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ASSISTANCE IN ESTABLISHING THE LEGAL AND INSTITUTIONAL FRAMEWORK NECESSARY TO SUPPORT A MARKET-BASED ECONOMY (LIME 2) KYRGYZSTAN AND TAJIKISTAN FINAL REPORT

JUNE 15, 2006

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DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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ACRONYMS AND ABBREVIATIONS

CIB	Credit Information Bureau
CIMS	Court Information Management Systems
CLE	Continuing Legal Education
CPC	Civil Procedure Code
CTO	Cognizant Technical Officer
EBRD	European Bank for Reconstruction and Development
HEC	Higher Economic Court (Tajikistan)
IBC	International Business Council
ICA	International Court of Arbitration
IFC	International Finance Corporation
JODB	Judicial Opinion Database
JTC	Judicial Training Center
LIME 1	Legal Infrastructure for a Market Economy Project
LIME 2	Assistance in Establishing the Legal and Institutional Framework Necessary to Support a Market-Based Economy in the Kyrgyz Republic and Tajikistan
LNLA	Law on Normative Legal Acts
LRF	Land Reserve Fund
M&E	Monitoring and Evaluation
MOJ	Ministry of Justice
MOU	Memorandum of Understanding
NGO	Nongovernmental Organization
NASMB	National Association of Small and Medium Businesses (Tajikistan)
SEGIR	Support for Growth and Institutional Reform
SME	Small and Medium Enterprise
UNIFEM	United Nations Development Fund for Women

USAID

United States Agency for International Development

I.0 INTRODUCTION

KYRGYZSTAN

This final report covers the ten-month period of activities from August 5, 2005 to May 31, 2006 of assistance in Establishing the Legal and Institutional Framework Necessary to Support a Market-Based Economy in the Kyrgyz Republic and Tajikistan (LIME 2) Project under the Support for Growth and Institutional Reform/Commercial Legal and Institutional Reform (SEGIR-CLIR) Indefinite Quantity Contract. The project was tasked to develop and carry out a broad range of activities designed to assist in developing the commercial, legal and institutional framework necessary to support a market economy in Kyrgyzstan.

In accordance with the Scope of Work to this task order, the project undertook activities in three major areas:

- (1) General Commercial, Legal and Institutional Framework;
- (2) Dispute Resolution Mechanisms; and
- (3) Institutional Reform.

The project developed and carried out the activities described in the Scope of Work within the rubric of these three major areas, as follows.

General Commercial, Legal, and Institutional Framework

- Lawyer Training
- Information for Lawyers
- Legislative Drafting

Dispute Resolution Mechanisms

- Court and Judicial Procedures Reform
- Court Modernization
- Training of Judges in Non-commercial Law Topics
- Training of Judges in Commercial Law Topics
- Fair Trials
- International Court of Arbitration

Institutional Reform

- Business Associations
- Lawyer-Business Relationships

- Dissemination of Information
- Judicial Opinions

The project developed, designed, and carried out its activities in a manner that built on the initiatives of, and fostered cooperation with, individuals and organizations in Kyrgyzstan society.

TAJIKISTAN

USAID's overall country program strategy in Tajikistan during LIME 2 focused on supporting the country's transition to a market-based economy. This strategy included support for both the laws necessary to govern such an economy and the legal institutions necessary to administer the laws. Within this strategy, the project in Tajikistan was conceived as a 10-month "bridge" project to cover the period between the end of the USAID Legal Infrastructure for a Market Economy (LIME 1) Project on August 4, 2005, and the beginning of a new strategy period some time in 2006. The project was extended from May 31, 2006 to September 30, 2006 with a much-narrowed scope of activities.

The project continued as USAID's principal vehicle for providing technical assistance in the commercial law development area, with the goal of encouraging a legal environment conducive to the growth of private enterprise in the form of small and medium businesses. The project functioned within USAID's economic development Strategic Objective 1.3, Improve the environment for the growth of small and medium enterprises. More specifically, the project's work fell under Intermediate Results 1.3.1, Increased opportunities to acquire business information, knowledge, and skills; 1.3.2, More responsive financial institutions, instruments, and markets; and 1.3.3, Increased implementation of laws and regulations.

Over a fourteen month period, from August 5, 2005 through September 30, 2006, the project provided technical and financial assistance to improve economic laws and regulations, strengthen institutions (public sector), improve the professionalism of lawyers and judges, build capacity among business associations (private sector), and disseminate the laws and legal publications throughout the legal sector. Building on the accomplishments of LIME 1, LIME 2 worked in five main objective areas:

1. **General Commercial Legal and Institutional Framework:** Increase the professional skills and ability of lawyers and other legal professionals to competently represent clients in (a) transacting increasingly sophisticated business deals in a market-based economy and in (b) litigation involving complex commercial issues. Improve the current framework of commercial legislation in areas critical for the proper functioning of a market economy.
2. **Trade and Investment:** Assist in development of the legal framework necessary to support Tajikistan's accession to the World Trade Organization and its participation in the global economy.
3. **Dispute Resolution Mechanisms:** Increase the competence of legal professionals responsible for interpreting and applying the law, and increase the efficiency and transparency of the legal system generally and the courts specifically.
4. **Institutional Reform:** Increase the understanding of Tajik businesses, entrepreneurs, and the general public of the law not as something to be avoided, but as something that can and should be used to help them protect their rights and business interests. Increase the degree of transparency in the legal system and thereby decrease the propensity of judges who might otherwise be inclined to issue arbitrary or capricious rulings. Increase the capacity of People's Representatives to provide fair and reasoned advice to the courts in matters utilizing them.

5. **Property Rights:** Substantially improve the legislative and institutional framework and the implementation and application of laws for the protection and promotion of private property rights, and the registration and collateralization of such property.

2.0 SUMMARY OF THE WORK PERFORMED

KYRGYZSTAN

In Kyrgyzstan, the project satisfied the requirements of the tasks assigned by USAID, and the program was directed by Chief of Party Brian Kemple, with support provided by Brad Johnson and Ruzan Aghazadyan in ARD's home office. In a span of ten months, the project carried out a wide range of activities, developed new programs, and produced a number of legal information products.

The project successfully developed and carried out two new training programs for lawyers and business persons, respectively, and continued and expanded a training program for judges and legal officials. It facilitated the successful execution and implementation of a second Memorandum of Understanding (MOU) between USAID and the Supreme Court, which expanded the areas of cooperation that had been established by an earlier MOU. The Judicial Opinion Database (JODB) gained the full acceptance of and endorsement by the Supreme Court; court participation in the JODB was expanded to include an additional 24 courts (bringing the total to 34); and, at the end of the project, the Supreme Court had agreed to assume and support the JODB.

The project's extensive and innovative work with the business community demonstrated the receptivity of this group to learn to use the law and led, in our view point, to a fruitful way for future USAID efforts to promote both the rule of law and an open market economy in Kyrgyzstan.

The project also produced and disseminated a wide range of publications and legal information products and unveiled the *Explanatory Russian-Kyrgyz Dictionary of Legal Terms* and the *Commentaries to the Civil Code*, both of which stand to become landmark publications in Kyrgyzstan's development.

The only areas in which the project did not fully satisfy assigned tasks were in the courts and Court Department, whose organizational, financial and political problems prevented these groups from cooperating effectively with the project, despite the close relationship shared between the project and them.

TAJKISTAN

LIME 2 was implemented by the ARD SEGIR-CLIR Consortium, in association with Checchi and Company Consulting, Inc. ("ARD/Checchi") under a SEGIR-CLIR Indefinite Quantity Contract task order. ARD/Checchi fielded a seasoned project director who worked closely and effectively with USAID, the Embassy, other international donors, and the project's counterparts. The director William Kennedy, an experienced commercial lawyer from the United States, was supported by an outstanding group of Tajik technical and administrative staff as well as by expatriate and regional short-term advisors. Mr. Kennedy remained with the project throughout the base period. For the extension period, senior lawyers Sukhrob Hojimatov and Nurali Shukurov became the project's co-directors. Keith Rosten from Checchi's home office in Washington, DC provided essential supervision and support throughout the task order.

To implement its ambitious activities in such a short time-frame, the project relied on ARD/Checchi's long-running and carefully fostered relationships with key counterparts, including the Legal Department of the President's Administration, the MOJ, the Supreme Court, the Higher Economic Court, the Constitutional Court, the Council of Justice, the Judicial Training Center, the National Chamber of Advocates, the eight regional oblast-level courts, the law faculties of the major universities, and the Tajik Parliament. Effective legal reform work in Tajikistan would be impossible without these ties. Unfortunately, to many of the governmental counterparts, stability and consolidation of power continued to be more important than reform or economic growth (particularly given the Presidential election scheduled for November 2006), hampering some project activities. In the area of court and judicial reform it is important to note that shortly before the project began, a large percentage of the leadership at the project's two main court counterparts, the Higher Economic Court and Supreme Court, were not reappointed and were replaced with others with less experience. The changes at the courts had the effect, at least in the short term, of reducing the competence of the courts and hindered reform there.

In summary, ARD/Checchi implemented this project with one overarching goal: the achievement of tangible results. We are pleased with the results achieved, particularly given the difficult implementation environment and the short time allotted. The following summary of major accomplishments is formatted to match the project's approved work plan, to allow USAID to easily assess ARD/Checchi's success under the task order based specifically on its achievement of results and meeting or exceeding work plan benchmarks.

3.0 DESCRIPTION OF THE WORK PERFORMED

KYRGYZSTAN

3.1 GENERAL COMMERCIAL, LEGAL, AND INSTITUTIONAL FRAMEWORK

3.1.1 Lawyer Training

Description of the Tasks

The project was tasked with increasing the professional skills and abilities of lawyers and other legal professionals to understand the needs of small and medium enterprises (SMEs) and to competently represent clients in (a) transacting increasingly sophisticated business deals in a market-based economy and (b) litigating in complex commercial issues.

Performance Indicators

The following performance indicators were approved by USAID for this area of activity:

1. Overall design and schedule of lawyer training program consisting of an integrated program of 8 training modules on different areas of commercial law and practice completed and publicly advertised by October 10, 2005;
2. At least two commercial law training seminars conducted monthly in Bishkek, beginning no later than October 2005 and ending in May 2006, for an average of twenty-five Kyrgyz lawyers, notaries, and other legal professionals on relevant and timely commercial law topics and utilizing lawyer trainers developed by the project;
3. No less than 80% of the trained lawyers passing with a score of 75% or better, calculated to measure mastery of the material taught;
4. Preparation and delivery of the project's proposal on institutionalization of the continuing legal education to USAID;
5. A "brainstorming" session conducted among interested parties on ways to improve the professional level of legal practitioners in Kyrgyzstan and the results reported to USAID; and
6. Assessment tools calculated to measure the professional skills and ability of Kyrgyz lawyers and other legal professionals to competently represent clients in (a) increasingly sophisticated business transactions in a market-based economy and (b) litigation involving complex commercial issues developed and applied to program participants.

Summary of the Work Performed

The project fully satisfied the requirements of the tasks established for this activity, with the exception that less than 80% of the lawyer participants received a score of 75% or higher on tests on the material taught. (The average pass rate was 32%) We attribute this to the fact that the tests were very demanding. The assessment revealed that the participants valued the instruction very highly and found it directly relevant to their work as practitioners.

Description of the Work Performed

Designing the Training Program. The project developed and carried out a training program on commercial law issues for practicing attorneys as described below.

We began with the assumptions that, in order for the training program to be successful, it must (1) provide information that practicing lawyers need and want and (2) get the lawyers to take part in the training. In order to satisfy the first requirement, the project conducted research, surveys, and discussions with accomplished practitioners to identify practice areas and issues that are topical and significant and oversaw the development and preparation of presentations and materials that expound these issues in an interesting, effective, and comprehensive manner.

Our experience with the local legal community, however, suggested that practicing lawyers would not be induced to attend by topicality and quality alone, and we elected the following approach in order to provide additional incentives to our audience and to lay the basis for institutionalizing the training program.

We decided to present the seminars as a series that constituted a single program, rather than being a sequence of individual, unrelated seminars. We developed a logo and identity for program, the “School for Practicing Lawyers,” to emphasize that lawyers should know the law in detail rather than just in general terms. We decided to develop eight different, area-specific training modules and have State agencies and other organizations co-sponsor individual seminars where appropriate.

We announced that certificates would be issued at the end of each seminar to each participant who successfully passed a test on its subject matter. The certificates would be signed by both the corresponding minister or official, as well as by the project. (We believed that formalizing the program and issuing quasi-official certificates would provide a significant incentive for the many local lawyers who are seeking to improve their credentials as well as their qualifications.)

Preliminary Survey. A preliminary survey was carried out among lawyers to help the project to design the program. This was designed to elicit respondents’ opinions on (1) which topics presented the greatest interest; (2) which lecturers the lawyers would like to see; and (3) how the training sessions should be organized with respect to time of day and duration of sessions so as to ensure the greatest attendance. A total of 86 persons (out of a total of 139 contacted) sent us responses. After analyzing the survey results (which largely corroborated our own original intentions), we developed the program along the following lines:

1. The project developed eight training modules on the following topics:
 - Tax and Customs Law
 - Real Property Transactions
 - Corporate Governance and Securities Law
 - Intellectual Property Law
 - Bankruptcy Law
 - Labor Law

- Dispute Resolution
- Contract Law

A description of the results of the preliminary survey is provided in Appendix 1.

2. Each module was carried out over the course of a week and made up between twelve and fifteen academic hours, depending on the amount of material covered. A description of the content of each training module is provided in Appendix 15.
3. The training was broken into 3-hour segments held on successive days to accommodate working professionals.
4. The training was practical and practice-oriented, it did not include introductory lectures or presentations of a general nature, and it combined interactive and informational teaching methods. Most training materials were developed by the project and private practitioners. The involvement of ministry officials was be circumscribed, in that their lectures were commissioned by the project to address specific issues identified by or were subject to prior approval of the project; most often official involvement took the form of question-and-answer sessions.

We also believed that fees should be charged for attendance, with a discount for subscriptions to the entire series. Very reasonable fees were set, i.e. 1,000 soms (approximately US\$25) for the entire course. A total of 74,700 soms (approximately US\$1,820) was collected, which was used to defray costs of program activities, with USAID permission.

Institutional co-sponsors of the training modules included the Chamber of Tax Consultants, GosRegister, the Kyrgyzstan Stock Exchange, the Ministry of Labor, the International Court of Arbitration, the Bankruptcy Department of the State Property Fund, KyrgyzPatent, and the Lawyers Association of Kyrgyzstan.

Announcing the Training Program. We had originally intended to carry out the lawyers training program in both Bishkek and Osh. We advertised the program in local newspapers in both cities and, in Osh, we used a number of local organizations to disseminate information on the training program directly to the local legal community. Unfortunately, response in Osh was very weak. At the same time, more than 70 people signed up for the training in Bishkek (more than 60 were lawyers).

As a result of this disparate response, two seminars were carried out on each training topic in Bishkek, for roughly 30 persons each (giving preference to lawyers), and it was decided to not carry out the program in Osh.

Designing the Training Program to Address Businesses' Legal Issues. It is obviously very important that the lawyers be trained in handling the legal problems that are affecting and will affect business in Kyrgyzstan. To address this concern, we enlisted experienced practitioners as lecturers and trainers, who were in the best position to know these issues; we supported the practitioners' work with additional research and analysis of the issues, including insights and information gained in the course of our work with business persons.

Conduct of the Training Program. As noted above, we formed two groups from those that signed up for the training and carried out each training module for each group, for a total of sixteen seminars. We commenced the program in October 2005 and concluded it in May 2006. Attendance averaged 28 persons per seminar (27 for Group I and 30 for Group II), with an average of 18 women (19 for Group I and 18 for Group II) and 11 men (9 for Group I and 12 for Group II) per seminar. Sixty-one percent of attendees were in-house lawyers of commercial firms (63% for Group I and 60% for Group II) and 39% were lawyers who worked as outside for businesses (37% for Group I and 40% for Group II).

Participants who attended and successfully passed all eight trainings (19 persons) received recognition in the form of a special certificate. They also each received a copy of the *Explanatory Russian-Kyrgyz Dictionary of Legal Terms*, the *Commentaries to the Civil Code*, and a set of copies of major laws.

Testing. We developed tests on each subject area and administered them at each training activity. Note that **two different tests** were developed in each case. A simpler test was given at the beginning of each seminar to determine the participants’ general level of knowledge of the subject. A more challenging test was given at each seminar’s conclusion. The results of that latter testing—which is tied to a performance indicator—are presented below:

Percentage of seminar participants who received a score of 75% or higher:

	GROUP I	GROUP II
1. Tax and Customs Law	57%	23%
2. Real Property Transactions	18.5%	18.5%
3. Corporate Governance and Securities Law	12%	32%
4. Intellectual Property Law	55%	25%
5. Bankruptcy Law	60%	33%
6. Labor Law	17%	10%
7. Dispute Resolution	54%	37.5%
8. Contract Law	12%	36%
Average Pass Rates	36%	27%

Identifying an Institutional Partner to Continue the Program. As noted above, we developed the training program as described in order to increase the likelihood that it would be institutionalized and continued after the project ends. In the expectation that the follow-on USAID project would be launched shortly after the end of this project, USAID had originally tasked us with identifying a potential institutional partner who would be able and interested in continuing the program. To that end, we planned to conduct a solicitation of bids from interested institutions and organizations and conclude a final arrangement with one of them by the end of project. As things turned out, however, USAID has not yet announced a follow-on project, and our project does not have the extra program funding available that could provide the initial financial support that we believe any local partner would require in order to be able to carry out a training program.

In view of these circumstances the project provided USAID at its request with an assessment of potential local partners for USAID’s reference if and when USAID elects to continue program activities in this area. The assessment was presented to USAID prior to the end of project.

Round-Table on Issues Surrounding Legal Education. The project held a “brain-storming” session on ways to improve the current state of continuing legal education for lawyers, licensing for attorneys and other issues. The event was attended by private attorneys, a representative of a law department, project attorneys and Irina Krapivina of USAID. Participants were requested to continue to think over the issues discussed and to convey and further thoughts or recommendations to USAID.

Lawyer Assessment. In connection with our task of determining the professional level of local legal practitioners and measuring the impact of our lawyers training program, we were forced to limit our surveys and assessments to participants in our lawyers training program, owing to limited time and resources. In October, the project’s short-term technical consultant, Leo Surla, came to Bishkek to help us develop and carry out an assessment of lawyer ability to represent clients in business transactions and litigation, and to gain as much additional information as practicable. With Mr. Surla’s help, the project developed effective questionnaires and an assessment strategy and plan. Mr. Surla also met with a focus group of seminar participants and began to gather information for his own assessment of the project’s work and the needs of its counterparts and constituencies. Mr. Surla gave a presentation to Cognizant Technical Officer (CTO) Irina Krapivina on his initial findings.

Mr. Surla returned to Bishkek in April 2006 to carry out the second and final part of the assessment of the project’s activities. The project provided him with extensive information, including analyses of survey results. (Mr. Surla noted that he received three times more information to review than he had ever received from any USAID project previously.) He met extensively with project staff and conducted interviews with local program participants and counterpart organizations from many areas of the project’s activities. Mr. Surla’s visit culminated in a presentation to Cliff Brown of USAID on April 25. The presentation included useful information and findings that can inform USAID program planning in the future.

Mr. Surla’s preliminary and final assessment reports and final presentation are provided in Appendices 2, 3, and 4, respectively.

A summary of the results from survey conducted among the lawyer training program participants is provided in Appendix 5.

Self-Assessment by Program Participants. Owing to the constraints described above, self-assessment by the program participants served as a major source of information on the utility and effectiveness of the training program. The results of the self-assessment are provided below. Forty-five program participants took part.

I. To what extent, if any, will the knowledge received at the seminars of the School for Practicing Lawyers help you improve your work serving clients?	
Not at all	0
By 10-20%	3
By 30-40%	9
By 50-60%	13
By 70-80%	10
By 90-100%	10

Thus, 44% of respondents said that the knowledge received improved their abilities as lawyers by 70% or more, and 51% of respondents indicated that the knowledge received improved their abilities as lawyers by 50% or more.

2. How often do you think practicing lawyers should receive such training?	
Every year	29
Every other year	3
Once every three years	2
Once per month	5
Once every 6 months	6

Thus, respondents were unanimous that such training should be repeated, and 89% indicated that the training should be at least once per year.

A list of lawyers program participants is provided in Appendix 12.

3.1.2 Legal Information for Lawyers

Description of the Tasks

The project was tasked with producing and disseminating materials developed in the lawyers training program, as described in the performance indicator.

