

# USAID UKRAINE COMMERCIAL LAW CENTER PROJECT

Contract No. 121-C-00-00-00823-00

Deloitte Touche Tohmatsu Emerging Markets, Ltd.

## QUARTERLY PERFORMANCE MONITORING REPORT 5

For the Quarter Ending 31 October 2001

### SPECIFIC ACTIVITIES DURING REPORTING PERIOD

#### ADMINISTRATIVE & INSTITUTIONAL

##### *Staff development*

- The Chief of Party, Petro Matiaszek, resigned effective September 13, 2001. He was replaced as Chief of Party by Justin T. Holl, Jr. on October 29, 2001, who had been the Senior Legal Advisor for the project.
- The Senior Legal Advisor position will be filled by Darrell Brown, Attorney at Law, who has significant experience in Ukraine and a strong commercial law background. He will begin in January 2002.
- Professional Development Director Myroslava Antonovich resigned her post effective in August 2001 and was replaced by Inna Topal, who had served as assistant to the PDD Director, on September 10, 2001.
- Halyna Shevchuk, who has served as assistant to the Director of the CLC has been promoted to assistant to the Director of the Professional Development Department.
- Yuriy Popov, an attorney with an extensive private practice in commercial law in the Odesa region, joined the Legislative Development Department as a senior legal advisor in October 2001.
- Dmytro Nochvay, who has experience as legal advisor to one of the deputies of the Verkhovna Rada, joined the Legislative Development Department on October 16, 2001 as junior attorney.
- The CLC has added two full time translator/interpreters, Irina Bazeliuk and Mykola Prokpets. Irina Bazeliuk has become the Senior Translator, replacing Maryna Vozna who will be working part time for the project.
- In early August the president of Kyiv-Mohyla Academy withdrew its offer for housing the Commercial Law Center at the university, citing an acute space shortage. The CLC began searching for larger office space and is in the process of negotiating for 400 square meters in the building next door to Horizon Towers. If an appropriate agreement on this space can be reached it will add approximately 250 square meters, which is necessary to accommodate the increase in CLC staff and the personnel that will join the Project as a result of the anticipated merger of the USAID Financial Restructuring Project with the CLC. Notice of Termination of the present lease was tendered to the landlord, ISA Union, on October 29, 2001 pursuant to the lease with a move out date not later than December 31, 2001.

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- Daniel Mosher, from the Washington office of Deloitte Touche Tohmatsu traveled to Kyiv to work with the administrative staff in developing a Business Plan for the Center. The final Business Plan has been completed. The business plan includes preliminary measures to move the CLC toward self-sustainability. Internal training sessions were completed with Department Directors to familiarize them with the elements of the business plan. He also assisted with administrative support during the period of transition to a new Chief of Party.
- In continued preparation for the establishment of the Commercial Law Center as a self-sustaining Ukrainian legal entity, the Finance Department and the Legal Development Department conducted a comparative analysis of the current legislation for the establishment and regulation of “non-business legal entities” and proposed draft laws to assess the impact that legislative changes might have. The Legislative Development Department has been asked by the Committee for Economic Policies, Property and Investments of the Verkhovna Rada to assist in developing this legislation.
- The first of four Advisory Board meetings was held to develop priorities for the CLC was held on October 5, 2001.
- In addition, to arranging for the conference hall and other logistical matters, written materials are being completed, including a report prepared by the Outreach/Information Department publicizing the successes of the first year of operation of the CLC.

### PROFESSIONAL DEVELOPMENT

#### *Training Workshops*

The CLC has received responses from attendees of last year’s Work Shops and seminars regarding how those participants have used the information they received during the seminars in their workplace. This material is being analyzed in order to incorporate lessons learned in the planning and implementation of future training programs.

The Professional Development Department finalized its general plan for Training Workshops for Year 2 and has tentatively scheduled the workshops for November and December 2001 and February, April, May and June 2002. The six Workshops will cover 1) business organizations, 2) contracts, 3) financing, 4) dispute resolution, 5) unfair business practices, and 6) comparative commercial law.

At the end of October the CLC conducted a two day seminar on general legislative drafting principles attended by 18 participants from 12 different Ukrainian ministries and institutions, including the Secretariat of Committees of the Verkhovna Rada and the Cabinet of Ministers. This was the first of four work shops on legislative drafting that will be held by the CLC this year.

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### *Continuing Legal Education (CLE) Seminars*

The first continuing legal education short-course entitled “Protection of Rights of Businesspersons” was held on October 3, 2001. The course featured V.I. Danishevskaya, the Director of the CLC as one of the lecturers, along with M. Husak and T. Dobrolybova, both judges of the Supreme Economic Court of Ukraine. Presentations focused on the protection of rights of businesspersons and discussed court practice before the economic court. A large segment of the 43 participants were judges.

On October 21-22, 2001 an interactive work shop was held for the training of trainers. This course is intended to improve the quality of the Continuing Legal Education courses put on by the CLC by introducing our regular lecturers to a variety of presentation techniques. The lecturer, Betty A. Meikle, has extensive American and international experience developing and presenting training courses. Each participant was required to make a presentation practicing the principles that Ms. Meikle had suggested and these were video-taped for self-evaluation and constructive suggestions by the participant’s peers. All of the CLC professional staff took part as part of the CLC internal capacity building. It is expected that professional staff of the CLC will gradually be more active in the CLC legal training program.

In Kyiv on October 30, 2001 a second continuing legal education short-course was held, which covered “Protection of Intellectual Property Rights in Ukraine”. Presentations were made to the 45 attendees by Yuriy M. Kapitsa, Director of the Institute for Intellectual Property and Transfer of Technologies of the National Academy of Sciences of Ukraine, Volodymyr S. Drobyazko, Consultant of the State Agency of Ukraine on Copyright and Neighboring rights, Victor I. Zhukov, Attorney, Director of the Institute of Intellectual Property in Kharkiv and Volodymyr M. Kharchenko, Judge of Shevchenkovsky Rayon Court in Kyiv.

### *Commercial Law Curriculum Reform*

In September, the CLC hired three experts to review its proposed curriculum for a specialty in the law schools called “Commercial Law of Ukraine”. Three reviews are a prerequisite for submitting the proposed curriculum to the Education and Science Ministry of Ukraine. The three reviewers, N.O.Saniakhmetova, Chair of Commercial Law at Odesa National Legal Academy, V.S.Shcherbyna, Chair of Economic Law at Taras Shevchenko National University in Kyiv, and A.V.Kravets, a partner of “Kravets & Levenets” law firm, completed their independent assessments of the overall curriculum and offered constructive criticism and recommendations for improvement. The Working Group developing the curriculum will meet in November to consider modifications to the proposed program based upon these critical reviews.

### *Practical experience for students*

On September 12, 2001 the CLC management and the USAID CTO for this project met with V. M. Sushenko, Dean of the Law Department at the National University Kyiv-Mohyla Academy to discuss ways in which the CLC might continue to support

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the KMA's Legal Clinic Consulting Center. The CLC has determined that it will contribute to this legal clinic by providing financial support for some administrative staff at the legal clinic. The Clinic, in turn, will provide the CLC with a monthly report on its activities so that the CLC can monitor the development of the clinic program.

The Professional Development Department of the CLC has begun collaboration with the All-Ukrainian Association of Law Students whose members have a depth of experience with the operation of legal clinics in Ukraine. Together with this organization the CLC plans to prepare a manual for law faculties of institutions of higher education outlining how to create and maintain effective legal clinics.

In addition, the CLC is preparing for a law student competition in analysis and case presentation in a moot court format. Hypothetical fact situations that raise controversial and difficult legal issues are being developed by the Professional Development Department and Legislative Drafting Department for use in the competition.

### *Publications for professionals*

Prof. Opanas Pidopryhora, an authority in the intellectual property, served as editor of the first issue of the CLC Law Journal dealing with intellectual property rights. During this quarter the Journal was completed and distributed to all persons on the CLC mailing list. The next edition of the Journal will deal with issues regarding hypothecation.