Performance Indicators

The following performance indicator was approved by USAID for this area of activity:

- Comprehensive training and supplementary materials developed in connection with the lawyer training program described in [Section 3.1.1] and published and distributed in an edition of 1000 copies before end of project to libraries, legal information centers, associations of Kyrgyz attorneys, and law schools, using professional associations and law schools and conduits for further dissemination to the public (May 2006).

Summary of the Work Performed

The project fully satisfied the requirements of this task.

Description of the Work Performed

Training and supplementary materials were prepared as an integral part of the lawyers training program. Training participants received the materials at the end of each seminar, as an inducement to participate in the training. At the end of the project we published 1,000 copies of a complete compilation of the materials developed in the course of the training program. The materials consist of a single volume of 550 pages and the training materials of seventeen lectures.

As with all of our publications, we provided the materials free of charge to libraries, legal information centers, and law departments throughout the country. The remaining portion of the materials were sold to the Chamber of Tax Consultants, the Lawyers Association, and the Central Asian Library (law-related, not-for-profit private organizations) with the agreement that these organizations would sell the materials to the public at an agreed-upon price and keep the proceeds from the sales.

3.1.3 Legislative Drafting

Description of the Tasks

The project was tasked with continuing and bringing to a point of completion a legislative drafting initiative in six areas.

Performance Indicators

The following performance indicator was approved by USAID for this area of activity:

- Completion of work by end of project on the following major pieces of commercial legislation critical for the proper functioning a market economy: (1) real property legislation set forth in the “Green Book” of proposed amendments to the major land laws; (2) the model regulation for the Land Reserve Fund; (3) the Law on Normative Legal Acts; (4) the Tax Code; (5) regulations to the Law on Pledge; and (6) the Law on Credit Information Bureaus with the project playing the role of facilitator and supporter, but not primary drafter, and private sector representatives involved in working groups and otherwise included in discussions regarding the draft legislation.

Summary of the Work Performed

The project fully satisfied the requirements of this task. All draft legislation in question was brought to a stage of completion satisfactory to the project. At the same time, the legislation has not yet been reviewed by Parliament and may undergo changes during that process.

Description of the Work Performed

The “Green Book” Package of Amendments to Major Land Laws. The predecessor project spearheaded a comprehensive effort of involved USAID projects to develop a sweeping package of amendments to the major land laws—the Land Code, the Law on Land Governance, and the Law Bringing the Land Code into Force—in order to bring them closer to the realities of rural life and address emerging problems. This draft legislation was submitted to the previous Parliament but was not acted upon, owing largely to the political ferment in the country during the time leading up the Parliamentary elections in February 2005. These elections culminated in the ouster of the President and led to a period of uncertainty and parliamentary paralysis.

USAID indicated that it wanted the new Land Market Development Project to assume this task when that project became operational. Leading up to that time, the project met with parliamentary staff members to make them aware of the proposed legislation and with Parliamentarian Marat Sultanov to solicit his support for the draft. (Marat Sultanov was in the same Parliamentary faction as Mr. Jurayev, who sponsored the draft legislation during the previous session. Mr. Jurayev was not re-elected.) The project also took part in a round-table organized by the United Nations Development Fund for Women (UNIFEM) to discuss proposed changes to the Law on Land Governance. The project used this as an opportunity to present those changes previously proposed as a part of the “Green Book.” At the end of 2005, the project formally transferred responsibility for this area of activity to the USAID land markets project, implemented by Chemonics, by providing it with copies of all of the draft land legislation, as instructed by USAID, along with relevant contact information and other background information.

We would like to remind USAID that, in our view, the best way to address issues surrounding land takings for public purposes (eminent domain), an area that needs to be addressed, is through amendments to the Land Code rather than by developing a new Law on Land Takings, which had been previously considered. The proposed amendment to the Land Code in the Green Book amendments do not address this issue.

Proposed Regulation for Land Reserve Fund (LRF). The predecessor project developed a model regulation on the Land Reserve after carrying out research and analysis of LRF management practices and procedures in three separate locales in Kyrgyzstan. The final version of the proposed regulation was developed in close cooperation with GosRegister. As with the Green Book amendments, USAID indicated that it wanted responsibility for this task transferred to the USAID Land Market Development Project when that project became operational.

At the beginning of this project’s current contract, the proposed regulation had been sent by GosRegister to the Government of Kyrgyzstan for approval by other government ministries. The delay with which the new government was formed in fall 2005 forestalled any progress in this process before the transfer of responsibility for this task from the project to the USAID land markets project.

Draft Law on Normative Legal Acts (LNLA). The predecessor project, under the auspices of the Investment Round Table, began to develop a new LNLA. Such a law is badly needed to establish (1) a clear hierarchy of laws; (2) clear requirements on the procedures to be followed for promulgating a new law or regulation and for dealing with laws and regulations that have not been adopted in accordance with such procedures; and (3) straightforward rules for resolving conflicts between laws. The existing legislative system suffers from a severe lack of order and clarity on all three of these fundamental questions, which creates much uncertainty and confusion.

Work conducted by the predecessor project consisted of developing a first draft of the law and developing proposed constitutional amendments that would accord the LNLA the legal status necessary to establish a hierarchy of laws. The proposed constitutional amendments were distributed to members of the Constitutional Assembly working group.

Under our current contract, the project first led the effort to finalize the proposed constitutional amendment that would afford the LNLA the status of a constitutional law. In October 2005, the working group prepared

a letter in its own name and forwarded their proposal to the Chairman of the Drafting Group of the Constitutional Assembly, Mr. Kerimkulov. In November, the working group sent the proposal to Mr. Zulpiev, Secretary of the Working Group of the Constitutional Assembly.

Over the period from December 2005 through March 2006, the working group carried out research and analysis of a number of relevant issues and finalized the draft law. The draft law was posted on five Web sites for review and comment—on the project Web site, along with the Web sites of the USAID Trade Facilitation and Investment Project, the International Business Council, the Investment Round Table, and the Soros Foundation. The working group also began the search for a local independent expert to review the draft.

In carrying out this work, the project continued to work closely with the International Business Council (IBC), whose representative has been a member of the working group since it began its work.

In addition, in March 2006 the working group hosted a delegation from Tajikistan, headed by the USAID Commercial Law Project in Tajikistan, which is planning to develop a similar law.

As of the end of the current contract, the outcome of both the constitutional reform process and the draft Law on Normative Legal Acts remained unclear.

Work on the New Tax Code. There has been a great deal of change in the process to develop a new Tax Code, which has been led by the Ministry of Finance. The predecessor project supported the participation in the process of private tax experts. In our view, their participation creates the best opportunity to effect tax reform along the lines recommended by the Investment Summit, which called for tax reform that would reduce overweening State control and corruption and encourage the development of an open market economy.

Most of the experts' recommendations and approaches, however, were not accepted at the time by the Ministry of Finance, particularly those that sought to address the two most important issues: (1) pervasive corruption; and (2) the need to bring citizens and companies out of the shadow sector, which is very large. Following the political changes in March 2005, however, a number of the new highly-placed government officials and parliamentary deputies expressed support for the private sector experts' views, approaches, and dissatisfaction with the existing draft. Both newly-appointed Prime Minister Kulov and Parliamentary Deputy Sabirov expressed support for this effort and urged the private experts to develop their own version of the Tax Code, taking the draft of the Ministry of Finance as their starting point.

The project continued to support the private tax experts' work under the new contract in accordance with the timetable and level of effort that was approved by USAID. Over this period through September 2005, the private experts completed their own proposed tax code and submitted it to Parliamentary Deputy Sabirov. In their view, this prompted the government to begin to take their proposals seriously.

In October 2005, the experts concluded the follow-up work on their own draft that was submitted to Parliament at the end of September. They also continued to provide comments on the Ministry of Finance draft through the Tax Commission, of which Irina Kemple was a member. The tax experts prepared and presented a comprehensive formal critique of the draft prepared under the auspices of the Ministry of Finance and distributed those materials to the members of the Tax Commission. At the same time, the private experts continued to meet with a broad range of representatives of business, on a sector-by-sector basis, to get their input and views on tax issues (which they began doing earlier in 2005), through a series of round tables organized by the Union of Taxpayers.

Their work with the Tax Commission continued through December, at which time the tax experts and the Ministry of Finance had reached an impasse on many very important issues. The tax experts prepared a table demonstrating the salient points of difference between their views and those of the Ministry of Finance Working Group. They also gave an interview on Tax Code process that appeared in the local newspaper *MSN* on December 27, 2005.

In January 2006, a Reconciliation Committee was formed under Prime Minister Kulov to reach agreement on all remaining points of contention. That process continued until February. Following this, the Ministry of Finance and the Government finalized their version of the Tax Code, which was submitted to Parliament in April. The tax experts noted that the draft submitted by the government failed in some instances to reflect the positions that had been agreed to at the Reconciliation Commission.

Note: the project's financial support of the experts' work ended when they completed their comparative table in December 2005.

Work in the Area of Pledge and Mortgage. In the spring of 2005, a new bill governing pledge and mortgage transactions was signed into law in Kyrgyzstan, with active USAID support. The work carried out by the project under our current contract consisted of follow-on work.

The first task was to bring a number of other laws into conformity with the new law on pledge and mortgage. The project took the lead role in a mini-working group formed under the auspices of IBC to develop conforming changes to the Civil Code, the Land Code, the Law on Land Governance, and the Residential Code.

That work was completed in October 2005, at which time the proposed changes were vetted with members of IBC's finance committee for their review and comment. When the representative of the Ministry of Justice (MOJ) declined to support the proposed changes, the finance committee approved the changes but decided to request that the MOJ to make a formal review of the proposed changes.

In December, the MOJ responded to the recommendations of IBC's financial committee and expressed its disagreement with the changes proposed to the Law on Pledge. The MOJ expressed support for the changes proposed to the Residence Code and recommended that the working group refer those changes to the State Architectural Department, which is drafting a new Residence Code.

In addition, the MOJ sent its draft changes to the Civil Code and the Land Code to the National Bank, and the National Bank asked the project to review them. It bears noting that the MOJ was proposing requiring all pledge and mortgage agreements to receive notarial approval in order to be valid. At present, such approval is required for pledge and mortgage agreements only if the underlying contract received notarial approval or if the parties so agree. In our view, the MOJ's proposal represented a step backwards in the effort to make it easier and cheaper to enter into mortgage agreements and realize on mortgaged property.

In February 2006, the working group formed under IBC's financial committee received comments and suggestions from the Association of Commercial Banks on ways to improve the laws affecting pledge and mortgage. The association and the National Bank agreed with the working group's proposals on all salient issues, leaving the MOJ as the lone dissenter. In March, the IBC financial committee met with the working group and representatives of the Association of Commercial Banks and the National Bank to finalize their proposal. The financial committee then forwarded the final draft to the Association of Commercial Banks in the expectation that they would send it on to Parliament.

In April, additional discussions were held with representations of the Association of Commercial Banks to determine the need for the changes proposed to the Civil Code, the Land Code, the Law on Land Governance, and the Law on Notaries. The project also reviewed and provided comments on changes to the Civil Code proposed by the MOJ.

As of the end of project, there were two parallel drafts of proposed changes related to pledge and mortgage in Parliament: the draft proposed by the MOJ and supported by the government; and the draft package of amendments supported by the project, IBC, the Association of Commercial Banks, and the National Bank.

Project attorney Alya Tsarnayeva also took part in developing a program initiated by the National Bank entitled "A Middle-term Strategy for Microfinance in Kyrgyzstan, 2006–2010" and made a presentation on issues surrounding foreclosure at a round table held to present the program.

Work on the Draft Law on Credit Information Bureaus. Our predecessor project was requested by the European Bank for Reconstruction and Development (EBRD) to provide assistance in connection with the development of a law to govern credit information bureaus, and this work was begun under the previous contract. The EBRD renewed its request that the project continue that work under the current contract.

The project provided consultation on the draft law, which the working group finalized in November 2005 and sent to the National Bank for its review and comment. Over the three ensuing months, there was ongoing discussion between the working group and the National Bank. The primary points of disagreement related to the kind and amount of information that the Credit Information Bureau (CIB) would be required to provide to the National Bank about its members. In February, a compromise was reached in which the National Bank dropped its insistence regarding the provision of extensive information on CIB members and accepted the version of the draft prepared by the working group; in return, it was agreed that the National Bank would retain the supervisory (*nadzorny*) power to receive and investigate complaints from CIB members.

In March and April, the CIB underwent adjustments occasioned by the departure of outside consultant Brian Gill and the arrival of a new director. It is our understanding that a new outside consultant to the CIB may be approved by USAID. We expect lobbying for the law in Parliament to begin in the fall of 2006, perhaps after the new consultant has arrived.

Near the end of the project, the team reviewed proposed changes to the CIB charter that were prepared by the law firm Veritas. Project Senior Attorney Galina Kucheryavaya took part in a general meeting of CIB members and made a presentation on the changes and their implications to the charter. Ms. Kucheryavaya also took part in subsequent discussions of these issues by the CIB with Veritas.

3.2 DISPUTE RESOLUTION MECHANISMS

3.2.1 Court and Judicial Procedures Reform

Description of the Tasks

The project was tasked with facilitating the conclusion of a second MOU between USAID and the Supreme Court that would expand the areas of cooperation begun under the first MOU. The project was also tasked with fostering reforms in case and court management, with a focus on case assignment practices and the development of a case management handbook. Lastly, the project was tasked with promoting discussion of proposed constitutional reform amendments that would create the basis for an independent, professional, and accountable judicial system in Kyrgyzstan.

Performance Indicators

The following performance indicators were approved by USAID for this area of activity:

1. Proposed agreement to extend the MOU between USAID and the Supreme Court prepared by the project and presented to USAID by September 15, 2005.
2. Case assignment software developed and finalized by December 31, 2005 and, subject to the level of cooperation and organizational capacity of the courts, implemented by end of project in all courts that have computers.
3. Subject to the availability of funds and resources, and to the ability of the courts to support such work, assessment completed by the end of December 2005 as to whether to proceed with the development of written case management instructions based on Court Information Management Systems (CIMS), and, in the event of an affirmative finding, this initiative completed by the end of the project.

4. Recommendations developed by the end of project as to the scope and nature of amendments to the Civil Procedure Code to streamline the adjudication of commercial law and administrative law cases, along with recommendations to USAID at that time on whether and how to further proceed with this initiative.
5. Subject to USAID approval and the availability of funds, provision by the project of a short-term technical consultant to carry out an assessment of CIMS in order to inform the decision to go forward on developing written case management procedures (December 2005).
6. The package of proposed constitutional amendments developed by the predecessor project that would lay the basis for the development of a judicial system independent from external and internal controls and accountable to society is promoted for discussion and advocated for adoption if and as opportunities arise.
7. In the event that it proved possible to carry out reforms of case management and adjudication procedures with the courts, and an end-of-project survey shows that a majority of Kyrgyz lawyers who handle cases in courts within the jurisdiction of the Supreme Court believe that there has been a “substantial improvement (or better) in court and judicial procedures and in deciding commercial disputes on the merits.”

Summary of the Work Performed

The project fully satisfied the requirements of the tasks for these activities, except that it did not prove possible to develop the case management handbook. While relations with the Supreme Court have remained very positive and the judges continued to be supportive of all of our current initiatives, the courts proved unable to carry out this activity. Judges cited heavy workloads and heightened tensions within the Supreme Court—owing to unresolved political issues—as impediments to carrying out the work. Since the courts were not able to devote substantive attention to case management and procedural reform during our 10-month contract (as described below), there was no basis for assessing the impact of the project’s work with the courts in this area.

It is noteworthy that the project’s proposals for constitutional reform and judicial reform gained some currency and were reflected in Kyrgyzstan’s proposal to the Millennium Challenge Corporation.

Description of the Work Performed

Memorandum of Understanding. With USAID approval, the project developed a draft MOU that was signed by USAID and the Supreme Court on December 27, 2005. This MOU expanded the areas of cooperation that had been contemplated by the previous MOU (entered into in March 2004 and expired in August 2005). The second MOU continued the cooperation in carrying out judicial training and reaffirmed the approach of developing the curriculum on basic, collegium-specific core courses and an intensive, specialized course. The second MOU expanded the number of courts participating in the Judicial Opinion Database from the original ten pilot courts to a total of 37. (The additional 26 courts had already received at least one computer and modem each in order to enable them to participate in the JODB project.) The second MOU also provided for cooperation in connection with improving adjudicatory and case management practices and procedures and creating the legal basis for requiring the State to provide easy and free access to the body of judicial opinions. A description of the work carried out in each of these areas is provided below.

Improvements in Judicial Practices and Procedures. The project identified four potentially promising areas of activity related to judicial practices and procedures where we believed we could expect to receive the support of the courts and Court Department. These areas addressed assistance the courts to (1) reform procedures for assigning cases to judges; (2) reform case management procedures; (3) reform adjudicatory procedures for commercial law cases; and (4) help the Court Department develop a modern information management and reporting system. We developed these proposals on the basis of our own experience and familiarity with the courts, but not as a result of a comprehensive assessment of judicial procedures involving

comparative analysis. While it would have been preferable to carry out a comprehensive assessment of judicial management and adjudicatory procedures, we did not have the funding necessary to hire an outside expert to do this, and we did not have the resources or expertise within the project to carry out a broad assessment ourselves. (The project was able to receive an outside expert's assessment of CIMS in order to inform the decision to go forward on developing written case management procedures.)

1. Case Assignment Software. To this day, cases are assigned to judges by the chairman of the court. This arrangement is fraught with subjectivity and can lend itself to corruption. The predecessor project had proposed developing a computer program that would assign cases to judges. When the World Bank provided funding to the courts to develop the CIMS, we believed that it would address this issue. We ascertained that the CIMS did not contain software for this function and that more funding, currently not available, would be required to modify the system to add the function. Recent discussions with the Supreme Court generated interest in having such a software program developed, and we undertook to do so. This proved fairly simple and quite economical, as we were able to draw on our experience in this area.

By December 2005, the software program had been developed and was being tested by the economic collegium of the Supreme Court. By February, all testing had been completed and corrections had been carried out, and the First Deputy Chairman, Mr. Davletov, expressed great satisfaction with the program. He came to use the software on a routine basis to make all case assignments within his collegium. At a CIMS presentation by the Supreme Court in February 2005, we arranged a demonstration of the case assignment software program.

The major difficulties to be overcome in getting the case assignment program installed and used in the courts are not technical or financial, but political, since the discretion to assign cases is a major source of each court chairman's power and influence. For that reason, we cannot expect the software to be used throughout the system unless and until far-reaching reforms of the judicial system are carried out. However, it is encouraging to note that in Kyrgyzstan's Millennium Challenge Account proposal, the government has requested funding to modify the CIMS so as to have it contain case assignment capabilities. That, coupled with other substantive judicial reforms in the proposal, could help alter the operation of the courts in a fundamental and positive way.

We believe that our project can take credit for raising this issue and having it recognized and acted on by policymakers.

2. Case Management Instructions and Assessment of CIMS. As concerns case management, the following situation had emerged. Those courts in which CIMS has been installed are using case management procedures incorporated in the CIMS. Although we were not allowed to keep abreast of that work when it was underway (owing to the policies of the previous Supreme Court chairman), we understand that the new procedures were developed with the input of the local judges. The CIMS has been installed fully in only five courts. While an additional fourteen courts received one computer, each with the CIMS installed, they cannot use the CIMS for case management because full automation of the court is required. Thus, the new case management procedures are being used only in the three courts that are fully automated.

Those courts where the CIMS has not been installed are still using Soviet-era instructions for case management that badly need overhauling. At first glance, it appeared advisable to support the development and adoption by the courts of a written version of case management procedures embedded in CIMS. If successful, that would give the judicial system much more modern case management procedures that would not depend on the pace of automation.

As an initial step, we asked Judge Jim Hargreaves to make an assessment of the CIMS. Mr. Hargreaves is a former Oregon state judge who has become an expert in court information systems and court management, among other things. He traveled to Bishkek in December 2005 to take part in round tables that we were organizing on judicial reform and constitutional reform. (Mr. Hargreaves had also worked as a technical consultant in a number of countries on judicial reform.) He spent one and a half days in various courts

reviewing the CIMS. He reported that he found the system to be modern and very satisfactory. He noted that the platform software, Lotus, was very effective for information systems that do not exceed a certain overall size and would likely be able to accommodate Kyrgyzstan's judicial system for several years. On the basis of Mr. Hargreaves' findings, we then explored the feasibility of developing a written handbook that explains the procedures embedded in the CIMS. The Supreme Court was supportive of the idea.