### LEGISLATIVE DEVELOPMENT

In August 2001 the Commercial Law Center legislative development department continued its work on the intellectual property provisions contained in Book IV of the draft Civil Code. The CLC Working Group met 10 times between 15 August and 1 September and finalized the text of the general provisions of Book IV and the part devoted to copyright. The Working Group then submitted these texts to stakeholders, including the Economic division of the American Embassy, the US Department of Commerce WTO division and the International Federation of Phonographic Industries for written comment. On September 12, 2001 the International Federation of Phonographic Industries (IFPI) had an opportunity to present oral comments to the Working Group at a meeting held at the CLC offices for that purpose and submitted written comments on September 17 and September 19. Most, but not all of its suggestions were incorporated in the final version of Book IV prepared by the Working Group. The CLC held a meeting at its offices on Friday, September 28, 2001 with Anatoly Dovgert, Professor, Doctor of Law, who represented the drafters of the original version of Book IV. At this meeting the Working Group was represented by Yuriy Kapitsa, Director of the Center on Intellectual Property of the National Academy of Sciences, and Gleb Krivenko, USAID, also attended. The purpose of the meeting was to inform Professor Dovgert of the final draft of the Working Group, and solicit his comments. Professor Dovgert generally supported the output of the

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CLC and suggested that it be presented to the Temporary Commission of the Verkhovna Rada on the Civil and Economic Codes. In order to garner additional support the CLC comments and proposals were submitted to the State Department of Intellectual Property, the Ministry of Justice and the private law firm of Baker and McKenzie. All three considered the CLC output favorably and brought what political influence they could to support this text. Roger Lawrence, the U.S. Department of Commerce representative in Kyiv, was briefed on all significant meetings and activities of the CLC regarding Book IV. Yuriy Yurchenko, Strategic Planning Director, met with MP Z. Romovska and her assistants throughout the last week in September to prepare for the meeting of the Temporary Commission on October 4, 2001. In addition, the CLC arranged for the in-country assistance of an American lawyer, Allen Shinn, who is an expert in WTO and TRIPS conventions to provide consultation and prepare a report regarding conformance of the Working Group version of Book IV with international conventions. He met with Y. Kapitsa for a briefing on the legislative history of Book IV. He also met with Amy Mason, U.S. Embassy, and Roger Lawrence, U.S. Department of Commerce WTO Specialist for their opinions and suggestions. His conclusion was that, except for one definition that might conflict with international conventions, the version of Book IV prepared by the Working Group was in conformance with international standards. His conclusions were then presented to Mr. Gornisevich, Deputy Head of the Ukrainian Institute of Industrial Property, and he emphasized to Mr. Gornisevich that comments by the U.S. Department of Commerce should be given special attention, because these matters will again be issues when Ukraine starts the process of accession to the WTO. Book IV of the Civil Code was considered by the Temporary Commission of the Verkhovna Rada on the Civil and Economic Codes on October 4, 2001. MP Romovska introduced text based on the CLC output at the Special Commission. There was heated debate by the Temporary Commission behind locked doors and Mr. Tepluk, Head of the Legal Department, made negative comments regarding the Romovska text. After lengthy argument the Temporary Commission recommended that the Romovska text be forwarded to the Verkhovna Rada for consideration and vote. Nevertheless, the legal department forwarded the old text that had passed the second reading and doesn't conform to international standards. U.S. Ambassador Pascual informed the Deputy Speaker of the Verkhovna Rada, Medvedchuk, that the text that had passed the first two readings of the Verkhovna Rada did not have the support of the Embassy. Mr. Medvedchuk stated that, in that case, he would make sure that Book IV would not be voted upon by the Rada October 18<sup>th</sup>. This set off intense activity between MP Romovska's office, supported by the CLC, and the Legal Department, the result of which was that the Temporary Commission has stated in a protocol of its proceedings that it supports the Romovska text. The Temporary Commission will meet again on November 13, 2001 to make its recommendation as to which text will be voted upon. The vote is now scheduled for November 15, 2001.

The Head of the Committee for Banking and Finance officially requested by letter dated October 17, 2001 that the CLC draft recommended changes to the text of the Law on Hypothecation and submit them to the Committee. CLC staff attorney, Gennadiy Semenov, prepared suggested textual improvements for the law, in part based upon analyses commissioned by the CLC from an attorney from Mriya Bank,

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and a second attorney specializing in comparative international law. The proposed amendments concentrated on rendering the draft consistent with the terms and principles of the new Land Code, EU legislation, and the Civil Code. Also the CLC improved provisions for the assignment of notes and mortgages by the lender to third parties, which is necessary for future development of a secondary mortgage market. Lastly, the proposals streamlined mortgage foreclosure procedures to allow non-judicial foreclosure through notaries. The proposed CLC textual amendments will be formally submitted to the Committee in November 2001.

In October it was brought to the attention of the CLC by persons working on the USAID Micro Finance Project that the “Law of Ukraine on Valuation of Property”, adopted in the summer 2001, is too broad in that it requires an appraisal of all property used as collateral. For small loan transactions that involve collateral the requirement that there be an appraisal of the property will substantially increase transaction costs and may stifle micro-lending. In addition, the sale of consumer goods on credit often requires that the item sold be given as collateral to secure payment of the purchase price. For these transactions there is generally no need for an appraisal, because the market value of these consumer goods is readily ascertainable by the parties to the transaction. There are also valid legal reasons for amending the law, since it is inconsistent with the freedom of disposition of private property and it is inconsistent with principles established in the new Civil Code which favor private contracts over mandatory third party intervention. A meeting was held at USAID on October 2, 2001 to develop a strategy to introduce an amendment to the law that would create an exception for these types of transactions between private parties. The CLC and V. Renner, General Manager of Micro Finance Bank, jointly drafted an appropriate amendment to the law and submitted it to MP Zachosov, who has registered it. The amendment will now be considered by the Scientific Expert Board of the Verkhovna Rada as well as the Cabinet of Ministers. Thereafter, it will be submitted to the Rada Committee on Issues of Economic Policy, Management of Public Economy and Property Investment for deliberation. If the Committee approves the amendment it will be submitted to the Verkhovna Rada for vote.

A draft law “On Incorporating Changes to Some Laws of Ukraine” introduces changes to the law “On Recovery of a Debtor’s Solvency or Acknowledgment of Debtor Bankruptcy”, the law “On Judicial Enforcement”, “On Pledge” and “On the Procedure for Paying Debts of Taxpayers to the Budgetary and State Funds”. This draft law violates a number of Constitutional principles regarding equal treatment of subjects of rights in property, the inviolability of property rights, and division of executive and judicial powers. It is also inconsistent with general principles of the laws “On Bankruptcy”, “On Valuation and Valuation Activity”, “On Execution” and “On Pledge”. The CLC Legislative Drafting Department prepared a legal opinion to this affect and delivered it to MP Zachosov and to the Committee on Economic Policy, Property and Investment in an attempt to show that the draft should not be passed. However, this draft law was prepared by the Cabinet of Ministers at the request of the President’s Administration and, thus, there is a reluctance among Committee members to oppose the bill. When the bill comes before the Verkhovna Rada for passage in the first reading there will be attempts to get the Verkhovna Rada

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to reject the draft. If this is unsuccessful there is a possibility that the Cabinet of Ministers may make compromises regarding some of the controversial provisions.

A draft law "On Incorporating Amendments to the Law of Ukraine "On Judicial Enforcement", registered on July 24, 2001 will be considered by the Verkhovna Rada Committee on Legal Policies. The draft law suggests expanding the types of property that can be seized to satisfy money judgments to include one apartment or house owned by citizens or shares in a housing construction cooperative in the case of unfinished construction. The CLC Legislative Drafting Department is in the process of establishing a relationship with the responsible Committee and formulating a position on key issues.