It was clear that only the judges and judicial personnel who helped develop the CIMS procedures would be in a position to write such a handbook. We first addressed the question of whether we would be able to pay them for that work. We received an opinion from the USAID Resident Legal Adviser in Almaty that (1) since carrying out such work is not within the judges' and administrative staff's official duties, we would not be prohibited from paying them, and (2) they would be required to work on this task during non-working hours, i.e., evenings and weekends.

Unfortunately, we were not able to proceed with this initiative, notwithstanding the Supreme Court's support and our ability to pay for the work. We were informed by the Supreme Court that the judges in question were very overworked and could not be induced to put in additional hours on evenings and weekends to write the handbook.

However, as with the case assignment software, it is likely that such a handbook will be produced as a part of the reforms contemplated by Kyrgyzstan's Millennium Challenge Account proposal, if the proposal is approved for funding.

3. Adjudicatory Procedures for Commercial Law Cases. Procedures for civil and criminal adjudication (including commercial law cases) are prescribed in detail in the Civil Procedure Code and Criminal Procedure Code. There are no supplementary bodies of rules and guidelines for the conduct of adjudication. Any changes to adjudicatory procedures must be made through amendment to the codes. The project determined that commercial law collegia would like to see reinstated some of the procedures from the previous Arbitration Court Procedure Code that were abandoned when it was incorporated into the Civil Procedure Code when the two court systems were merged. Judges note that the procedures that they wish to re-adopt provide for much more timely and streamlined resolution of cases and are much more appropriate for commercial law and administrative law cases than the corresponding procedures in the current Civil Procedure Code.

The project carried out a round table to promote a discussion of these proposals as well as other issues of interest to both judges and trial lawyers. A total of 26 persons attended, including a number of judges. (Unfortunately, relatively few trial lawyers took part.) Discussion was lively and productive, and a transcription of the proceedings was provided to the Supreme Court.

The discussion centered on the following principal issues and produced the following recommendations:

1. The procedural rules for the adjudication of administrative cases are scattered throughout the Civil Procedure Code. It was recommended that they be grouped together and systematized.
2. There are unfair limits imposed on the ability of a party to appeal a court ruling in certain cases. Those limits must be removed.
3. Only ten days are allowed for judges to hear administrative cases. Courts are not able to meet this deadline, and it should be extended to one month.
4. There is a lack of clarity in the law as to which courts has jurisdiction in cases of disputes between the founders of a legal entity, between founders and a regulatory agency, and between founders and the legal entity. This must be addressed.
5. The Civil Procedure Code must be clarified to provide that the Supreme Court may review evidence not presented in the lower court proceedings only if that evidence could not be presented in those proceedings.

6. The court hearing an appeal is compelled to complete its work in one month, as is the court of first instance; however, this is too little time for a court to hear an appeal.
7. The Civil Procedure Code must be revised to provide that a refusal by a judge to recuse himself may be appealed to a different judge. At present, it is possible that the judge requesting recusal is the same judge empowered to review the appeal of the refusal of recusal.
8. The Civil Procedure Code must be revised to allow a judge conducting cassation not to hear the case to conclusion if a party wishes to withdraw its claim.

Constitutional Amendments. In June 2005, the predecessor project developed a package of proposed changes to the Constitution that would lay the basis for an independent and accountable judicial system. The project discussed its proposals with a sub-working group of the Constitutional Assembly consisting of representatives of civil society and professional organizations, the judiciary, and donors. The sub-working group agreed to support the proposals, offering only a few changes. They did not alter the fundamental thrust of the proposal, which focuses on (1) the procedures for judicial selection, appointment, and removal; (2) judicial self-governance; and (3) judicial control over the courts' budget.

In December, the project held round tables on two successive days in order to present these ideas to a broader audience and to seize potential opportunities presented by the ongoing discussions and debate surrounding constitutional reform. (Our experience shows that most people involved in the constitutional reform process have very little knowledge of the specific issues that must be addressed in order to reform the judicial system effectively.)

At the round tables, former state judge Jim Hargreaves made a presentation on the 10 major problem areas that, in his experience, typically need to be addressed in post-Communist countries in order to create a modern and professional judiciary. This was followed by a presentation by Brian Kemple of our specific proposals for amending the Constitution to lay the basis for effective judicial reform in Kyrgyzstan.

The round table on the first day was held for participants interested in the constitutional reform process, and the second was held for judges. Thirty-two persons attended the first round table, and 109 judges attended the second. The round tables produced a good result, especially in the case of the judges attending on the second day because they supported the draft and appointed a group of 5 judges to develop it further. We met with them on subsequent days and developed a final draft in which all of our basic recommendations were supported and retained, and this draft was formally approved by the sub-working group.

Shortly thereafter, the project distributed the proposed constitutional amendments as recently approved by the sub-working group and judges at a conference sponsored by the OSCE and the Lawyers Association of Kyrgyzstan to discuss reform in the area of criminal law enforcement. The project received the endorsement for the proposal by the association, whose members indicated that they would join in the lobbying effort.

Although the constructional reform process has been delayed, it is noteworthy that Kyrgyzstan included all of the major ideas proposed by the project for judicial reform in its Millennium Challenge Account proposal. In our view, this represents the first real opportunity for substantive judicial reform in Kyrgyzstan that would lay the basis for a modern, professional, and independent judicial system.

The PowerPoint presentation prepared by Jim Hargreaves is provided in Appendix 16. Brian Kemple's presentation is provided in Appendix 17. The materials prepared and distributed by the project on judicial and constitutional reform are provided in Appendix 18.

3.2.2 Court Modernization

Description of the Tasks

The project was tasked with facilitating the completion, installation, and use by the Court Department of information management software that had been developed with and for the Court Department at the end of the predecessor project. The project was also tasked with exploring the feasibility of developing a Web site for the Court Department that would provide relevant information to the public on the status of the enforcement of judicial decisions.

Performance Indicators

The following performance indicators were approved by USAID for this area of activity:

1. Information management software for the Court Department finalized and tested by November 30, 2005.
2. Assessment completed as soon as practicably possible of the desirability of going forward with the Court Department with respect to developing a Web site for the Court Department that would provide information on the enforcement status of specific judicial decisions and serve as a public forum for the announcement of public auctions, including an assessment of whether the Court Department has provided a credible commitment to support the Web site for the purposes described and to adopt all internal regulations necessary for that purpose, and, in the event of an affirmative finding, the completion of these tasks by the end of project.

Summary of the Work Performed

The project substantially satisfied the requirements of these tasks. The software was finalized, tested, and installed in the Court Department. For the reasons described below, however, the Court Department was not able to provide the support necessary for the development of an effective Web site.

Description of the Work Performed

The predecessor project developed information software to enable the Court Department to much more effectively track and report on the enforcement of judicial decisions and conduct its operations more efficiently. Under the current contract, the project supported the finalization and testing of this software. The software will track and reflect information in three areas of the Court Department's activities: (1) the enforcement of judgments; (2) judicial statistics (on the number, type and disposition of cases heard); and (3) Court Department personnel. The software was finalized and made available to the Court Department by the end of November 2005. Since that time, it has been undergoing on-site testing. The Court Department has orally indicated that it is ready to install the program in all of its oblast offices as well as in the national office, but at the end of the project we had received neither written confirmation of this nor a written plan for installing the program.

While we have been informed orally of readiness to develop a Web site as described above, by the end of the project the Court Department had failed to act on this initiative.

The Court Department constantly demonstrated a willingness to work constructively with the project. The pace of progress on testing and installing the software, however, was slower than we expected. This was caused by the departure late last fall of the then head of the Court Department, Marat Bakiyev, upon his appointment as Kyrgyzstan's ambassador to Germany; the time required for his successor to assume and learn his new duties; and also the persisting political uncertainties surrounding the judicial system and the pointed criticism lodged against the Court Department in connection with highly politicized cases has interfered with the Court Department's day-to-day work.

3.2.3 Training of Judges in Non-commercial Law Topics; Training of Judges in Commercial Law Topics

Description of the Tasks

The project was tasked with developing and carrying out, with the Judicial Training Center (JTC), a program of training for judges and other legal officials in all areas of the law and with producing and disseminating a collection of materials developed in the training program.

Performance Indicators

The following performance indicators were approved by USAID for this area of activity:

1. Support provided to the JTC to develop and carry out a program of training for judges and other State legal officials pursuant to the schedule and program set forth in Attachment 1 to the Work Plan, subject to the JTC receiving funding from the national budget to allow it to cover its historical share of costs of the training, with no fewer than 80% of judges and other participants trained passing with a score of 75% or better a test calculated to measure mastery of the material taught.
2. Subject to the availability of funds, a collection of the materials produced in connection with the judicial training program published for distribution to the judges and lawyers at end of project.

Summary of the Work Performed

The project substantially satisfied the requirements of this task. A judicial training program was developed and carried out. For reasons owing to financial and organizational problems of the courts, we were not able to carry out as many seminars as the performance indicator required. In addition, judges performed very poorly on the tests following the training seminars. In our view, this points to the low level of proficiency of many judges in Kyrgyzstan today.

The project was successful, however, at commissioning and producing a considerable volume of training materials of adequate quality or better for judges and at publishing those materials.

Description of the Work Performed

Judicial Training. In the early fall of 2005, the project and the JTC agreed to a tentative training program and schedule of training activities to be carried out over the period from October 2005 through May 2006. This program represented our efforts to attain maximum utility from the program and design it to meet a number of concurrent objectives, while working within the constraints imposed by the realities of the judicial system. These include, chiefly, the natural limit on the amount of time that judges can undergo training, since that requires them to be absent from their courts; limited organizational capabilities within the judicial system, which were exacerbated by persisting political problems that arose around the March events—judges being held hostage, etc; and the limited amount of funds that are available to support judicial training.

The training program as originally agreed upon with the JTC did not satisfy the requirements set forth in our Scope of Work with respect to the number of training activities and the number of days of training. We originally proposed to the courts and the JTC a program that did meet the standards provided for in the Scope of Work, but the courts simply were not willing and able to hold that many training activities for judges, for the reasons described above.

In view of this situation, the project and the JTC agreed to include in the training program training activities for judicial enforcement officials and notaries (in response to formal requests that the project had received from the Court Department and the MOJ) and for court administrative personnel.

Unfortunately, the JTC's training budget was slashed sharply in the spring of 2005 during the time leading up to the Parliamentary elections, and no funds have been reinstated. The training program that was originally agreed to was premised on the JTC's being able to assume a certain amount of the costs associated with the training, consistent with past practice. When it became clear in early 2006 that the JTC was not going to have its funding restored by the Ministry of Finance, we were forced to reduce the number of judicial training activities that we carried out.

The training program that was undertaken consisted of fifteen seminars conducted from October 2005 through May 2006 and the following activities:

Core courses. The core courses are designed to provide judges with a broad overview of a number of subjects of law. The core courses were developed by our predecessor project and introduced in 2005. The training program contemplates carrying out the core courses a total of five times to ensure that every Kyrgyzstan judge has received that training in the area of law applicable to him/her once during the past twelve months.

Intensive seminars. The intensive seminars are designed to provide deeper, more intensive training in specific areas of law for selected groups of judges. The intensive seminars are designed to delve deeply into analysis of issues arising in judicial practice. Intensive seminars were carried out in the areas of tax, land transactions, and administrative law. An intensive seminar on bankruptcy was also originally planned, but we cancelled it when we learned that the World Bank planned to hold a similar seminar for judges in April 2006.

Seminars for administrative personnel of courts. The program included two general seminars for court administrative personnel and three one-day seminars on archiving judicial opinions electronically and in taking part in the judicial opinion database.

Seminar for judicial enforcement officials. We held one seminar to train judicial enforcement officials in current issues arising in the enforcement of judgments.

Seminar for notaries. We agreed to the JTC's request to support one seminar for notaries, funding that part of the presentation of lectures and materials that is a part of our civil law curriculum.

The training program as carried out included the following number of training days and participants:

- Twenty days of training for judges on civil and criminal law topics, for approximately 130 judges;
- Eight days of training for judges on commercial law topics, for approximately 50 judges;
- Nine days of training for court administrative personnel, for approximately 70 persons;
- Three days of training for judicial enforcement officials, for approximately 25 enforcement officials; and
- One day of training for notaries, for approximately 50 notaries.

Thus, the training program provided a total of 41 days of training for a total of approximately 325 persons. Four of the fifteen training activities were held outside of Bishkek. Note that the Scope of Work called for a total of 72 days of training (assuming that it does not contemplate training in August, when the courts are closed); 440 participants; and four seminars outside of Bishkek. Unfortunately, for the reasons described above it was simply not possible to get the courts to agree to hold as many judicial training activities as the Scope of Work called for.

The program and schedule of training as carried out is provided in Appendix 19. A list of the lectures and lecturers used in the training program is provided in Appendix 20. A summary of the results from survey conducted among judge-participants in the training program participants is provided in Appendix 6.

Judicial Testing. The predecessor project developed a computer program for testing judges after training activities. With the JTC's support, we have been able to make such testing a regular practice following each seminar and to overcome judges' initial resistance. (Note that such testing had never been carried out with judges until our predecessor project proposed it.)

Testing Results. Testing was carried out at the five core course judicial training seminars, with the following results:

- October 10–14; judges of economic collegia (Bishkek): 1 judge out of 31 received a score of 75% or higher (i.e., 3%)

- November 21–25; judges of criminal collegia (Bishkek): 8 judges out of 27 received a score of 75% or higher (i.e., 30%)
- December 19–23; judges of civil collegia (Osh): 0 judges out of 24 received a score of 75% or higher (i.e., 0%)
- January 16–20; judges of civil collegia (Bishkek): 1 judge out of 28 received a score of 75% or higher (i.e., 4%)
- February 6–10; judges of criminal collegia (Osh): 8 judges out of 22 received a score of 75% or higher (i.e., 36%)

Thus, the average percentage of judges receiving a score of 75% or higher was only 15%. Note that the testing addressed only the material that was presented at the seminar in question. We believe that the poor testing results reflect an overall low level of judges' professional abilities, rather than a failure in the training itself.

Training Materials. The project has compiled lecture materials on 44 separate topics that meet the criteria and standards established in the MOU for judicial training (along with eleven topics for judicial personnel and three for notaries). The materials were taken from the materials prepared for judicial training under this contract and during the last year of the previous contract. Selected lecture materials (from 28 lectures) have been published in a two-volume set (a total of 1,030 pp.) in an edition of 500 copies. The materials have been distributed to courts, libraries, and information centers and made available for purchase by the public through local partner organizations such as the Lawyers Association of Kyrgyzstan, the Chamber of Tax Consultants, and the Central Asia Library.

The project also prepared and distributed at the training seminars editions of key selected laws (sometimes in both Russian and Kyrgyz languages). Judges indicated to us that they very much value such publications. Judges still have very limited access to laws, which are rarely published in a satisfactory format. In addition, the judges are increasingly compelled by circumstances to hear cases and write opinions in Kyrgyz, and they have told us that they especially value the dual-language editions, which allow them to cross-check the Kyrgyz and Russian versions. (Even native Kyrgyz speakers often have a stronger command of legal terms in Russian than in Kyrgyz.)

The project exercised economy and circumspection in arranging for such publications and limited them to particularly important codes and laws that have not been distributed in a significant volume within recent times by our predecessor project. These included

- The Civil Code
- The Tax Code
- The Customs Code
- The Land, Forest, Water, and Air Codes
- The Law on Joint Stock Companies (Russian and Kyrgyz)
- The Criminal Code (Russian and Kyrgyz)
- The Criminal Procedure Code and the Penal Code (Russian and Kyrgyz)
- The Code of Family Relations

Participants also received copies of *Law and Business* and CD-ROMs containing the Ministry of Justice Legislative Database "Adis."

3.2.4 Fair Trials

Description of the Tasks

The project was tasked with conducting research and analysis of legal issues of relevance to business people, drawing on the project's program of training in law for business people, and disseminating the results of that research and analysis. The project was also tasked with providing USAID with recommendations on how to facilitate fair trials in commercial disputes between State agencies and private business.

Performance Indicators

The following performance indicators were approved by USAID for this area of activity:

1. Use of information gained from the project's training programs for business people, research, and analysis conducted of important legal issues arising in judicial practice that involve disputes between businesses and State agencies; and, subject to the availability of funding and the nature of the results of that analysis, publication for public discussion and comment.
2. Recommendations developed and provided to USAID at the end of the project on how to facilitate fair trials in commercial disputes between State agencies and private businesses.

Summary of the Work Performed

The project fully satisfied the requirements of these tasks. Note that the recommendations described above are provided in this Report, below.

Description of the Work Performed

Publication on Inspections. Through our intensive work with business persons and firms in our business law training program, we identified inspections of businesses by State agencies as a topic that is both relevant to business and on which there is a sufficient number of illuminating judicial cases so as to permit legal analysis and comment. The project researched the law and practice of inspections using the Judicial Opinion Database, and information gathered from the booklet outlines the actions that the business person should take during an inspection by a State agency and provides recommendations on how they can protect themselves from authorized or illegal inspections and how to minimize losses. The booklet also contains a survey of relevant judicial practice, as well as the compilation of applicable normative legal acts. The project distributed the booklet to participants in the business program through direct mailing and made the remaining copies available for sale to the public through local partner organizations such as the Lawyers Association of Kyrgyzstan, the Chamber of Tax Consultants, and the Central Asia Library.

Recommendations to USAID on Facilitating Fair Trials. Our experience with the judicial system, the bar, the business community, State agencies, and society at large suggests that (1) we can identify the core causes of unfair or improper adjudication; but that (2) they are not susceptible to quick or easy solutions, rather they reflect the persisting need for fundamental, sweeping reforms in a range of areas.

We can identify four major contributing factors that lead to cases being decided improperly: (1) a lack of judicial independence; (2) judicial corruption; (3) the manner in which State agencies are funded and how they operate; and (4) a lack of knowledge of and general attitude about the law prevailing in society (including the business community).

1. *Lack of judicial independence.* Judges remain subject to undue pressure and “telephone justice” from both within and outside of the judicial system. Anecdotal evidence suggests that this occurs when influential persons have an interest in the particular case, i.e., it does not occur in the majority of cases.
2. *Judicial corruption.* Anecdotal evidence suggests that many or most judges are willing to accept bribes. In some cases—whether in most cases or not, we do not know—bribes are demanded by the court. This

purportedly occurs less in cases where a State agency is a party, since they are understood to not offer bribes to the judge.

3. *The manner in which State agencies are funded and how they operate.* State agencies are given virtually no funding to carry out their activities. In addition, there are grounds for suspecting the existence of a “shadow” system of revenue collection that permeates the fiscal agencies. Whether or not that is true, state inspecting agencies do use inspections to raise revenues for themselves and well as for the State, and often inspectors have little regard for or even knowledge of the rules they are supposed to follow. As we have noted elsewhere, agencies often manage to shift the burden of proof in violation of the law, whereby the business person is compelled to prove that he/she did not violate the law, rather than the State having to prove that a violation occurred.
4. *Lack of knowledge of and general attitude about the law prevailing in society.* We have frequently reported that a major impediment to developing a democracy and a rule of law is the persisting ignorance of many people in society about how to use the law, reinforced by a belief that the law cannot help them protect their interests.

The situations described in points 1 and 2 will continue until there is sweeping judicial reform, which in turn will require political will to reform the system. There is increasing recognition of the need to reform the courts, but the first serious initiative, the Millennium Challenge Account proposal, has not yet been approved and it remains unclear how serious Kyrgyzstan policymakers are about carrying out the reforms in good faith. The state of affairs described in Point 3 will continue until there is real administrative and budgetary reform. This would entail infringing on interests that are perhaps more entrenched than those in the judicial system. The executive branch is probably the least reformed of all three branches in terms of the attitudes and political culture that prevail there.

As concerns point 4, however, as we have reported, the situation is changing. Business people are increasingly looking to the law as a means of protecting and advancing their business, for example, and they have responded very positively to the training that we provided. Therefore, of all the points described above, the one most susceptible to change (i.e., the one that does not require active political will by policymakers) is Point 4, society’s attitudes toward law. Our work has demonstrated that it is possible to increase the recognition and use of law among the populace—beginning with the business community—and to increase their willingness to demand the same of State agencies, official, courts, and judges.