The CLC reviewed the draft law "On Non-Profit Organizations" and prepared proposals to amend the draft to differentiate between non-profit organizations for public benefit and non-profit organizations for private benefit. This entails adding corresponding definitions to the draft law and adding changes in the management and reporting requirements set out in the law. These proposals were submitted to the Committee of the Verkhovna Rada on Economic Policy. This effort is directly related to the CLC's strategy for incorporating as a Ukrainian legal entity.

### OUTREACH & INFORMATION

#### *Business seminars*

In August 2001 the CLC started preparation for its next series of business seminars by preparing for a focus group to identify the business community's legal information needs. Proposals on topics for the planned two-day seminar cycles are under development. On September 19, 2001 the CLC hosted a roundtable attended by practitioners, attorneys, representatives of business associations, and experts from other projects to better understand what information in the field of commercial law regional businesspersons are interested in and how best to disseminate this information. The topics and the schedule for the year two cycle of regional seminars for businesspersons was developed, which calls for three two-day sessions in each of four base cities: Cherkasy, Dnipropetrovsk, Ivano-Frankivsk and Simferopol. If a person attends the entire cycle in his/her city that person will have a well-rounded understanding of basic commercial law principles. The requirements for attendees are that they have not less than 2 years experience running a business and must be a member of a local business association. This will ensure that the practical experience of the attendees will be shared at the seminars with other participants and that the materials will be available to other members of the association who cannot attend. Four persons, Ye.Kupaigorodsky, V.Novosel'sky, V.Kobyletsky and O.Dodukal, have been selected from several candidates as potential lecturers for the first cycle of seminars. In the first weeks of October a general meeting will be held with them to discuss approaches to preparation of handout materials and methods of seminar presentation. On October 8, 2001 a general meeting was held to finalize agendas and approaches for the written materials.

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### *Publications for non-professionals*

The USAID Financial Restructuring Project and the CLC have entered into preliminary negotiations with experts on bankruptcy issues, who will write a basic bankruptcy manual entitled “Bankruptcy for Beginners”. It is intended that this manual would be directed at persons who have no expert skills in bankruptcy but face the need to initiate or participate in bankruptcy proceedings.

The CLC has ordered 1000 additional copies of its first publication in its series for businesspersons entitled “Legal ABC’s for Entrepreneurs” because of popular demand. The first 3000 copies of this brochure were quickly distributed to the numerous business organizations and businesspersons that had sought a copy.

The second publication in the series, “Licensing of Entrepreneurial Activities in Ukraine” has been completed and 2000 copies have been ordered.

The third Bulletin by the CLC with articles on the need for the new Civil Code, trends in the law of competition, how reporting has improved the transparency of business law, and ways for developing mortgage law in Ukraine was published and distributed to 1500 recipients throughout Ukraine.

### *National Commercial Law Conference*

The date for the first annual National Commercial Law Conference has been set for December 12, 2001. The CLC commissioned three commercial law experts to prepare analyses and propose directions and priorities for the commercial law framework in Ukraine. These reports will be part of the written materials for the conference. The agenda and proposed list of attendees has also been completed. It will be a one day conference consisting of a plenary session at which an overall perspective on commercial law and possible priorities will be introduced, followed by three break out sessions that will be conducted in a Roundtable fashion covering 1) Intellectual Property, 2) Protection of Rights of Businesspersons and 3) Civil Law contracts, including land relations, mortgaging and finance. A summary of the results and protocol of conclusions regarding priority legislation will be produced.

### *Media Seminars*

At the request of UNIAN, the largest national information agency of Ukraine, the CLC will be holding a seminar for journalists in November to familiarize them with the importance of the development of the commercial law framework in Ukraine and to introduce the CLC as a resource that can be called upon by journalists when contemplating articles on commercial law issues.

### *Press Relations*

In October the well-known Ukrainian business portal LIGA ([www.liga.kiev.ua](http://www.liga.kiev.ua)) published the results of a survey carried out by the Association of Young Lawyers of Ukraine, which recognized the “Commercial Law Center Project” as the best legal

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project of the year in Ukraine. This information has been disseminated through the CLC web site, the CLC Bulletin, the UMREP Monthly Journal and UNIAN Information Agency.