In our view, this is the best path to take in order to prompt the courts to adjudicate fairly in cases between citizens and state agencies. The more citizens know their rights, the more loathe they are to pay bribes rather than challenging a State inspector’s finding in court. Of course, in any given situation it may be preferable to the business person to pay the bribe; he/she has to assess the costs involved in going to court and the likelihood of prevailing in the decision against the costs (monetary and otherwise) of making the illegal payment. To help tip the balance in favor of business people who decide not to pay a bribe and are more willing to challenge agency action in court, a number of activities could be carried out:

- Training programs in law for business should be broadened and tailored to business people of all levels of sophistication and economic resources.
- Information should be produced and disseminated to business program participants on an ongoing basis on developments in the law and in judicial practice;
- Moral pressure could be brought to bear on courts by monitoring the proceedings of business cases as they take place. Unfortunately, decisions are not provided for inclusion in the JODB in a sufficiently timely fashion to alert users to cases until those cases have already been decided. Therefore, in order to work, a court monitoring program requires close contacts with the business community, so that firms planning to challenge agency action in court would make that known ahead of time. Following the conduct of the trial, an analysis of the proceedings (including procedural issues) as well as the decision

should be prepared and published. It would be possible to hold forums and TV programs to discuss particular cases—although judges would probably take the position that they must not discuss a case that is being appealed to higher courts.

- This effort could be extended to facilitating the provision of legal consultation to small individual businessmen. Law clinics exist, but they do not address commercial matters. Actions could be undertaken to set up commercial law clinics or develop other approaches to make competent legal advice available to rank-and-file business persons when they seek it.

In sum, in the absence of sweeping judicial and regulatory reforms, the only avenue apparent to us for influencing the courts (in a positive way), is by working closely with the business community in the ways described above. There are undoubtedly additional ways that information could be disseminated, but the keys to all this are (1) that close links be forged with business people, businesses, and business associations first, to teach them how to use the law and protect their rights and, second, to encourage them to inform us of their plans for litigation in advance; and (2) that information about judicial decisions be given accurate assessment and disseminated broadly.

At the same time, we believe that a concerted effort in this direction will produce results; indeed, changes in business people's knowledge of the law and readiness to use it will create pressure for change for judicial and administrative reform.

3.2.5 International Court of Arbitration

Description of the Tasks

The project was tasked with facilitating the development by the International Court of Arbitration (ICA) of a strategy and plan for the ICA to operate without outside donor assistance after the end of project.

Performance Indicators

The following performance indicator was approved by USAID for this area of activity:

- An initial proposal and budget for ICA through the contract end date developed by October 7, 2005 for USAID review that is consistent with the aim that the ICA continue its operations without further technical or financial support from USAID after current USAID assistance ends.

Summary of the Work Performed

While the ICA did develop a five-year plan for USAID, no avenue has been found to enable the ICA to operate entirely without outside financial assistance.

Description of the Work Performed

During the previous three years USAID, through the predecessor project, supported the establishment and operation of the ICA with a significant level of funding. During that period, the ICA director and deputy director accomplished a very large volume of work. They led, together with the predecessor project, the drafting and lobbying effort for the Law on Third-party Arbitration and achieved the adoption of the necessary revisions to the Constitution and the Civil Procedure Code; carried out extensive work to establish the organization and its rules and procedures; developed a cadre of arbitrators and provided them with training; carried out extensive educational activities throughout the business community on commercial arbitration; organized seminars and conferences; and developed ties to a number of international commercial arbitration organizations. That work continued under the current contract, and the ICA continued to receive a small but steady increasing flow of requests for arbitration.

It is fair to say that the ICA has become an established institution in terms of its competency and operations. At the same time, it is still far from attaining financial self-sustainability, and it is not yet secure from political efforts to undermine it and to curtail its operations. Despite the ICA's many accomplishments, its efforts and experience to date suggest that it is unlikely that substantial financial support from other donor sources will be found. During the current contract, the project maintained the level of funding that was in effect at the end of the predecessor project and, at the same time, prompted the ICA to develop a business plan for the period that would follow the end of project. The ICA submitted its business plan to USAID in March 2006. We believe it will be necessary to work with the ICA further to scale back its budget in order that the court be able to continue its operations over the next five years with a reasonable and realistic amount of donor support.

A report prepared by the ICA that describes its activities over the period from August 5, 2005 to May 31, 2006 is provided as Appendix 21.

3.3 INSTITUTIONAL REFORM

3.3.1 Business Associations

Description of the Tasks

The project was tasked with increasing the understanding of Kyrgyzstani businesses, entrepreneurs, and the general public of the law not as something to be avoided, but as something that can and should be used to help them protect their rights and business interests.

Performance Indicators

The following performance indicators were approved by USAID for this area of activity.

1. Schedule of initial planned training activities with businesses developed by October 15, 2005 as a result of contacts and discussions with firms set forth in Attachment 2 to this Work Plan.
2. Research completed and an action plan developed by October 31, 2005 with respect to (1) additional businesses to be targeted for training activities and (2) the most effective way(s) to disseminate to those targeted businesses information on legal issues and project activities.
3. Ongoing research and analysis of legal issues affecting business, for incorporation in training activities with lawyers, judges and businessmen, and/or in publications for public discussion and comment, as appropriate, and as funding permits.
4. Surveys developed and carried out among participants in the business training program that determine, respectively, (1) what percentage of businesses and entrepreneurs in Kyrgyzstan view the law not as something to be avoided but as something that can and should be used to help protect their rights and business interests; (2) the level of entrepreneurs' knowledge of basic legal principles; and (3) whether any changes in those perceptions or knowledge have occurred as a result of the training received.
5. Data gathered in the surveys described above indicates (1) an increase of at least 10% in the percentage of businesses and entrepreneurs who view the law not as something to be avoided but as something that can and should be used to help protect their rights and business interests; and (2) significant increases in the entrepreneurs' knowledge of applicable law.

Summary of the Work Performed

The project fully satisfied the requirements of these tasks.

Description of the Work Performed

Working with Businesses and Business Associations. The business community in Kyrgyzstan is in reality not a single community per se, but an assemblage of businesses and business persons that range widely in size of operations, sophistication, and the extent to which they operate openly and legally or conduct their operations in the shadow sector. While there are some businesses of significant size in Kyrgyzstan that operate almost wholly in this latter group—the garment industry, rumored to be very large, is the most salient example—our experience to date, gathered through the experimental work with various businesses carried out by our predecessor project, suggest that the vast majority of medium and even large businesses operate astride the formal and shadow sectors. They tend to be formally registered and report to the tax authorities, for example, but they conceal some part of their income, transactions, or operations from the authorities.

As the predecessor project, we carried out a number of round tables and training sessions on the law as it pertains to business with a fairly small number of businesses and individual business persons. The objective of that work was to determine whether businessmen were receptive to such training. At the end of last year, we began preparing for the next phase: developing systematic courses for businessmen in the areas that experience showed were of the most interest to business, beginning with tax, labor, and customs law. We approached specific businesses and business associations with proposals to provide such training. Initial responses were encouraging. By the end of March, the materials were to be completed and instruction was to begin. However, the March 2006 political upheavals and their aftermath forced us to postpone the training sessions, and we were not able to launch this work until the current contract came into effect.

Under the current contract, we developed and carried out a training program, “School of Law for Business,” which was conceived on the basis of the following:

1. Individualized Seminars for Established Medium-sized Businesses. We put into effect the initiative begun under the predecessor project—to work with those businesses that were already established and operating openly and that had demonstrated some desire to develop further along those lines. These are mostly businesses who are members of various business associations.

We believe that was and is a very promising avenue in the effort to develop constituencies for a rule of law in the business sector. At first glance, it might appear that these businesses are already operating with a sufficient awareness and knowledge of the law and that there is nothing much to be gained by working with them. Our work with such businesses, however, demonstrated that that was not the case. To the contrary, in most cases the managers and directors of such firms indicated to us that they would like (1) to better understand the law that applies to their business and/or (2) for their employees to have a better understanding of the law that applies to their business. While these firms do pay taxes and consult with lawyers, we learned that more often than not the lawyers are called in to fix a problem that has arisen precisely because the businessman does not have a basic understanding of the applicable law. Moreover, it appears that the majority of such firms do not conduct all of their operations within the law. In some cases, this occurs out of desire simply to shelter some income from taxation, but an equally common reason is that the businesses often do not know how to conduct their transactions in a manner that would be in compliance with the law and keep their tax and customs obligations to a legal minimum.

2. Approach to be taken in instruction. As concerns our effort to work with established, medium-sized businesses, we believe that the greatest chance of success comes from working with businesses on a firm-by-firm basis for the following reasons: (1) while part of the instruction will be universal, applicable to virtually any business, the training as we envision it will also be tailored to the business’s particular needs or issues related to their area of operations; (2) experience shows that training is most effective if the participants feel that they can speak frankly, and this is difficult to achieve when businessmen are together, especially if they are competitors.

We began this program by approaching firms that met the criteria and with whom we had already developed contacts. After receiving a positive response from an initial letter, we would meet with management to discuss

the content and outlines of the training. We would identify with them the issues and areas of law of most concern to the firm and develop the training on that basis. Typically we would also include instruction on areas and issues of which they were not necessarily aware, but that we believed were important. In this way, each seminar was different, and in the course of the training program, we amassed a body of material that could be used for a variety of firms.

A training program for an individual firm typically consisted of between 15 and 30 hours of training. The most common subjects included tax law, labor law, contract law, inspections, and a general introduction to law. In addition, training modules were developed on protecting intellectual property, environmental regulation, customs law, and land law. Private practitioners and project attorneys prepared all of the materials and provided the instruction, which was provided through PowerPoint presentations with a highly interactive approach. (One of the reasons for providing instruction to firms individually was to encourage them to discuss their problems openly and fully.)

Reaching Out to Additional Businesses. As noted above, we began the training by approaching firms with whom we had previously worked. We were able to extend the program to new firms by reaching out to them directly through business associations and, where those were not available, through contacts and referrals from business persons. Our training program received high praise from most of our participants, and we encountered no difficulty at finding firms who were interested in taking part.

A total of 8 firms participated in the program and a total of 175 managers and staff members. The firms included the following:

1. KyrgyzConcept
2. Aleksandra Fashion
3. Garment Producers Association “Soyuztekstil”
4. MNT Consulting
5. Bishkek-Sut
6. Forester
7. “Narodny” Grocery Stores
8. Celestial Mountains

2. Training for Individual Entrepreneurs. We were also determined to make training available to individual entrepreneurs. To do this, we built on our long-standing cooperation with the Chamber of Tax Consultants and their experience in conducting group seminars. Through the Chamber, we developed and carried out business law courses for individual business people. We based the training materials on those that we first developed for our “corporate” program, along with materials that the Chamber had developed. The course consisted of 15 hours of instruction carried out over five days. The course addressed issues of relevance to business generally, with an emphasis on issues of particular importance for the individual business person.

A total of 7 such seminars were carried out, with a total attendance of 134 persons.

3. Advanced Seminars. In the course of our training activities, many participants expressed a desire to receive further instruction on a more advanced level than could be provided in the introductory seminars, particularly with respect to tax law. In response, we developed an advanced training module on tax law for business people. We carried out a total of 4 such seminars with a total attendance of 91 persons.

A list of the lectures and lecturers in the business training program is provided in Appendix 13 to this report. A list of business program participants is provided in Appendix 14.

Research and Analysis. As noted above, we designed the training program so as to provide the business community with practical information that addresses the legal aspects of the problems they encounter in their business and that also addresses needs of which they may not be aware. Each corporate seminar was tailored to the business participant; we met with representatives of each participating firm beforehand in order to hear about the issues of most importance to them and develop the instruction accordingly. Our experience is that it is most effective to provide additional information on other topics (which we believe the business people should hear about but about which they may know little) if that information can be tied to a specific problem or issue that they see as important to their business. Thus, we applied the approach of beginning with a specific issue, proceeding to the more general level that establishes the legal context and framework for the issue and brings related issues to their attention, and then returning to resolve the specific issue raised. In that way, the participants receive a general understanding of the larger legal system to which their particular problem is related. This nearly always piqued their interest and prompted them to go beyond their immediate questions and seek to acquire a broader understanding of the applicable area of law.

When we established the issues and areas of most importance—in many cases coinciding across sectors to include tax law, labor law, contract law, and inspections—we provided instruction based on analysis of the most recent practice. Thus, we researched issues that arose out of our work with business people and incorporated our findings from that research into the training the business people receive. Where there was relevant judicial practice, that was also included.

Assessments. Owing to our limited resources and time constraints, the project was compelled to confine its assessment activity to those business people taking part in our business training. (We had explored the possibility of carrying out, in consultation with USAID Enterprise Development Project and the Trade Facilitation and Investment Activity, broad surveys among businesses at the beginning and at the end of our project.) In our view, this also made the most sense, because our recent experience confirmed that work with business requires direct interaction through trainings and discussions to be most effective; for that reason, we would expect our program activities to have an impact only on those businesses that took part in them. We would not expect assessments of business people’s attitudes and knowledge of law to register significant change over ten months unless those people took part in our training program. A summary of the results from surveys we conducted among the business training program participants is provided in Appendix 7. The surveys, taken together with information and impressions gathered in the course of our work with business persons—their responsiveness, attendance, requests for additional training, and continuing expressions of interest and enthusiasm—make it clear that the program changed the attitudes of many or most program participants about the law.

Some Practical Results of the Training. Seminar participants noted that they applied to good effect instruction they received on (1) the tax patent; (2) establishing and registering an agency relationship; (3) drafting contracts with an eye to tax implications; (4) the comparative consequences, for taxes and otherwise, of civil contracts and labor contracts. Some business persons expressed the desire to organize constructive dialogue between businesses and tax inspectors, with a donor serving as mediator.

Participants also noted that the training had made them more effective at dealing with inspections and familiarized them with the workings and functions of relevant agencies. There were also examples where the business people put their new knowledge to address more mundane issues, such as dealing with a landlord.

An in-house lawyer of one of the participating firms noted that seminar had a positive effect on the attitude of the managers and staff towards the law. Her standing in the firm had risen markedly as the firm increasingly turned to the law to solve its problems. The same company requested a second, additional round of seminars.

As a result of the seminar, the management of the company Forester decided to file a complaint about unlawful inspections by certain government officials. (Government Resolution No. 158 forbade the inspection of businesses that suffered from the events of March 24–25.) They also decided to file an appeal

with the government commission to request an extension of the moratorium on State inspections of business, since the businesses had not yet recovered from those losses.

3.3.2 Lawyer-Business Relationships

Description of the Tasks

The project was tasked with facilitating the building of trust and understanding between lawyers and business people. After exploring various approaches to accomplish this task, the project, with USAID's approval, proposed developing a reference list of lawyers for the public.

Performance Indicators

The following performance indicators were approved by USAID for this area of activity.

To the extent supported by the lessons gathered in the course of the project's work with lawyers and businessmen, ongoing efforts to identify activities that will increase understanding between businessmen and lawyers.

- The project has developed contact information on local lawyers that indicates each lawyer's specialty and provided the list to USAID and local business associations.

Summary of the Work Performed

The project fully satisfied the requirements of this task.

Description of the Work Performed

Lawyer-Business Relations. Our accumulated experience indicates that there has been a large gulf separating most businessmen and lawyers in Kyrgyzstan today. As a general rule, businessmen have looked to law in order to fix, after the fact, a particular problem that has arisen, rather than regarding law as the overarching context in which they should conduct their business. Many lawyers, on the other hand, have tended to apply a formalistic reading of law and have little familiarity with the issues and concerns of business, often telling a business person that the law forbids this or that, but not helping him/her find an acceptable way to achieve the business goal within the law.

However, our recent experience suggests that changes are taking place within both the business and legal communities. Many of the participants in our lawyers training program came with extensive experience in serving business clients and have demonstrated a constructive attitude in trying to find lawful solutions for their clients' problems. While this does not by itself indicate that positive changes in attitude and knowledge are occurring throughout the legal profession, a core group of lawyers and law firms with a Western approach to law practice has emerged. (It remains unfortunately true that many business people and companies cannot afford their services.) Those lawyers have pointed out that business clients are increasingly turning to them for advice when first planning to set up a business or to carry out a transaction, rather than when they encounter a problem. This corroborates our findings from working with businesses directly, i.e., that there is a growing perception among business people that they will benefit from gaining a basic understanding of the law that applies to their business.

The project looked for ways to begin to bridge the persisting gap between the law and business communities. Ultimately, lawyers who must learn to speak the language of the business people and understand their problems, and business people have to recognize the need for lawyers' services. We incorporated into our ongoing lawyer training applicable lessons and information gained from our work with businessmen. As noted above, however, the problem lies less with the lawyers in our training program than with the Kyrgyzstani law profession in general.

We believe that the keys to both are (1) engagement with and training and information for both groups, including training for lawyers, on issues and problems that arise when running a business and on the businessman's perspective; and (2) market forces, i.e., as more and more businessmen seek legal advice, the demand for effective lawyers will increase. And we believe it will be possible to facilitate (2) with the activities described in (1).

Our business training program produced a positive result in this connection, in that it succeeded in causing business people to recognize the relevance of law and the usefulness of legal advice at all stages of business development. Many of the business participants sought our lawyers (including those that have participated in instruction in our program) for private advice. This is a good result and a necessary first step to bringing the law and business communities together.

An additional problem concerns the difficulty one encounters when trying to find a local lawyer with a particular practice specialty. We discovered that there is no registry or other source of such information available to the public. The project therefore developed such a list, one that provides contact information for lawyers and indicates what each specializes in, if applicable. The list contains approximately 200 lawyers. The list will be posted on the project's Web site, which will be continued until the end of the year and provided to USAID. It will be equipped with search functions. The project has also reached agreement with the Lawyers Association of Kyrgyzstan, whereby the Association will post the information on their Web site and update and expand the list going forward, and the project will cover the cost of maintaining the Association's Web site until the end of 2006.

3.3.3 Dissemination of Information

Description of the Tasks

The project was tasked with producing a number of legal information products and services, and with arranging for the Judicial Opinion Database to be posted on the Supreme Court Web site.

Performance Indicators

The following performance indicators were approved by USAID for this area of activity.

- 1) The journals *Law and Business* and *Tax and Law* published separately on their respective schedules until the end of project (*Law and Business*, bi-monthly; *Tax and Law*, monthly), with the project seeking to find an organization who is willing and able to assume the publication of *Law and Business* at the project's end and with the Chamber of Tax Consultants retaining the rights to *Tax and Law*.
- 2) The hot line of the Chamber of Tax Consultants expanded by October 31, 2005 to increase the number of other areas of commercial law in addition to tax law and is integrated in the project's work with businesses and information dissemination.
- 3) Web site for the Supreme Court (which the Supreme Court plans to establish independently) shall contain the JODB by end of project, provided that the Supreme Court has established the Web site by that time.
- 4) A basic primer has been prepared in Russian and Kyrgyz on law and society, with a focus on commercial law, for broad dissemination throughout the country.

Summary of the Work Performed

The project more than fully satisfied the requirements of this task. Note that the basic primer in law will be finalized at the end of June, as described below.

Description of the Work Performed

In addition to carrying out training programs for lawyers, judges, and business people and producing large compilations of materials derived from those programs, the project carried out the following activities with the aim of disseminating legal information to the public: (1) the publication of the journals, *Law and Business* and *Tax and Law*, which are designed to reach the legal and other professionals that serve business; (2) the operation of a “hot line” that responds to citizens’ inquiries about tax and commercial law; (3) the publication of a booklet with answers to the most commonly asked questions handled by the hot line; (4) the preparation of an introduction to law and commercial law for the general public, to be published in the newspaper *Daat* and disseminated throughout Kyrgyzstan in Russian and Kyrgyz; (5) the publication of a booklet on the law and judicial practice with respect to inspections of business by State agencies; (6) updated versions of the *Electronic Litigation Guide* and *Electronic Notary*; (7) direct mailings to program participants via e-mail of information on significant developments in commercial and related law and practice; and (8) maintenance of a very comprehensive project Web site, updated and expanded on a continuous basis, with direct links to our publications, databases, and training activities.

Journals. The predecessor project sponsored two journals, *Law and Business* and *Tax and Law*, the latter produced by the Chamber of Tax Consultants. Both journals have developed a devoted readership and have name recognition among professional communities. (We had originally considered proposing to merge the two journals into one. After exploring the matter further, however, and discussing it with all parties concerned, we concluded that it would be preferable to keep the two journals separate. They have distinct readerships, with *Tax and Law* oriented more toward accountants and auditors and *Law and Business* addressing practicing lawyers.)

Tax and Law has been produced by and at the initiative of the Chamber of Tax Consultants. The journal has been published on a monthly basis and has enjoyed a steady increase in readership; by the end of the project, *Tax and Law* had a circulation of 1,000 copies, of which 900 are sold (800 by subscription) and 100 are distributed free of charge. Subscriptions are sold at a subsidized price of 1,200 soms (approximately \$30.00) per issue. (Conditions in Kyrgyzstan do not make it possible to sell the journal at a rate that would cover all the costs of publication.)