### *Public Dissemination of Information and Publications*

The CLC has created a distribution list so that breaking information can be quickly disseminated to those who have participated in CLC programs.

The design of the CLC web site has been enhanced to include easier electronic access to the CLC publications, including the bulletin, the Ukrainian Commercial Law publication and the ABC series for businesspersons.

### *Contractor Coordination Meetings*

In September the CLC co-sponsored a contractor's coordination meeting with the USAID Parliamentary Development Project. Justin T. Holl, Jr., Chief of Party, and Valentyna Danishevskaya, Director of the CLC, actively participated in this event. Mrs. Danishevskaya introduced the CLC Project to the other contractors and gave a short presentation on what is required in order for legislative activities to be successful in Ukraine. Mr. Holl, after a short introduction on successful legislative initiatives and problem areas working with lawmakers, moderated a discussion where the other contractors shared their experience and recommendations for success. The discussion was carried over to the PDP coordination meeting held on October 31, 2001, which Mr. Holl attended on behalf of the CLC.

Because the PDP sponsors a broader contractors' coordination meeting on a monthly basis, the CLC has decided to organize a coordination meeting that will focus on specific legislative issues geared toward contractors with a specific interest in chosen topic. Where possible and expedient the CLC will invite high level government officials to attend. Pursuant to this strategy the CLC sponsored a contractor's coordination meeting on October 25, 2001 targeting several USAID projects that have an interest in developing effective banking, credit and ownership possibilities in Ukraine. Justin T. Holl, Jr., introduced the topic with an exposition of the status and directions for the development of mortgage credit in Ukraine. Members from USAID, the USAID Land Titling Initiative, BIZPRO, the Banking Supervision Project, the Agribusiness Development Project, Eurasia Foundation and the Regulatory Reform Initiative joined in the subsequent discussion. The comments and suggestions noted during the discussion have been taken into account by the CLC Legislative Drafting Department in its assistance to the Verkhovna Rada Committee for Banking and Finance with the draft Law on Hypothecation

### *Cross-Cutting Issues*

Members of the CLC Outreach and Information Department took part in a two day-conference in Lviv entitled "Women in Business: Equality and Opportunities" (September, 25-26, 2001). Present at the conference were leading international and local organizations working in the field of women's rights. The CLC established

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contacts with the leaders of these organizations and gathered material for an analytical paper on the status of women in business in Ukraine, which the CLC will prepare this project year. The results of this analysis will be published in brochure form and be widely distributed to key government officials and institutions, members of the business community, private laws firms and interested women's organizations. It will also be posted to the CLC web site.

The Outreach Department has started research regarding gender equality in the area of the application and reform of commercial law in Ukraine. This research will take into account experience and best practices

### **ACTIVITIES PLANNED NEXT REPORTING PERIOD**

Specific activities during the quarter will include:

- Professional Development
  - The first cycle of two day seminars will be held in Simferopol and Dnipropetrovsk on Contracts
  - The first extended Work Shop will be held in November on "Dispute Resolution
  - The second extended Work Shop will be held in December on "Business Contracts"
  - The second and third Continuing Legal Education Courses will be conducted in the regions
- Legislative Development:
  - Improvement of draft law on Hypothecation will be submitted to Rada Committee
  - Proposals for the law of Pledge will be completed
  - Strategy for improvement of the enforcement of judicial decisions will be completed
  - Amendment to law on Appraisal of Property will be submitted to Rada
  - Assistance to Rada on the implementing law for the Civil Code
  - Roundtable on judicial enforcement will be held
- Outreach & Information:
  - The second compliance guide will be published entitled "Licensing Businesses in Ukraine
  - Report on Gender issues in commercial law will be completed
- Administrative & Institutional:
  - The CLC will move to new premises

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- The Financial Restructuring Project will merge with the CLC Project
- An incorporation schedule will be completed for the CLC
- The first Annual National Conference will be held

**FINANCIAL STATEMENT & MONITORING PLAN UPDATE**

Please see attached.

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Justin T. Holl, Jr.  
Chief of Party