As concerns the project’s own journal, *Law and Business*, the predecessor project made considerable improvements to the publication during the last three years of the project and the journal acquired an interested and established readership, also. *Law and Business* was published every second month and was distributed via a mailing list free of charge. We were unsuccessful at finding an organization that was in a position to assume the journal and continue it after project end. As with *Tax and Law*, it would be very difficult to produce *Law and Business* on a self-sustaining basis without outside financing. Our formal co-sponsor of the journal was the Lawyers Association of Kyrgyzstan. Unfortunately, their relationship to the journal remained purely formal, despite our repeated efforts to enlist their involvement and input. Nevertheless, as the official founder of the publication, the journal belongs to the Association and will revert to them when we cease publication.

A list of the major articles of each issue of *Law and Business* and *Tax and Law* published during this contract is provided in Appendix 23 to this Report.

Note that we included distributions of Labor Code (with search functions), the *Commentaries to the Civil Code* and the *Russian-Kyrgyz Dictionary of Legal Terms* on CD-ROM with the September 2005, January 2006, and May 2006 issues of *Law and Business*, respectively.

Electronic Consultant. Under the current contract, we continued and expanded the “Electronic Consultant,” a hot line established by the Chamber of Tax Consultants and sponsored by the predecessor project. The hot line operates by e-mail, telephone, and face-to-face interactions. As structured during the previous contract, the hot line provided citizens with consultation on tax and accounting issues.

Under the current contract, we expanded the hot line to address other areas of commercial law as well. (The rationale for the hot line is that in many regions of the country it is difficult for citizens to find qualified tax

specialists. In addition, the hot line provides direct information on the legal issues and problems arising in citizens' daily lives.

The hot line staff worked very assiduously, and the resource has been meeting a real need. Over the period from August 2005 through April 2006, the Electronic Consultant received a total of 2,373 inquiries, broken down as follows: 1,526 tax law inquiries (64%); 371 inquiries on other areas of law (16%); and 476 inquiries on accounting (20%). The number of inquiries made and handled by e-mail and telephone was roughly the same. The hot line continued to operate in May 2006, but we could not receive their final statistics in time for inclusion in this Report.

The project sponsored the publication of a booklet in May 2006 prepared by the Chamber of Tax Consultants that contains answers to the forty most frequently asked questions received by the hot line. The booklet is 32 pages long and has been published in an edition of 1,000 copies. It will be distributed by the Chamber of Tax Consultants.

Supreme Court Web Site. In connection with the agreement reached between USAID and the Supreme Court (described below), and the demonstration of the Supreme Court's willingness to provide public access to judicial opinions on its Web site, the project responded to a last-minute request for funding by the Supreme Court to help it set up its Web site. (The project had been tasked earlier by USAID to provide such assistance in the event of an agreement over future support for the JODB and public access to judicial opinions; however, the Supreme Court had indicated earlier that no financial assistance was needed.)

Introduction to Law and Commercial Law for the General Public. We had originally envisioned developing a basic guide for businessmen for publication by the end of project. However, a number of factors caused us to propose another activity instead (since time and resources do not permit us to do both): (1) such guides have been produced in Kyrgyzstan, although not recently, to our knowledge; (2) our experience with business people indicates that they are not very likely to be able or inclined to use such a guide unless they have received training of the sort that we are providing (Only after such training, in our view, will most business people be prepared and psychologically ready to apply the information provided. This rather harsh judgment has been borne out by our own experience of the changes we observe in business training participants before and after instruction.); and (3) there is a pervasive ignorance throughout the country of existing law and of the role of law in a modern society. Our acquaintance with the newspaper *Daat* and the opportunity it offers to disseminate information throughout Kyrgyzstan to citizens at the village level and to begin to address this problem caused us to opt to develop something for that audience as perhaps a last act of the project.

For that reason, the project prepared a basic primer on law and society, with a focus on commercial law, for broad dissemination throughout the country through the newspaper *Daat*. As of the end of project, the first draft of the materials was completed and the project entered into arrangements to have them translated and published. The final version, however, will not receive final editing until June. (Note that no project funds will be paid for that work in June, it is to be carried out voluntarily by project staff.) At that time, we will also make the final version available to USAID, for any further distribution that USAID may choose to undertake. We intend for the materials to comprise 40–45 standard pages in length, i.e., 12 complete newspaper pages.

Disseminating information to business about new developments in the law. In addition, in the course of our work with business people, we began a program of regular, direct mailings to business program participants of information on legal developments. We also posted such information on our Web site. (To date, the most promising way we have found to provide program participants with information directly is by e-mail. Virtually all of the participants in the corporate program use e-mail, and approximately one-half of the participants in the group trainings do.) Establishing and using regular mailing lists, whether for e-mail or regular mail, can also provide a means for mobilizing the business community on relevant issues in the future.

Project Web Site. The project developed a very comprehensive and—judging from informal reports, as well as our surveys—very useful Web site. The Web site contained (1) information about the project, in Russian

and English; (2) the text of all issues of *Law and Business* published since 1996; (3) the extensive publications of the project and predecessor projects; (4) sections on our work with lawyers, the judicial system, and business persons, respectively, with extensive reference information; and (5) updated information on recent events and developments.

We intend to keep the Web site posted until the end of 2006 (or until the commencement of a USAID project that wants to use it), since it contains so much information of use to the public.

Since 2003, the project's Web site has received a total of 48,638 visits by users. (We have not been able, for technical reasons, to segregate the number of visits since August 5, 2005.)

Explanatory Russian-Kyrgyz Dictionary of Legal Terms and the Commentaries to the Civil Code.

The *Explanatory Russian-Kyrgyz Dictionary of Legal Terms* and the *Commentaries to the Civil Code* were developed and produced by the predecessor project, but they were published and formally announced to the public in March 2006.

The *Explanatory Russian-Kyrgyz Dictionary of Legal Terms* provides explanations of over 4,800 legal and economics terms in both Russian and Kyrgyz. The hard copy volume is over 800 pages long. The purpose in developing the *Dictionary* is to foster the development of the Kyrgyz language as a language of modern legal discourse. Despite formal declarations by the State of the need to elevate the role of Kyrgyz in daily life, little has been done to address the poor translations into Kyrgyz of laws and legal acts and the contradictory and inconsistent development and usage of legal terms in Kyrgyz. The *Dictionary* has received the official endorsement of the National Language Commission, and we hope will lead to the improvement and standardization of modern legal terms in Kyrgyz. This is particularly important in view of (1) the steadily decreasing knowledge of Russian that is evident in the country, particularly in the South; and (2) the fact that it is those new terms and concepts that are central to democracy and a market economy that are often poorly rendered in Kyrgyz. Commentators have compared the publication of the *Dictionary* to the publication of the first (and only) authoritative Russian-Kyrgyz dictionary in 1965, compiled by Yudakhin. The project also developed an electronic version of the *Dictionary* that can be installed in one's computer.

The *Commentaries to the Civil Code* represents the first and only article-by-article commentaries to the entire Civil Code of the Kyrgyz Republic. They consist of six volumes and over 3,000 pages. The Civil Code is the fundamental law establishing the legal basis for all civil and commercial rights, obligations, and relations. The *Commentaries* provides explanations of the meaning and application of each article, using hypothetical and actual examples. The *Commentaries* are designed for use by both specialists and educated non-specialists. The *Commentaries* were produced by leading local law specialists, with the participation of US legal experts.

A portion of both publications were distributed free of charge to libraries, information centers, government agencies, courts, and nongovernmental and professional organizations. The remaining publications are being sold at fixed prices through the Association of Lawyers, the Chamber of Tax Consultants, the legal information not-for-profit organization Central Asian Library, and libraries under an arrangement that will allow those organizations to keep the proceeds from the sale. The publications have also been made available on CD-ROM.

We believe that both the *Explanatory Russian-Kyrgyz Dictionary of Legal Terms* and the *Commentaries to the Civil Code* will serve as a source of guidance and legal learning in Kyrgyzstan for many years to come.

Success stories on the *Dictionary* and the *Commentaries* and related information are provided in Appendix 24.

3.3.4 Judicial Opinions

Description of the Tasks

The project was tasked with continuing the Judicial Opinion Database and increasing the number of courts providing opinions for it, facilitating an arrangement for the continuation of the JODB after the end of

project, and developing and lobbying for draft legislation that would establish the public's right of effective access to judicial decisions and would require the State to provide such access.

Performance Indicators

The following performance indicators were approved by USAID for this area of activity.

- 1) By end of project, the JODB contains at least 36,000 judicial opinions and at least 32 of the 36 courts planned for participation in the JODB have established a regular practice of providing their opinions, with the majority of opinions being provided in electronic form.
- 2) Responsibility for ongoing maintenance, expansion, and distribution of the JODB assigned to a third party on terms providing reasonable assurance that the database will continue to be maintained, expanded, and distributed in a manner acceptable to USAID, or such other arrangement is proposed as deemed acceptable by USAID (April 2006).
- 3) The project has, by end of project, prepared and lobbied for draft legislation requiring that judicial opinions be publicly available and that the State provide the requisite funding.

Summary of the Work Performed

The project more than fully satisfied the requirements of these tasks. By end of project, the JODB contained 36,000 judicial opinions, as called for by the applicable performance indicator, and all 37 courts were participating in the JODB, exceeding the performance indicator.

Description of the Work Performed

Judicial Opinion Database. As of August 5, 2005 (the beginning of the current contract), the JODB contained 22,000 judicial opinions along with all cited legislation, which included opinions of the former Commercial Courts and opinions from the ten pilot courts designated in the MOU that was signed by USAID and the Supreme Court in March 2004. As of August 5, 2005, however, a total of 27 additional courts—i.e., in addition to the ten courts designated in the MOU—had received computer equipment to allow them to participate in the JODB. Following the signing of the second MOU in December 2005, the additional 27 courts were instructed to begin providing their opinions for inclusion in the JODB, and the project worked closely with the courts to resolve a number of logistical issues surrounding the participation of the additional courts. By the end of project, 23 of the additional 27 courts had begun providing us with their opinions. Thus, by the end of project a total of 33 courts were participating in the JODB.

In May 2006, the project received a total of 2,457 judicial opinions for inclusion in the JODB, of which 1,862 were provided in electronic form. This brings the total number of judicial opinions received since May 2004 (i.e., after the signing of the first MOU) to 24,718, of which 20,138 (81%) were received in electronic form. Approximately 12,000 opinions were in JODB before the first MOU was signed. These were largely opinions issued by the commercial courts when they constituted a separate system. Therefore, as of end of April, the JODB contained approximately 36,000 opinions.

A success story on the JODB is provided in Appendix 24 to this Report.

Development of USAID Plan for JODB Going Forward. In April 2006, the project analyzed and presented to USAID an analysis of the available options that the agency could pursue with respect to the JODB after the end of project. Then project then worked with USAID and the Supreme Court to facilitate the continuation of the JODB under the auspices of the Supreme Court, the option that USAID has tentatively elected. In parallel to that effort, the project sought to determine the technical feasibility of converting files between the JODB and the courts' CIMS. Working closely with the two local firms that developed the respective operating systems, we determined that the conversion can be carried out fairly easily at no significant cost. This will make it possible to have all opinions from the JODB transferred to the CIMS, which contains only those opinions issued by the five CIMS courts since the beginning of 2006. (Courts not

in the CIMS must use the JODB to have access to a database of judicial opinions.) We have agreed to fund the development of the conversion at a cost of \$150.

It was also proposed by USAID that the project fund the processing of opinions received since April 2006 for some period of time (up to six months) after project end until funding could be assumed by a subsequent USAID project. The project will use funds available at end of project for that purpose. Even though the Supreme Court has agreed to assume the JODB (although this agreement has not been finalized), the Supreme Court has no objection to having the JODB processing carried out by a private firm, since the court fully recognizes that the courts do not have the capacity to maintain the JODB at present.

As noted above, the project intends to maintain its Web site until the end of 2006. We expect it to provide links to the most recent versions of the JODB as it continues to be updated.

Supreme Court Web Site. We had originally proposed establishing a Web site for the Supreme Court along the lines of the Web site established for the National Procuracy, if and on condition that the Supreme Court commit to posting its own decisions on the Web site as soon as they have been issued and to adopting the necessary internal instructions in support of that commitment. To that end, the MOU between USAID and the Supreme Court, signed in December 2005, also contains such a provision. Since the signing of the second MOU, however, the Supreme Court indicated that it would develop a Web site on its own. We have received an oral commitment from the Supreme Court that they will post the JODB on their Web site.

Law Requiring Public Access to Judicial Opinions. In connection with the legislation prepared as part of Kyrgyzstan's Millennium Challenge Account Proposal, we took part in the development of amendments to the Law on the Supreme Court and Local Courts that require (1) the courts to provide easy and effective public access to the body of judicial opinions; and (2) the State to make funds available for such access to be possible. Kyrgyzstan has committed to have that draft legislation sent to Parliament by June 15 and to have it adopted by December 31 at the latest.

3.4 ADDITIONAL TASKS

In April 2006, USAID tasked the project with working to facilitate the presentation by Kyrgyzstan of its proposal for Threshold Country Assistance under the Millennium Challenge Account program. The deadline for submission was May 15, 2006. The project assisted with respect to developing the presentation on all three components, but took the lead role, for the US side, on the judicial reform component. Kyrgyzstan's proposal was submitted to the Millennium Challenge Corporation on May 12, ahead of schedule. As of the end of project, no decision on the proposal had been announced by the MCC.

TAJIKISTAN

3.5 GENERAL COMMERCIAL LEGAL AND INSTITUTIONAL FRAMEWORK

1. **Lawyer Training:** The project developed a commercial law curriculum of five new subjects (licensing law, customs law and customs clearance procedures, labor and employment contract law, choice of and establishment of legal entities, and entering into and terminating business contracts) targeted to raise professional skills as necessary to support current market developments patterns in Tajikistan. We engaged local experts in each field to work with project attorneys to design and develop detailed training modules for each course. Using these, attorneys and local training experts conducted 14 training seminars for lawyers, attended by a total of 356 Tajik lawyers (223 men and 133 women). On average, 25 lawyers,

notaries, and other legal professionals attended each seminar. For each seminar, participants completed written exams before and after the course, designed to help gauge the level of learning. On average, participants achieved a 24.5% increase in legal knowledge from project seminars, with an average post-course exam score among all participants of 76.6%, showing overall mastery of the material presented.

- 2. Lawyer Skills and Professionalism – Assessment and Evaluation:** As noted above, the project dedicated significant resources to increasing lawyer skills and professionalism. We also undertook a significant monitoring and evaluation (M&E) effort to measure the effects of this training and, more generally, to gauge lawyers' professional skills and ability to competently represent clients in commercial transactions and complex commercial litigation. In addition to the examinations before and after each training course, the project developed other tools to gather both qualitative and quantitative information. These included holding face-to-face interviews of business persons, government leaders, judges, and lawyers throughout Tajikistan; conducting focus groups with members of the business community; and conducting written surveys of business persons, lawyers, and judges. The results of the extensive M&E program are compiled in project documents and included in a summary report presented by MetaMetrics Inc. to project Cognizant Technical Officer Irina Krapivina in Bishkek, Kyrgyzstan. One very clear indicator of the development of the legal profession in Tajikistan is the fact that, whereas there were no private professional firms practicing law in Dushanbe two years ago, there are now several. These firms have grown up in response to the need for local counsel as foreign law firms have become increasingly involved in complex commercial transactions (hotel development, import/export) and litigation arising out of such transactions. Unfortunately, aside from these bright spots among recently established commercial firms in Dushanbe, the project's assessment results indicate that the legal profession in general needs significant help understanding the fundamentals of private practice and significant professional development before lawyers in general will be ready to serve private business clients appropriately.
- 3. Legal Training Institution:** The project developed and submitted for USAID's review a 31-page lawyer training report and institutionalization proposal regarding potential local continuing legal education (CLE) partners. This report analyzed the capacity, capabilities, strengths, and weaknesses of five local entities using pre-established criteria. Based on the analysis and recommendations in the report, USAID agreed on an institutionalization plan that the project followed. Pursuant to this plan, the project worked with three selected entities to help them develop administrative and training capabilities to conduct lawyer training. This capacity building included training in how to prepare training modules, how to locate and select appropriate training venues, how to make local contacts necessary to get needed attendance, selecting appropriate trainers, provision of appropriate training aids, and various logistical capacity building exercises. Using this knowledge, the three entities each conducted at least two lawyer training activities under contract for the project. The project evaluated their performance for USAID and met with them to discuss how they could improve. Overall, based on the findings of all the institutionalization work, the project believes that Legal Education Center, a local nongovernmental organization (NGO) run by the former head of the Association of Judges, built the most capacity and did the best job conducting lawyer training. One important recommendation: lawyer training is unlikely to gain much momentum in Tajikistan until such a time as either the legal profession or the government requires mandatory continuing legal education for all licensed lawyers.
- 4. Practical Guidance for Lawyers:** Lawyers' handbooks are critical practice guides, used both as a teaching aid at continuing legal education seminars and as resources for practicing lawyers. The project published and distributed the second volume (developed by LIME 1) of the "Handbook for Lawyers," including the topics bankruptcy for advocates, freight carriage contracts, and financing transactions secured by movable property. The project also established a drafting group and developed two new volumes covering litigating labor disputes under the New Labor Code, understanding licensing requirements in Tajikistan, representing import and export clients under the newly adopted customs code, and effectively representing clients involved in motor vehicle incidents. The project published 500 copies of each volume and distributed them at lawyer training seminars and other events in accordance

with distribution plans discussed with and approved by USAID.

5. **Legislative Drafting:** Building on relationships developed and work commenced by LIME 1, the project continued providing assistance to the Tajik government on commercial legislation critical for proper functioning of market-based economy. The project continued the approach of providing guidance and demonstrating best international practices to allow Tajik drafters to craft better laws that take into account and improve on the legal framework and commercial realities in Tajikistan. Consistent with our drafting philosophy and USAID guidance, the project served in the role of facilitator and supporter, not as primary drafter. As may be expected, this practice resulted in draft laws that, while not perfect, have local ownership and are better understood. Where possible, the project included private sector representatives in working groups and facilitated inclusion of the private sector in discussions regarding the legislative drafting process. This was done primarily through roundtable discussions held throughout the country on the various laws the project helped develop.
6. **Economic Procedure Code:** The project provided the official government working group with technical and financial support to finalize the Code, including translation of the draft into Tajik, copying and distribution support for public notice and comment, and a multi-day, off-site working session to finalize the law after comments were received. The draft law was aired before more than 50 judges from the economic courts at roundtables in Dushanbe and Khujand and then finalized. It was circulated through various governmental committees for comment. As of September 30, 2006, the draft law has been under review by the State Advisor to the President. It is expected that the draft law will be submitted to Parliament either through the government or directly by the President by the end of 2006.
 - a) **Civil Procedure Code:** The project supported substantial support to the official government working group. A project lawyer (Alimov) worked nearly full-time with the working group at evening amendment sessions at the MOJ. The working group was supplied with the use of a computer projector and screen to make their deliberations run more smoothly. The project worked with a translator to keep Russian and Tajik versions of the Civil Procedure Code (CPC) consistent throughout the drafting process, and helped to prepare a chart of comments and suggestions from the public during the comment period. The law was prepared in its final form. An English translation of the new Code was also prepared so that international organizations could review and comment on it. The law was circulated among various governmental committees. As of September 30, 2006, the draft law has been under review by the State Advisor to the President. It is expected that the draft law will be submitted to Parliament either through the government or directly by the President by the end of 2006. The government determined to submit to Parliament all at the same time the new draft procedure codes, including the Economic Procedure Code, the Civil Procedure Code, and the Enforcement Procedures Code.
 - b) **Enforcement Procedures Code:** Neither the draft Economic Procedure Code nor the draft Civil Procedure Code contain enforcement provisions. Both working groups decided to wait and include all enforcement provisions in a separate law upon completion of the two procedural codes. In late 2005, the government appointed an official working group to draft these provisions in a separate law. Bakhtior Khudoyorov was appointed chair of the working group. The project worked closely with him to plan and support the drafting process, from its first meeting onward, and it proposed to assist the working group with regional expertise. However, Mr. Khudoyorov preferred to limit outside expertise to his contacts with the German Agency for Technical Cooperation (GTZ), and the written comments provided by GTZ, which were copied and provided to each working group member. The project also provided the group with background materials and enforcement provisions from other countries and funded at an uninterrupted, multi-day, full-group working session in April 2006. Following this working session, the project provided translation assistance to create a Tajik language version of the draft so that it could be circulated among government agencies and courts. They also worked with GTZ to conduct another multi-day working session in July 2006 to review the comments of the GTZ expert.

The project conducted a roundtable in Khujand with the participation of 26 judges and bailiffs from oblast- and district-level courts and workshops in Dushanbe with Tajik government officials, members of the judiciary, the bailiff department, private sector representatives, and legislative drafters to elicit commentary and recommendations for revision of the draft. Altogether, 56 Tajik government officials, members of the judiciary, representatives from the bailiff department, private sector representatives, and legislative drafters participated in the discussions of the draft Enforcement Procedures Code. Of the 56 participants, one-quarter were women. At the conclusion of the project, the working group was still making changes to the draft Enforcement Procedures Code. The working group planned to summarize all comments and suggested revisions received from government ministries and departments and participants at the roundtables and complete its work on the draft by the end of October 2006, and then send it to the government for further submission to Parliament.

- c) Civil Code, Parts I and II: LIME 1 attempted to prepare a set of amendments to harmonize the Tajik and Russian language versions of the Civil Code. The project's goal was to follow up on the Russian/Tajik language harmonization effort of 2004–2005 with a set of substantive amendments to the Civil Code. The project began with a planning phase, in which it met with academicians and government officials on how to move forward with amendments to the Civil Code. Based on these meetings and given the short time allotted, the decision was made to provide commentary on which provisions of Part 1 of the Civil Code required amendment, and which provisions were affected by other recent legislative initiatives. Next, the project met with Mr. Salikhov, head of the Presidential Administration, and other legal representatives, to seek government approval of the amendment plan, which was granted. Based on Salikhov's approval, the project assembled a four-person team of prominent Tajik Civil Code experts and two experienced international experts to do the work. Professor Peter B. Maggs of the University of Illinois and Professor Anatoly Didenko of Kazakh Humanitarian Law Academy served as international experts. The project then provided the Tajik team legal resources, suggestions for amendments needed, and other background materials. The Civil Code Commentary, which LIME 1 produced in 2004, was an important component of the working material. The international experts provided their written comments near the beginning of the process, so the Tajik members of the working group could review these before they began writing in earnest. Armed with the materials provided by the project and the comments provided by Professors Didenko and Maggs, the Tajik experts divided up Part 1 of the Civil Code among themselves, then set about preparing individual packages of amendments and explanatory analysis.

LIME 2 received the work product from each Tajik expert in mid-March, whereupon project attorneys reviewed it all and compiled it into a comprehensive set of amendments in the form of a three-column chart: one column with the current Civil Code text, one with the suggested amendment, and one with a clear explanation of why the amendment was necessary and what benefit it would bring. The project served as a coordinator at the beginning and throughout the amendment development process, ensuring that the various experts did not duplicate each other and that the suggestions of the outside experts were properly received and considered, and combining all resulting suggestions/amendments into a single overall chart. The chart format for the comments was chosen because we believed it would be most conducive to facilitating discussion at the conference and further consideration of amendment of the Code.

To provide traction for adoption of the amendments and to solicit input and comments on them from the private sector, the public sector, NGOs, and the international community, the project worked with the Presidential Administration to co-sponsor a government conference on May 4, 2006 entitled "Amending the Civil Legislation of Tajikistan." Both international experts traveled to Tajikistan in early May to meet with the Tajik experts prior to the conference, discussing disagreements and difficulties, seeking compromise solutions, and making final plans for the conference.

The working group developed a comprehensive set of recommendations to amend Part I of the Civil Code, which was then reviewed and endorsed by the international experts and forwarded to the Executive Staff of the President and Parliament. At about the same time, a draft packet of amendments to the Civil Code was submitted to the Executive Staff by parliamentary deputy M.Z. Rakhimov. Based on the project's analysis, there was extensive agreement between the two packages, but further work remained to harmonize the two efforts. The MOJ prepared a proposal for the President's Office to create an official working group to unify the two proposals and agree on the actual text of amendments. The Presidium of the Government adopted this approach and decided to review and revise the proposed changes with the working group of the President's Office. The decision of the Presidium was sent for approval at the session of the Government in September 2006. The government adopted the decision of the Presidium on September 7, 2006 and sent it on for further consideration to the Parliament.

- d) Law on Legal and Normative Acts: By decree of the government, an official working group was appointed on September 17, 2005 to develop amendments to the Law on Legal and Normative Acts. First Deputy Minister of Justice Gulchera Sharipova, who was appointed to chair the working group, requested technical and financial assistance from the project to complete the work. This law is one of the fundamental pillars of legislative drafting in Tajikistan and contains a number of outdated provisions from Soviet law and other flaws that need to be corrected. The project began its support by providing the working group with background materials, including laws on normative legal acts from other countries of the former Soviet Union (Kyrgyzstan, Kazakhstan, Azerbaijan, Belarus, Uzbekistan, and Turkmenistan), model law of the Commonwealth of Independent States, Principles of Refining the Law on Normative Legal Acts of the Kyrgyz Republic, draft Code on Administrative Procedures of Tajikistan, and commentary of the working group on drafting a law on legal and normative acts of the Kyrgyz Republic and Tajikistan. We also provided technical support including regular drafting and research assistance from senior lawyer Shukurov and financial support for regular meetings of the working group. The project assisted in organizing working group meetings, in which project staff provided commentary and analysis. We also planned, organized, and funded a joint working group session in Bishkek, Kyrgyzstan, during which members of law drafting groups from Tajikistan and Kyrgyzstan, together with LIME 2 lawyers from both the Tajikistan and Kyrgyzstan components, discussed drafting strategies and approaches. This joint working session produced good results for both countries, with changes made to each draft to more closely harmonize the approaches in each law. Tajikistan's draft law benefited from inclusion of provisions from the Kyrgyzstan draft, primarily those provisions relating to making the law drafting process more transparent and inclusive. The project stayed in regular contact with Ms. Sanda Putnina, the international expert for the MIGA-FIAS¹ project, to ensure that both USAID's and the World Bank's work affecting the Law on Legal and Normative Acts was coordinated. The draft law took into account the recommendations concerning access to normative legal acts made by the MIGA-FIAS project. The project sought and obtained written analysis and comments on the drafting progress of the working group from international experts, including Professor Maggs and Nurlan Alimbaev, head of the Kyrgyz drafting group. These comments were reproduced and provided to all members of the Tajik working group in advance of the joint working session in Bishkek, and used to revise the Tajik draft. The project also conducted a roundtable in Dushanbe with the participation of 50 Tajik government officials from all government agencies and legislative drafters to elicit commentary and recommendations for revision of the draft. As of the end of the project, the working group sent the draft law to the government for consideration.

¹ The Government of Tajikistan asked MIGA and FIAS (a joint facility of the International Finance Corporation and the World Bank) to explore options for a technical assistance project that would help the government address shortcomings in Tajikistan's investment climate and assist in building up a more effective institutional framework for investment facilitation. MIGA and FIAS implement the project for "Strengthening Tajikistan's Investment Climate and Investment Facilitation Capacity."

- e) Administrative Procedures Law: The project assisted the government working group to organize and carry out two roundtable meetings for government officials and NGO and business community representatives. These roundtables were held in Dushanbe and Khujand. Through these roundtables and other interaction with interested parties, the working group included more than 20 amendments to the draft law. In November 2005, project senior attorney Hojimatov prepared and published an article in the Higher Economic Court Bulletin concerning reform of the law of public administration and the need to adopt the new draft Administrative Procedures Law. The HEC Bulletin was distributed among judges, lawyers, participants of project seminars, and Bulletin subscribers (that included representatives of the ministries and agencies). Pursuant to Chapter 7 of the draft law, the working group in cooperation with international experts Keith Rosten and Tom Ginsburg prepared a draft Regulation on the Administrative Commission. During a March 2006 meeting among the working group and project experts, discussion of the draft regulation resulted in more than 50 amendments. Professor Ginsburg's visit in March produced excellent results, and he, with LIME 2 senior attorney Hojimatov, conducted more than 10 meetings and discussion sessions with representatives of the government, parliament, and international donors about the importance of public administration reform through adoption and implementation of the Administrative Procedures Law.

The project stressed the need throughout the donor community and the government to begin planning now how to properly and adequately implement the new law. At the end of LIME 2, the draft law was under consideration in the Parliament, and the project is supporting and informing the deliberation process. Mr. Hojimatov prepared a lengthy booklet on the Code's significance and how it will work. The project published this booklet in 2000 copies and distributed it widely throughout the country. The booklet was provided to ministries and departments and their regional divisions (600 copies); the Khukumats of the district, city, and regions (400 copies); local NGOs (600 copies); to lawyers (100 copies); businesses, including foreign companies (200 copies); and international organizations (100 copies). A member of the working group, M. Nurmatova, prepared a brochure with forms for administrative legal acts. The project published 1000 copies of this booklet and distributed it to ministries and departments and their regional divisions (400 copies); the Khukumats of the district, city, and regions (200 copies); local NGOs (100 copies); lawyers (200 copies); and businesses, including foreign companies (100 copies).

7. **Legislative Drafting Manual**: The project assisted the drafting manual working group to finalize the new manual on the fundamentals of legislative drafting. This assistance included review by project lawyers and professional editing by a local Russian linguist and text editor. The completed manual is 110 pages long and contains basic techniques and principles of legislative drafting that have been recognized as international best practices, as well as significant specific guidance from the laws and regulations of Tajikistan. The manual contains numerous examples of good and bad drafting techniques to illustrate the authors' points clearly. The project worked with a local publishing company to complete layout of the text and, after an additional round of proofing, funded publication of 1800 copies. The manual was distributed to all government agencies, institutions, and offices involved in law drafting pursuant to a distribution list approved by USAID. In January 2006, the LIME 2 representatives met with D. Elnazarov, Dean of Law Faculty at Russian Tajik (Slavonic) University, to discuss the idea of using the new manual for a special course on fundamentals of law drafting. Based on previous discussions with the project during the legislative drafting training in 2005, Dean Elnazarov approved a new "Legislative Techniques" course to be organized at the Law faculty. Valijon Abdulkhamitov, employee of the MOJ, teaches the course. Dean Elnazarov noted that approximately 80–100 students are taking the course each semester. He expressed appreciation to the project for the more than 200 copies of the drafting manual received, being used as teaching material for the course. All the books will be kept in the Law Faculty library, and students will be provided with copies while studying the course, to be returned upon completion.

In February 2006, the project held a presentation ceremony for the Legislative Drafting Manual in the

MOJ. More than 40 representatives of ministries, agencies, NGOs, and donor organizations attended. The Manual's authors also participated and signed copies for guests. The manual is currently under review for adoption as the main course material for a legislative drafting course at Tajik State National University Law Faculty in Dushanbe, with the larger goal that it could serve as the basic text for legislative drafting classes at law faculties throughout Tajikistan. In February, the project also met with deans of two law faculties in Khujand to discuss the text and provide copies for review. The manual is still under review at these two schools, and may be adopted in the fall of 2006.

The intellectual property rights in the Legislative Drafting Manual are owned locally among USAID and the authors, in order to allow them to produce updated or expanded editions of the manual in the future. All rights to the manual outside Tajikistan are owned solely by USAID.

Classification of Laws: The Government of Tajikistan formed an official working group to develop a new law classification scheme on September 12, 2005. The working group was chaired by Gulchera Sharipova, First Deputy Minister of Justice. The project prepared for this working group for several months and advised First Deputy Minister Sharipova on the steps needed to complete the work. Upon formation of the group, the project immediately helped organize an initial meeting and prepare an action plan, and provided the group with background materials including the Russian, Kyrgyz, Belarusian, Kazakh, and Uzbek classification systems and World Bank documents in Russian prepared by Sanda Putnina of the FIAS-MIGA Project. With significant hands-on assistance from senior attorney Shukurov, the working group members met intensively for two months, completing an initial draft classification system and a draft Presidential Decree on its approval on November 5, 2005. The project then provided financial and technical support to circulate the draft among government agencies, ministries, local government entities, State Committees, prosecutors, courts, and academicians. The project provided additional assistance in the form of regional expertise to ensure consideration of best international practices and the most recent developments in the former Soviet Union. Specifically, the project funded development of written comments on the draft Tajik Classification System from Kazakh expert Marat Jumagulov and Kyrgyz expert Ainura Salieva. The expert comments and comments from the Tajik ministries and agencies were provided to all working group members in advance of a project-funded study trip to Bishkek, Kyrgyzstan in the second half of November 2005. In Bishkek, the working group met with Ms. Salieva and her colleagues from the Kyrgyz MOJ to discuss the draft and visited the MOJ to learn about how the classification system works and how Kyrgyzstan operates its electronic database. The working group also reviewed all comments and made extensive changes to the Classification System during intensive work sessions in Bishkek. Upon their, the working group members and project senior attorney Shukurov developed an explanatory note to the draft Classification System, explaining the changes the new system makes and how it will affect legislative affairs in Tajikistan.

The revised draft Classification System and accompanying Presidential Decree and explanatory note were delivered to the Government of Tajikistan for final consideration in January 2006. In April 2006, after two additional meetings with the project to discuss it, the government approved the draft and sent it to the President's office for signature and adoption. The Classification System was approved in June 2006, and in July 2006, the system was adopted by a government decree. The system adopted corresponds to that used in the Adliya database, discussed in Section 3.8.2, Dissemination of Information. The project held two training sessions on the Classification System in Dushanbe in September 2006 for 50 participants, including representatives from all government agencies and two members of the university law faculty.

3.6 TRADE AND INVESTMENT

At the outset of the project, staff lawyers conducted an informal assessment of WTO requirements relating to planned project legislative drafting activities. Results of this assessment shaped the project work plan and

informed implementation of many activities, including drafting of the Law on Legal and Normative Acts, the two procedural codes, and the Administrative Procedures Law. The project focused on assistance and advice to the Tajik government in development of the legal framework necessary to support Tajikistan's accession to the World Trade Organization and its increased participation in the global economy. In close cooperation with USAID's Trade Facilitation and Investment Project (TFI), consulted monthly, the project continued the practice of providing guidance and demonstrating best international practices, allowing our counterparts to craft better laws that take into account and improve commercial realities in Tajikistan. One of the most important WTO hurdles that Tajikistan must clear is increased transparency in several areas of government, including legislative drafting and operation of the courts. The TFI project was not working in this area, so it was a good fit for project attention. Numerous laws and policy changes are necessary for Tajikistan to meet WTO's transparency requirements; the project focused on these areas. Specifically, the project carefully and successfully guided the development of the draft Civil Procedure Code and the draft Economic Procedure Code so that each now contains preliminary relief provisions as required for WTO accession. We argued most loudly for these provisions in the Civil Procedure Code, and were not successful until the eleventh hour, when the Chief of Party (COP) and senior attorney Shukurov met the Minister of Justice and urged inclusion of these provisions. The project helped draft the necessary language, translated it into Tajik, and worked with the Minister and his colleagues on the reasons for which the provisions were important for Tajikistan's future.

Another key piece of legislation for WTO accession is the Law on Legal and Normative Acts. The project provided extensive technical and financial support to the drafting group working on this law. From the standpoint of meeting WTO requirements, the project worked to devise a legislative scheme requiring: (1) a central clearinghouse in the MOJ or other appropriate public sector entity for public review of and access to draft laws and regulations before they are adopted, (2) electronic copies of all drafts and adopted laws/regulations be provided to the MOJ along with the final hard copies to facilitate government openness and public availability of Tajik law, and (3) adequate public notice and comment periods for draft laws and regulations prior to adoption. The draft law envisions mandatory publication for public comment of draft normative legal acts that implicate the interests of legal entities or individuals, and also draft normative legal acts regulating entrepreneurial activity. This obligation is borne by the organization that has developed the draft normative legal act. In completing the draft normative legal acts, the drafting body is required to take into account comments from the public. The draft law also provides for sending normative legal acts both in hard copy and in electronic format to the MOJ for inclusion in the central database.

In early May 2006, the project organized and sponsored a government conference to discuss changes to the Civil Code, Part 1, discussed above in Section 3.5.6.d, Law on Legal and Normative Acts. At the conference, officials from many different government agencies, NGOs, and representatives of the private sector engaged in wide ranging discussion of the need for legal and structural reform in Tajikistan. The conference was structured around the comments and suggestions of a group of local and international experts funded by the project. One issue that was heavily debated, and strenuously advocated by Professor Anatoly Didenko, a Kazakh civil law expert engaged by the project, was the need for greater transparency in most areas of government activity. His comments were generally well received and provoked thoughtful discussion. Another success in the area of greater transparency and open government was the completion and approval by the President of the draft Administrative Procedures Law, which includes provisions requiring the Government of Tajikistan to make publicly available as appropriate and required for WTO accession all administrative legal acts of government entities.

3.7 DISPUTE RESOLUTION MECHANISMS

- 1. Court and Judicial Reform:** The project began by analyzing the results of the LIME 1 project's baseline assessment of court user perceptions of the Supreme Court and the Higher Economic Court (HEC). We held discussions with the leadership of both courts, and with the Constitutional Court, to discuss the results and try to stimulate new thinking in terms of court and judicial reform. In April 2006, the project

completed a follow-up study, asking the same questions to court users a year later for comparison against the baseline. Unfortunately, the second study offered mixed results, with improvement in some areas of perception of court performance and deterioration in others. A detailed report of the findings of this study was provided to USAID in early May 2006. One major obstacle to improvement of court operations during the period studied was the replacement, in May 2005, of many seasoned judges at the high courts with new, less qualified ones. Our survey shows that this external factor played a role in court user perceptions of the quality of judicial decisions. Judicial reform is not an area that was enthusiastically embraced by either the courts or the government during the life of the project. However, some positive results were achieved. We convened a newly constituted court reform committee in late 2005, consisting of the chairmen of all the high courts and the Council of Justice. Several court reform ideas were presented and discussed.

The project decided to focus attention on the development of a judicial decision database and to implement it on a pilot basis at the HEC. This database, which is discussed in greater detail below, was the primary focus of court and judicial reform efforts. The project also brought court automation and administration expert Judge James Hargreaves to Tajikistan in November 2005 to study computerization results and make recommendations about further automation needs in the Supreme Court and HEC. During the time he was in Dushanbe, Judge Hargreaves delivered training seminars for judges at the Supreme Court and HEC in court case flow management. These seminars, which focused on teaching judges how to take more control of their case load, received mixed reactions from judges. However, many understood and embraced the idea that courts operating more efficiently from an administrative standpoint will be able to dispense justice more effectively and eventually become more trusted and independent. A report concerning Hargreaves' activities was provided to USAID in January 2006. On November 4, 2005, the project and the Soros Foundation jointly sponsored a conference dedicated to the tenth anniversary of the Constitutional Court. More than 50 representatives of the legal community, from all branches of government and the private sector, participated. The project's COP made opening remarks calling for genuine judicial independence in Tajikistan. Several members of the judiciary, academia, and the MOJ gave presentations on aspects of Tajik constitutional law. The participants discussed and at times argued over various matters, such as why there are not more cases filed in the Constitutional Court. The project sponsored publication of a book describing the court's history and mission. The book is in Tajik, English, and Russian languages and contains a question and answer section about how to bring a case to the court.

- 2. Court Modernization:** After negotiations with the courts and discussions with USAID, the Memorandum of Understanding (MOU) among USAID and the Tajik Supreme Court and HEC signed during LIME 1 was extended to cover the period of LIME 2. The modification of the MOU was executed by all parties on October 26, 2005. Following execution of the extension, the project went to work planning Phase Two of the court modernization program. Planning activities included organizing and convening meetings of a newly reconstituted court automation committee, which was required because the most active members of the former committee had been replaced in the judicial shakeup of May 2005. The project also brought experts Keith Rosten and Judge Hargreaves to Dushanbe to review results of previous automation and make recommendations on the next logical steps. In February 2006, the project presented to USAID a written status report and plan for Phase Two, including several options for modernization programming. USAID reviewed the plan and approved a modified approach, including three new computers for new judges at the HEC, five new printers for HEC judges, additional training at both the Supreme Court and the HEC, and work on a new judicial opinion database to be piloted in the HEC.

Following USAID approval of the plan, the project moved into implementation. Based on a local tender, the project purchased three new computers and five new printers for the HEC. The project expanded the network at the HEC to include the new computers and the court chairmen, who were not originally included. The project provided 35 hours of computer literacy training to 11 judges and staff members who had not received it before. The Phase Two modernization activities produced tangible results at the

HEC. All judicial opinions are now being created electronically on computers. Court standards of practice and internal orders are now available on the network for the reference of all judges.

Moreover, the court gained the capacity to take the next step in court modernization—using the computers to organize and access its decisions. The project engaged a local software designer to develop a simple, user-friendly database. Based on extensive discussions and focus group sessions at the court, with both judges and staff, the programmer and the project’s Information Technology (IT) Specialist worked together to develop a program tailored for the existing situation at the HEC, but capable of adaptation and data migration in the future. This database is discussed in further detail below in Section 3.6.d, Judicial Opinions.

3. **Judicial Training Materials; Video Program; Dissemination:** The project continued USAID’s judicial video training program, which produced eight interactive judicial education videos in relevant areas of civil, commercial, and criminal law, as well as judicial ethics under work before the commencement of this project. The project completed two interactive videos: “Judicial Consideration of Disputes Related to Labor Contracts”; and one on the pledge of movable property. Both films were approximately 80 minutes. The pledge video was prepared in both Tajik and Russian, with English subtitles. It was designed not only for judges, but also for lawyers, representatives of banks, creditors, and debtors. The pledge video complemented the project’s work in establishing the pledge registry and training as described in 3.9.1, Pledge Registry, of this report. These two videos and the eight previously made are all part of the standing curriculum for the training of judges at the JTC.
4. **Training of Judges in Non-commercial Law Topics:** The project supported continuing judicial education for judges throughout Tajikistan at the JTC in selected civil and criminal law topics. The topics for training were based on discussions with the center’s Curriculum Committee, together with surveys of judges. The project provided financial support for the new, monthly, two-week judge training program at the JTC, in cooperation with the Swiss Agency for Development and Cooperation and the Open Society Institute. During the period from November–May, 2006, five trainings were conducted with project support. The training courses were for 20 judges for each course or a total of 100 judges (81 men and 19 women), all of whom passed the training courses. These judges represented about 42% of all district and oblast courts. At both the beginning and end of each training course, the judges took a 50-question, multiple-choice written examination. The judges substantially improved their knowledge, as they scored an average of 16% higher on the exit exams.

Since January 2006, the training at the JTC has been conducted under a new program, developed by the Academic Council in November and December 2005, as part of an effort to standardize training for all judges in the country. The new curriculum now includes sessions on various fields of substantive and procedural law designed for the judges of general jurisdiction courts, such as (a) law on language and official record keeping, (b) pledge law, (c) order for drawing up, concluding, and implementing a contract, (d) forensic examination, and (e) forensic psychology.

5. **Training of Judges in Commercial Law Topics:** The project also supported continuing judicial education for judges throughout Tajikistan at the JTC in selected commercial law topics, including commercial and economic substantive and procedural law designed specifically for the economic court judges. The project provided financial support for the new, monthly, four-day Economic Court judge training program at the JTC, in cooperation with the Swiss Agency for Development and Cooperation and Open Society Institute. During the period from November 2005–May 2006, the project supported three training courses, in which 90% of the judges of the economic courts attended and passed the training courses. Altogether 39 judges (including 28 men and 11 women) from the HEC and the economic courts of the regions participated in these training courses. At both the beginning and end of the training course, the judges took multiple-choice written tests. The judges attending these courses improved their knowledge of commercial as reflected by a **10% average increase** in their test results as measured before and after these courses. Those judges who participated in the training clearly wanted more of this kind of training, particularly because the courses were specially designed for economic court

judges. “A separate training program for economic court judges was needed,” said one judge of the Sughd Economic Court. “Thanks to the Commercial Law Project, the trainers are now more specialized. I learned new things about commercial law. Before, I knew that the Civil Code covered intellectual property. Now I know the details of how to apply it.”

In cooperation with the HEC, the project also organized and developed a multi-day seminar for HEC judges specifically related to application of the bankruptcy law. Due to a reappointment process at the HEC at the beginning of the project, the judges who were most able to hear bankruptcy cases left the court, and the new judges did not have training to apply the bankruptcy law. The project attempted to elicit the support and expertise of judges from the economic courts in Russia to jointly present the seminar, but could not find the judges with the appropriate background who were willing to come to Dushanbe. Consequently, the project decided to work with local experts to present this seminar in September 2006. The project worked with and provided support to the Bankruptcy Trustees’ Association to conduct this training course for twelve judges and six court officers of the HEC over the course of three days (September 28–30, 2006).

To ensure sustainability of modern teaching techniques for commercial law at the JTC, the project provided the center with an projector for PowerPoint presentations and a CPU and keyboard for use in the training room at the JTC in July 2006.

- 6. Judicial Opinions:** Under LIME 1, the project developed the infrastructure for establishing a judicial opinion database. Computers were installed at the HEC and the Supreme Court. Most final opinions of the HEC are now prepared in electronic form. In contrast, many decisions of the Supreme Court are still not prepared in electronic format, as many judges do not have their own computers. In consultation with the Automation Committee, the project developed a plan for establishing a judicial opinion database. This database was developed under terms of reference that were designed with the input of HEC members. The project developed the database, which has searchable functions for several parameters, including the kind of decision, word search, title search, and status.

The database was demonstrated for court leadership and then for the whole court in May 2006 and put into action at the court for on-the-job training for judges and data entry personnel provided by the project. The court leadership is very pleased with the database. The HEC issued an order adopting the database, appointing the persons responsible for maintenance of the judicial database, and setting out the parameters for its use for all decisions. The project was encouraged by the fact that the HEC has indicated it will use the database to gather statistics for annual and semi-annual reporting to the government, a secondary function for which the database is well designed. Accurate statistics will require that the court input all decisions into the database. Currently, the court has trouble locating decisions it made in the past, and judges are rarely able to access the decisions of peers as guidance for making decisions in similar cases. As the court uses the new database in the future, all that will change. The database was tested at the Court, and the project trained judges and administrative personnel on how to use it. As a result of testing the database, several changes were made in accordance with the requests of the judges. The database will include decisions of the HEC, decisions of the Presidium, decisions of the Plenum, appellate decisions of the Court, cassational decisions of the court, and other relevant documents and decisions. The database became fully operational in September 2006 as the project reached its conclusion. The HEC has entered approximately 100 decisions into the database, and the database is available to all members of the HEC. Judicial decisions not subject to further appeal and that have gone into effect are being entered into the database. Eventually other judicial decisions will also be entered into the database.

- 7. Judicial Libraries:** LIME 1 developed judicial resource centers at six oblast-level courts. These study libraries, equipped with a computer for access to the Adliya legal database, furniture, and reference books, are in use now. The project studied the need for improved access to secondary legal sources and found it acute at the high courts, where judges decide cases in the final instance and are often required to interpret laws modeled after those found in Russia or elsewhere in the republics of the former Soviet

Union.

The project provided support to create resource centers at the Constitutional Court, Supreme Court, and the Higher Economic Court. The project ordered books from a Russian publisher based on the project's discussions with judges from these respective courts. In addition, the project supplied books from Tajik legal professionals published in Tajikistan, some of which were published with USAID support. The Supreme Court's resource center received 650 books; the HEC, 560 books; and the Constitutional Court, 473 books. Each of the courts signed an agreement with USAID about the storage and use of the books. Chief Justice Z. Aliev of the Constitutional Court summed up the project's contribution: "The books that were received as a gift are an important element in the raising of qualifications of judges and studying the experience of constitutional judicial review in other countries."

8. **People's Representatives:** The institution of People's Representatives has existed since Soviet times. People's Representatives are ordinary Tajik citizens chosen by local leaders to act as "lay judges" in the courts. The main goal behind People's Representatives was to involve the public in administration of justice. People's Representatives are appointed to serve with a particular judge for a term of five years, with two People's Representatives sitting with one judge to form a "collegium" and hearing certain criminal law cases. All three members of the panel have equal weight in deciding cases. The collegiums hear cases at the first instance only, and only for "serious crime" cases that can result in a prison sentence of ten or more years. Under Tajik law, each judge is entitled to a panel of 50 of these individuals from which to choose. Typically they are selected in lists by the local Khukumats (municipalities). Because all three levels of court hear cases in the first instance, People's Representatives work in all court levels of criminal cases.

Notwithstanding their high status under the law, the People's Representative's role in court has become restricted and ineffective. They do not check the power of appointed judges, and the public does not see the advantages of their role. In the eyes of the public and most judges, election of People's Representatives has become a mere formality. The mechanisms to ensure involvement of citizens with real authority and genuine concern for the integrity of the court system have been lost. In fact, there were attempts to abolish the institution in 1995 and 2000. According to lawyers questioned by the project in August 2005, People's Representatives are passive; they rarely participate in evaluation of evidence, and they do not attempt to influence the outcome of cases, generally doing whatever the judge orders. In short, they are not serving as effective public servants or as a check on the power of judges.

Based on this existing situation, the project organized and conducted a legal educational program for People's Representatives. The goal of this activity was to create a more knowledgeable and professional cadre of these lay judges, and to create better public and judicial understanding of People's Representatives as bearers of an important public mission—service for justice. The project's survey in August 2005 of judges and People's Representatives in district courts located in and around Dushanbe showed that the representatives would welcome a program to motivate them to participate more actively in court. More surprisingly, judges also supported implementation of a program to enhance People's Representatives' legal skills.

All the survey respondents said that publication of a guidebook and organization of trainings are important elements of this program. People's Representatives prepared a list of more than 15 topics for a guidebook. Project senior attorney Hojimatov and the panel of authors narrowed the list to the five most critical areas. The project selected judges, prosecutors, advocates, and jurists for the Guidebook Working Group. M. Vatanov, First Deputy Chair of the Supreme Court, was named head of the working group. Working with Mr. Hojimatov, the working group approved an action plan. The five chapters selected for the guidebook were: 1) People's Representatives in justice and judiciary (General information, history, and legislative overview); 2) other participants in a trial (judges, prosecutors, counsel); 3) People's Representatives in trial; 4) People's Representatives in the examination (evaluation) of the evidence; and 5) People's Representatives in parole procedures.

In November 2005, the working group presented a draft of the guidebook. The project prepared 20 review copies of the first version and disseminated them among district court judges and People's Representatives for comment. In early December, all comments were received and the working group revised the guidebook in accordance with these comments. In January 2006, the project completed work on the Tajik language version of the guidebook, which was 135 pages long, including forms, templates, diagrams, and other information. The project was informed that there were approximately 2,000 active People's Representatives in the courts and accordingly published 2,000 copies of the guidebook. The guidebook can be reprinted again if additional needs arise.

Additionally, the project developed a new training module to accompany and supplement the guidebook. This module is a two-day training sessions for People's Representatives. During April and May of 2006, the project conducted two training courses for People's Representatives, one at the Supreme Court and one at the Dushanbe City Court. Altogether there were 54 (34 men and 20 women) participants at these training sessions. At the beginning and the end of the training courses, the participants took a 50-question multiple-choice written examination. On average, those who participated in the training improved their scores by 24%.

The project also worked with a local company to produce a professional quality, succinct, three-hour mini training video covering the most important parts of the two-day training seminar that, together with copies of the new guidebook, was sent out to all 68 courts in the country. The video training program component was administered, supervised, and documented by the Council of Justice, an enthusiastic supporter of People's Representatives training. Based on Council of Justice figures, training was conducted for People's Representatives in 75 courts throughout the country and more than 1000 People's Representatives in total received training. On training and the new guidebook, I. Makhkamov observed, "I've been a People's Representative since 1953. I started this activity in Stalinabad City Court. During my whole life, this is the first time I've participated in such a seminar or been provided with a practical written reference book about how to properly do this important job. The new guidebook is excellent. I wish it had come out sooner."

3.8 INSTITUTIONAL REFORM

- 1. Business Associations:** The project worked with business associations and entrepreneurs in Tajikistan, assisting them to view the law as something that can and should be used to help them protect their rights and business interests. Businesses need ready access to legal information and transparent, even-handed government regulation if they are to function effectively. Yet despite some steps forward, power in Tajikistan tends to be concentrated within the executive branch, and there has been a tendency by the government to limit information and access. Business associations may sometimes provide some balance, and the project strengthened its ties with business associations that have been nurtured by LIME 1 over the past few years. The project provided support to business associations, including the National Association of Small and Medium Businesses (NASMB), the Association of Bankruptcy Trustees, the League of Women Attorneys, and the Tajik Association of Businesswomen. The project provided support to these business associations by providing them with legal literature, providing training on selected topics, and employing their services to advance other project activities, such as by implementing training activities. The project worked closely with NASMB to distribute Adliya to businesses, business associations, and other NGOs throughout the country.

The project conducted customs law training for customs inspectors. During the period from March–April, 2006, the project conducted three two-day trainings sessions for 69 customs inspectors (59 men and 10 women). These interactive seminars included case studies, and they focused on procedures and regulations. The participants took pre- and post-seminar tests, the results of which reflected an average improvement of 9%. The customs officials also candidly shared their assessment of various problems in

Tajikistan concerning customs, including for example, weak development of bonded warehouses and customs brokers.

The project also conducted training for members of the business community who are engaged in the import/export business. During the period from March–April, 2006, three two-day trainings were held for 55 participants (45 men and 10 women). The project also conducted pre- and post-seminar testing. The participants' scores improved on average by 30%.

With project backing, the Trustee Association conducted nine bankruptcy trainings on the status of debtors and creditors in bankruptcy proceedings. These two-day seminars covered all regions of Tajikistan and reached 227 participants, of whom 27% were state employees engaged in debt collection for the state. At each training program, the participants took written tests both before and after the seminar. On average, the scores of the participants increased by 28%.

All in all, the project held 11 seminars throughout the country for businesses and entrepreneurs on commercial law subjects. These activities contributed to an improvement in the business community's awareness of legislation regulating business activity. According to preliminary results of an International Finance Corporation-sponsored survey on the business environment, those small and medium sized businesses that "have a fairly good knowledge" of commercial legislation throughout the country improved from 28% in 2002 to 34% in 2005. For dekhans, the percentage improved from 20% to 26%, and for individual entrepreneurs, the percentage increased from 13% to 15%. Concomitantly, the percentage of respondents who had "no legal knowledge" of commercial law topics significantly decreased. According to this same survey, for small and medium sized businesses, the percentage decreased from 15% to 0%; for dekhans, the percentage decreased from 20% to 3%; and for individual entrepreneurs, the percentage decreased from 30% to 12%.

2. Dissemination of Information

- a) Electronic Database of Laws: The project continued updating and distributing the electronic database known as Adliya. Use of Adliya had been concentrated in Dushanbe, largely because the technical capacity of computers outside the capital city was limited. With computer infrastructure growing steadily in Tajikistan, demand for the database began to increase around the country. The project developed a proposal for distribution of the database through a network of local NGOs in the regions of Tajikistan to meet the growing demand. The goal was to increase access to normative legal acts among businesses, individuals and government entities outside of Dushanbe.

Distribution of Adliya more than doubled throughout Tajikistan. The project provided copies of the database to 971 entities, including 313 governmental agencies, 235 companies, 60 law firms, 136 various international donors, 95 NGOs, and 132 individuals. The project provided numerous training sessions on the use of Adliya. The project provided special training seminars for judges and court staff on the use of Adliya and provided similar training to local business persons.

Adliya became a critical legal tool for judges. Judge Amirkhoja Goibnazarov, Chair of the Higher Economic Court, reports that "Adliya is a very useful resource. It helps us find references and other legal authority quickly and conveniently." According to Judge Manzura Fayazova, also of the HEC, "Adliya is our legal first aid kit. Using computers provided by the LIME 2 project, we go to Adliya to conveniently find the law we need to decide cases."

The project also developed a proposal for technical upgrade of Adliya to significantly improve the database, including the ability to function in multiple languages. In accordance with the project's specifications, the Adliya database was upgraded to include capability for multiple languages, increased security, more user-friendly Windows-style interface, hyperlinks between documents, expanded and upgraded search capacity, and capacity to load the database on the Internet.

As the project approached its conclusion, we designed a plan on assigning Adliya rights and

obligations to a qualified entity through a public tender process. One critical component of any assignment of rights would be the assignee's ability to conclude an agreement with the MOJ to assure access to all laws, decrees and regulations. At the same time, the MOJ slowly began to recognize the value and importance of Adliya. The project had already trained MOJ personnel on how to install and use the database on the MOJ computers. The project held numerous discussions with the ministry on how to sustain the database after the conclusion of the project. The MOJ expressed the desire to transform Adliya into the official state database, and with the concurrence of USAID, the project agreed to the MOJ request.

In the meantime, MOJ obtained assurances from the World Bank for limited support for the database at the MOJ primarily through three data-entry operators for the Russian version of Adliya, and eventually three additional data entry operators for the Tajik-language components of the database. The project-funded training provided to two project specialists and one MOJ employee of, who will work on updating Adliya within the framework of World Bank assistance.

The project developed a revocable license for the Adliya database. The license was signed by representatives of the MOJ and USAID on May 24, 2006. The project transferred equipment and hardware to the ministry for Adliya's maintenance. The project continued to monitor the extent to which MOJ maintained the database in accordance with the revocable license. Despite the World Bank support, there were insufficient personnel at MOJ to sustain the database, primarily due to the absence of proofreaders and a computer specialist. Also, there was not sufficient governmental funding through the MOJ to continue support. After numerous discussions with the World Bank and the project, and in accordance with the terms of the revocable license, the MOJ determined to identify a commercial distributor for the database. It held a tender to identify a nongovernmental distributor of the database. The tender winner was the Kafolat Association. The MOJ and Kafolat concluded an agreement on transfer of exclusive commercial distribution rights of Adliya. The MOJ would still be responsible for distributing the database to the courts and government departments and agencies. Under the agreement with Kafolat, proceeds from the commercial distribution of the database will be used in part to support the additional personnel and equipment at MOJ to maintain and expand the database. In addition, the project assisted the MOJ in developing a demonstration version of the database, which includes all of the laws of Tajikistan. The demonstration version will be distributed free of charge to anyone who requests the database. As the project concluded, Kafolat had already commenced commercial distribution of Adliya.

b) Judicial Legal Literature:

Higher Economic Court Bulletin: The project assisted the HEC in publishing the Higher Economic Court Bulletin. The purpose of the publication is to keep the practicing bar and commercial law judges informed of the most recent developments in Tajik commercial law, thereby increasing their knowledge and competence and increasing their ability to facilitate Tajikistan's transition to a market economy. The publication is a soft-cover journal produced at the HEC by an editorial staff of five judges. The project published four issues of the Bulletin, one of which was dedicated to the tenth anniversary of the HEC. The Bulletin would include more than 20 articles, and each issue included articles by project attorneys. One hundred and fifty copies of the Bulletin would be published and distributed not only to lawyers, judges, and legal professionals in Tajikistan, but also to economic courts in Russia, Belarus, Moldova, and Kazakhstan. The Bulletin provided significant support to improving the institutional capacity of the court. As reported by the Chair of the HEC, Amirkhoja Goibnazarov, "The HEC Bulletin (which we are happily celebrating in the publication of the 25th volume since 1998) plays a significant role in disseminating valuable legal information. Thanks to the USAID [LIME 2 project] for funding 20 of those volumes."

Supreme Court Decisions: The project provided support to publish 1000 copies of the published collection of Supreme Court Plenum Resolutions and distributed this collection throughout the country. The project also made sure to include these decisions in the Adliya legal database.

c) Legal Publications:

Establishing Legal Entities under Tajik Law: The project supported the publication of a new business law book entitled *The Procedure of State Registration and Forms of Founders' Documents for Several Forms of Legal Entities in the Republic of Tajikistan*, written by Shavkat Mustafakulov. The book was published both in Tajik and Russian. The project commissioned this work for a broad audience including business people, academic circles, and practicing attorneys. The book is the first of its kind in Tajikistan, providing recommendations for every business form along with form documents. It includes the norms of the draft law on joint stock companies, which the project has supported. Seven hundred copies of the book were published and distributed to both governmental and nongovernmental organizations. One company director reported that the book provided him with the forms to create and register his joint venture company in the construction field. The publication received wide acclaim, and based on its success, the author published an additional 1000 copies at his own expense, which are for sale at book stores throughout the country.

Bankruptcy Reference Guidebook: There was a continuing demand for the Bankruptcy Reference Guidebook published under LIME 1. After discussion with local legal professionals, the project reprinted 200 copies of the guidebook. The project distributed it to judges, resource centers, trustees, law schools, commercial banks, business lawyers, and others.

- d) Judicial Opinion Database: The project held numerous discussions with the chairmen of the Supreme Court and the HEC to determine their willingness and ability to create and support a judicial opinion database. The matter was also discussed extensively with the Court Automation Committee in two meetings. Due to the limited time for the project and the limited absorptive capacity the project decided to limit introduction of the database to the HEC. A local computer programmer completed development of the terms of reference for the opinion database. Members of the Court Automation Committee also discussed the terms of reference and suggested some revisions, which were incorporated.
- e) People's Representatives: The project's activities with respect to developing a guidebook for People's Representatives are discussed above in Section 3.7.8, People's Representatives.

3.9 PROPERTY RIGHTS

1. **Pledge Registry:** Under LIME 1, the project spearheaded an effort to develop a secured financing system in Tajikistan by partnering successfully with the MOJ and the Pledge Law Working Group to prepare and enact the new Law on Pledge of Moveable Property. The new law contained a one-year period during which the registry was to be developed. Consequently, after passage of the law, the project devoted substantial resources to implement the new Pledge Law before the effective date of the registry on March 1, 2006. The registry system accepted in principle by the MOJ has been customized to function effectively within the IT and telecommunication limitations of Tajikistan. As part of the implementation program, the project conducted a phased training program for MOJ personnel who would operate the registry hardware, organize training seminars for management employees and credit officers of banks and microfinance institutions on use of the registry, and develop a user guide for banks and businesses.

The project recognized that the beginning of the operation of the Pledge Registry was critical. The Pledge Registry staff needed to be ready, in terms of equipment, understanding of the operation of the system, and particularly operating of the help desk. Experience in other jurisdictions demonstrated that the advantage of providing support during this period can minimize mistakes and prepare the registry staff for high-level, long-term, independent operation. The project provided extensive training to the Pledge Registry staff at the MOJ in seven phases. The project trained five employees, including the chief registrar in opening user accounts and how to enter simulated registry transaction for each client. Minor flaws were expected as part of the pilot basis, and these were quickly corrected. The project helped to prepare a user

guide, and the project's expert provided training materials and instructions. The project also assisted in finalizing the registry documents.

The project, along with the MOJ, held a seminar for banks and other financial institutions to acquaint them with the registry system and how banks could use the Pledge Registry to legally obtain priority of their security interests in moveable property collateral. The seminar focused on how to register pledge notifications and conduct searches of the computerized database during the pilot simulation. The project also provided the 44 participants with user guides for the Pledge Registry. Pilot phase highlighted some challenges. The creditor community did not take full advantage of the simulation phase. Despite the project's efforts (that included contacting banks and micro-finance lenders, involving the EBRD in urging its bank partners to use the registry, and involving the National Bank's Supervision Department to send out an advisory letter), only three lenders participated in the simulation phase, indicating that it would still take time for the creditor community to recognize the importance of the new registry, and requiring the MOJ to take a more active role in its outreach to the creditor community.

During the pilot phase, the project recognized the need to amend the law "On State Duty" to set the appropriate state fee for Pledge Registry users to pay for pledge registration and searching. The project assisted in preparing a draft law for the government to submit to Parliament, and it assisted in drafting a regulation that will govern operation of the registry.

As the MOJ geared up to launch the registry, the project's monitoring of the work included the preparation of a daily registry transactions report, which the project forwarded to its expert. The Ministry of Finance and the Treasury set up a payment account so that users could pay for the registry services. The project also facilitated meetings between the MOJ and Amonat Bank so that the Bank could serve as the "Public Service Provider"—to provide registry search services to members of the public who need to search the registry but do not want to go through setting up an account with the registry for just one transaction.

The culmination of the project's extensive efforts in supporting the Pledge Registry culminated on March 1, 2006, when the Pledge Registry was inaugurated at the MOJ. Despite some additional start-up problems, the MOJ opened three user accounts and registered two pledges in its first full month of operation. The project continued actively to provide support to the Pledge Registry through the remaining months. It provided training to eight trainers on how to instruct banks, other credit institutions, and law firm staff on opening account numbers, obtaining payment for pledge services, conducting a search, registering a pledge, and amending a registration. These trainers then provided training to credit institutions throughout the country. They provided 10 training sessions on how to protect lender security interest priority for 238 participants from various banks and other credit institutions in Dushanbe, Khujand, and Kurgan-Tube.

We had several discussions with the MOJ on occasions where it appeared the ministry was not properly applying the Pledge Registry regulations. For example, the project prevailed on the MOJ to assure that creditors could register their interests by email. The project also revised the manual for MOJ employees, based on the pilot experience.

At the end of his engagement, the project's expert indicated that "with proper IT support, the Pledge Registry can be fully sustainable." However, the main issue at hand is that the IT capacity at the MOJ is currently not sufficient to make the registry sustainable. The project continued to provide mentoring and support during the extension period, and IT support is a planned part of a World Bank project starting in late 2006. The MOJ will continue to need donor assistance to bridge the gap.

The purpose of the final months of effort was to institutionalize the procedures governing the Pledge Registry. The project carried out daily checks of the system performance and monitored making of back-up copies. On one occasion, a power failure crashed the system, and in accordance with the procedures, the server and data on the Pledge Registry were restored. The project continued to meet with credit

organizations and provide additional training to bank employees. As the project concluded, the MOJ was registering an ever-increasing number of pledges. At the end of the project, the MOJ had already registered 38 pledges of movable property, almost twice as many as had been projected for the project's benchmarks.

- 2. Law on State Registration of Rights in Immoveable Property:** The project provided technical and financial support to an official government working group charged with drafting a new law on state registration of rights in immoveable property. Proper land registration is crucial for security of tenure and property rights, effective housing and agricultural policies, and the promotion of market-oriented reforms in economies in transition. The project worked in this area to assist the government-appointed working group to develop a new law on registration of rights in immoveable property. This legislation is necessary to transition Tajikistan to a modern, market-based land rights registration system that will allow public access to land rights information, clarity of ownership, and ease and certainty in land transactions.

In Tajikistan, unfortunately, there are presently many serious obstacles to achieving these ideals. Primary among the obstacles is the Constitution's prohibition on private ownership of land, along with the Soviet-era mandate that the State will guarantee the effective use of land "in the interest of the people." Another serious obstacle to market-based land reform is the prohibition on transfers of land use rights.

Further complicating the environment for reform in Tajikistan is a simmering dispute between the State Land Committee and the MOJ over which entity should have responsibility for registration of land rights. USAID attempted to push reform forward under LIME 1 by sponsoring a two-country comparative study trip to Russia and Armenia. The study visit was designed to allow high government officials to contrast the efficiency and convenience of a consolidated registry in Armenia with the more difficult and inefficient multiple registration system in use in Russia. The trip achieved good results, with all attendees in agreement that a unified system is more efficient and should be the ultimate goal for Tajikistan. However, the working group members believed that at present, Tajikistan does not have the resources necessary to completely overhaul its land registration system and must be content with a political compromise that will leave three different government entities involved in registration—notaries (under the MOJ), the State Land Committee, and the Interdistrict Enterprise of Technical Inventory known by its Russian acronym MBTE (*Mezhdistrictnoe Predpriyatie Tekhnicheskoi Inventarizatsii*, translated "which registers improvements to land").

The project supported the working group to complete the law. This law has the potential to be a critical pillar of land reform, offering improved security of tenure for land rights holders to invest in their property, thus making land a much more significant engine of growth and development. Because registration of land use rights directly affects the work of other donors, including the World Bank, the Swedish Government, and the USAID Land Tenure Reform Project, LIME2 closely coordinated its work in this area with them.

The project provided international expertise and analysis on this subject. University of Illinois Professor Peter Maggs provided analysis at each stage of the working group's progress. The project regularly coordinated with the USAID Land Tenure Reform Project implemented by Chemonics to keep its staff and management up to date about development of the immoveable property registration law and take advantage of the land registry expertise available on that project.

Project staff met regularly with members of the working group who analyzed the Civil Code and the draft law on state registration of rights in immoveable property to highlight discrepancies between the two and make suggestions for harmonization. Three versions of this law were in various stages of development. The project worked to facilitate a full and fair discussion of all three versions in the hope that compromise could be reached. The major differences in the three drafts centered around the registration of property interests, either at MOJ, State Land Committee, or the Bureau of Technical Inventory. The project held numerous meetings with representatives of Swedesurvey, and worked with the head of the working group, Rasul Abdulloev of the MOJ, on inconsistencies between the Civil Code and draft law on state registration. After consideration, the working group decided to use the Russian law as a model—

which the project had advised against—heading in the direction of multi-institution registration process like the Russian system.

The project, with Swedesurvey, held a roundtable discussion with the working group to discuss the role of a cadastre system. MOJ supports a system whereby rights in building and other improvements would be registered in the ministry, while rights in actual land parcels would be registered at the State Land Committee, which issues use certificates. This would require amendment of the Civil Code. The project continued to work with the working group to revise the text and include changes, amendments, and suggestions by Professor Maggs. A Swedesurvey expert from Azerbaijan indicated how a multi-registration system would work. One agency would be responsible for mainly technical part of registration. Registry at the MOJ should be based on a cadastral register for purpose of convenience and unification of registries. This would require drafting the law “On Cadastre” to develop cadastre system in accordance with the draft law.

Per USAID instructions, the project developed an alternative draft of the law “On State Registration of Rights to Immovable Property and Transactions Therewith” that includes a unified system of state registration of rights. This approach was based on the Kyrgyz law. This alternate draft was sent to the USAID Land Tenure Reform Project and other donors, as well as to the working group. However, the working group did not accept the approach of creating a uniform state body. The Swedish experts provided detailed written comments on the Tajik working group draft

In April 2006, the project sponsored a roundtable session of the working group. Prepared materials, including the written comments from Swedesurvey land registration lawyers, were distributed. The donor community, particularly the project, Swedesurvey, USAID, and World Bank, strongly urged a unified system, but the working group resisted this collective and unified advice, opting for the Russian model in which there will be multiple registration points. The working group completed its work on the draft law, which did not adopt the donor advice, and submitted it to all relevant ministries and departments for comment and then to the government. As the project concluded, the Presidium of the Government decided to reconsider the draft law and, significantly, whether to create a unified state body on registration of a title to immovable property and transactions with them.

4.0 SIGNIFICANT ISSUES AFFECTING IMPLEMENTATION

TAJIKISTAN

This section provides a description of the most significant issues affecting implementation and impact of assistance in the legal sector. Below is a listing of issues that USAID should be aware of and prepared to confront in the future:

1. **Registration/Publication of Laws and Regulations:** For a modern, market-based economy to function properly, a centralized system of organizing and publishing all laws and regulations must exist. Tajikistan currently has a fractured process. All laws and regulations are required to be registered at the MOJ and published before coming into effect. However, the mechanism for doing so is unclear and under-funded; the requirement is not being implemented effectively. Often, ministries and other organs of government adopt rules and regulations without properly notifying the MOJ or providing required copies. Access to the laws is complicated by this state of affairs. In many cases, it is difficult to figure out what the law is, with some governmental bodies charging citizens or businesses exorbitant fees for copies of their rules. Many people working in the government indicate that it is sometimes difficult for them to obtain copies of regulations. Clear intra-governmental rules must be adopted and enforced, and a sustainable mechanism for providing public access to all laws and regulations must be developed. The MOJ has strongly indicated its willingness to participate in reforming this process. Publication may require donor assistance initially, as it can be prohibitively expensive to establish and maintain a proper government publishing operation. The best way to support the process of correcting these defects is to support implementation of the Law on Legal and Normative Acts.
2. **Internet Access:** Lack of reasonably priced, quality Internet access and affordable Web site hosting is putting a damper on public access to laws and other knowledge, as well as on government efforts to achieve greater openness and citizen involvement. The World Bank plans to provide support for a program of electronic government, but the government entities we have dealt with are unaware of how this program will affect them. All donors need to focus on the need for increased access to the Internet in Tajikistan, particularly high-speed access. Internet access is no longer a luxury item that can be afforded only in highly developed countries. Because so much of global commerce and information exchange takes place online, adequate access to this medium should be a priority.
3. **Property Rights:**
 - a) *Property Rights in Buildings:* Lack of a workable legal framework for common ownership and responsibility for privately owned real property. Poorly maintained (and in many cases hazardous) apartment buildings dot the landscape of cities and towns throughout Tajikistan.

Although it is typical for the interior of dwelling units to be clean and well-maintained, common areas and facilities (stairwells, halls, lighting fixtures, water and sewer infrastructure, entryways, roofs, building exteriors, etc.) are often poorly maintained or no longer maintained at all. These matters were previously attended to by organs of the government, which owned all housing. Although it is complicated to establish enforceable common ownership and maintenance schemes in existing buildings or neighborhoods with many owners, given political will and a fair scheme, it can be done. Reform in this sector would be best undertaken by a project specialized in reform of real property law.

- b) *Real Property Secured Financing*: The International Finance Corporation (IFC) has indicated that it will develop a mortgage law for Tajikistan. Currently, a newly established IFC project is studying the matter. Representatives of the MOJ have been outspoken in meetings with the project about their preference working with donors to develop this law and implement it at the MOJ, in coordination with the implementation of the new pledge law. It will be imperative in the future for USAID to maintain involvement in the mortgage law and a good cooperation with IFC on this matter.
4. **Corporate Governance**: The draft Law on Joint Stock Companies, for which the project provided substantial support, languished in Parliament for almost two years. It was unclear why the law has not passed yet, although at the end of the project, the draft law finally was reported out of committee in Parliament and is expected to be passed by the end of 2006.
5. **Judicial Training**: The Presidential administration recently re-appointed judges in the Supreme Court and HEC. Unfortunately, many experienced and well-trained judges with knowledge of commercial law topics were not reappointed. Most judges on the HEC now do not have necessary commercial law knowledge, particularly in the area of bankruptcy, which is rapidly becoming critically important. Several dozen new bankruptcy cases have been filed in the HEC, and judges there are not versed in how to handle or resolve them.
6. **Bankruptcy Trustee (Anti-crisis Manager) Association**: This recently established NGO is now the most significant repository of bankruptcy law expertise and related training capacity in Tajikistan. Its members also have significant expertise in various other areas of Tajik commercial law and business training. USAID provided modest initial support for the first six months of the association's life to commence its operations, but it is still not yet fully sustainable. Its revenues from training fees and other sources were sufficient to pay its office rent through the end of the project, but additional donor support may be needed to continue its activities.
7. **Tajik Civil Code Amendments**: A host of commercial law-related amendments to the Civil Code are needed soon. For example, at least three key amendments are critical to successful implementation of the new pledge law. Also, amendments are needed for implementation of a mortgage law and the law on state registration of rights in real property. Tajikistan must develop a mechanism for regular expert review of its fundamental codes (civil, criminal, and administrative) and amendment where necessary in order to keep the codes in harmony with the evolving legal environment. The Civil Code is the most pressing fundamental law from a commercial/economic standpoint. International expertise is needed to help guide the amendment process and ensure that international best practices are considered.
8. **Regional Expertise**: All legislative drafting and implementation programming should be designed to integrate regional expertise from former Soviet Republics with Western expertise. Because Tajikistan lags behind much of the region in developing a commercial law framework, regional experts who have both the necessary language skills and the experience in implementing similar types of reforms, are very valuable to the process.

9. **Judicial Reform:** Judicial reform in Tajikistan has proceeded in fits and starts throughout the project and its predecessor projects. We have a few general observations as the judiciary develops in Tajikistan. Tajikistan should develop a more open process of selecting and qualifying new judges. There should be increased representation on the Council of Justice for oblast and district court judges and civil society. Focused study trips should be designed to better prepare judges to play necessary role in an independent judiciary—under a program design that continues to foster a culture of judicial independence among judges. The role of the Council of Justice should be re-examined.
10. **Court Administration:** The project started a very long process of the development of court administration in Tajikistan. Courts have matured over the last several years, and there is more absorptive capacity now for court administration. But significant reform will require significant investment in court facility improvement, hardware acquisition, and training for the oblast and district court judges and staff. Court administration work should continue with a standing body of reform-minded judges and court administrators at all levels of the Tajik court system. USAID should continue the dialogue with the Council of Justice about the need for court reform in the oblast and district courts, using successes in the high courts as a model. A publicly-available database of judicial opinions is a good starting point, but also the computerization of courts should move to lower level courts. In addition, changes to the criminal procedure code will substantially affect court administration. But the draft Criminal Procedure Code has languished in the drafting process for nearly ten years. This law is critical to curbing human rights abuses. It needs to be finalized and put before Parliament in an open and transparent fashion.
11. **Public Administration:** Tajikistan citizens and businesses need a more efficient and transparent system of public recourse against arbitrary or improper government decisions. This can be accomplished through enactment of the Administrative Procedures Law, educating government officials about the draft law, creating public awareness of why it is needed, and supporting its passage and implementation. Because the concepts behind this draft law are new to Tajikistan, it may face opposition when considered by Parliament, and it will certainly face considerable challenges in implementation once enacted into law. The government of Tajikistan will need substantial support to assist in implementing this law, judges will need substantial support to assist them in understanding and applying this law, and citizens and organizations will need substantial support to assist them in understanding and using this law.

APPENDIX A. LIST OF PROJECT DELIVERABLES SUBMITTED TO USAID/CAR–KYRGYZSTAN

PERFORMANCE MONITORING

Results of Preliminary Survey for Lawyers Program
Performance Monitoring and Evaluation Plan: Final Report
Supporting Monitoring and Evaluation Project Materials
Monitoring and Evaluation Report (PowerPoint Presentation)
Lawyer Survey Results
Results of Surveys among Judges
Business Survey Results
Success Stories
Gender Breakdown of Participants in Training Activities

CONTACT LISTS

Contact List of Project Staff
List of Counterparts of the USAID Commercial Law Project in Kyrgyzstan, August 5, 2005 to May 31, 2006
List of Lawyers Program Participants
Business Program Lectures and Lecturers
Business Program Participants

OTHER

Training Modules Developed for the Lawyers Training Program
Becoming an Effective Branch of Government (PowerPoint Presentation)
Independence of the Judiciary in Kyrgyzstan (PowerPoint Presentation)
USAID Commercial Law Project (Implemented by ARD/Checchi) Program for Judicial Reform (Ideas on Judicial Reform)
Judicial Program Training Schedule (October 2005–May 2006)

Lecture Topics in Judicial Training Program

Progress Report by International Court Of Arbitration in Affiliation with the Chamber of Commerce and Industry of the Kyrgyz Republic: August 2005–May 2006

Publications and Legal Information Products Produced under this Contract

Features of the Issues of Law and Business Published over the Period of this Contract

Comments from Local People on the Dictionary and Civil Code Commentaries

APPENDIX B. LIST OF PROJECT DELIVERABLES SUBMITTED TO USAID/CAR–TAJIKISTAN

PROJECT PUBLICATIONS

Anti-crisis Management Directory
Anti-crisis Management: Rights, Authority, and Responsibilities
Bankruptcy of a Private Entrepreneur
Comments to Part One of Tajikistan’s Civil Code
Constitution of the Republic of Tajikistan
Financial Analysis during Bankruptcy Procedures
Handbook for Legislators
Lawyers’ Reference Guide: Part I
Lawyers’ Reference Guide: Part II
Lawyers’ Reference Guide: Part III
Lawyers’ Reference Guide: Part IV
Procedures for Federal Registration and Sample Registration Documents
Samples of Procedural Documents Related to Bankruptcy
Supreme Court Decisions of the Republic of Tajikistan

EDUCATIONAL FILMS

Disputing Inheritance
Evidence in Civil Cases
Legal Cases Related to Labor Issues
Applying Real Estate Law
Peace Agreements in the Economics Court
Bankruptcy Proceedings in Court (in Russian)
Bankruptcy Proceedings in Court (in Tajik)

Disputing Real Estate Sale/Purchase Agreements in Court
Cause of Action for Disputing Court Orders
Code of Honor for Judges of the Republic of Tajikistan
Resolving Consumers' Rights Disputes

PROJECT FILES

Volume One

APC
Assessment and Evaluation 2005/2006
Bankruptcy
HEC Bulletins
Civil Code
CPC
Coordination Meetings
Court
Court Reform
Customs Training 2006
Database
Enforcement code
General
JSC
Judicial Training

Volume Two

Lawyer Training Institutionalization
Lawyer Handbook
Legal Dictionary
Legal Practice
Legislative Drafting

Volume Three

Legislative Drafting Manual Activity
Monitoring and Evaluation
Manuals
Memoranda

NGO

Open Lectures

Other

Pledge Registry Notice

Volume Four

Translations

Office Issues

Seminar for Lawyers

Seminars

Volume Five

Bankruptcy

Handbook for Lawyers

Drafting Legislation

Drafting Manual

Pledge Law

OTHER DELIVERABLES

Adliya Legal Database

Pledge Registry (including a User Guide)

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