



**Business Law Reform and
Alternative Dispute Resolution
Development**

Under the USAID/Madagascar Legal, Regulatory and
Judicial Reform Activity
USAID Contract No. 623-C-00-98-00029-00

**Madagascar Participation & Poverty (P&P) Project
Legal, Regulatory, Judicial Reform Activity**

**SECOND ANNUAL REPORT
June 1, 1999 through June 30, 2000**

Revised October 20, 2000

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**MADAGASCAR PARTICIPATION & POVERTY (P&P) PROJECT
LEGAL, REGULATORY, JUDICIAL REFORM ACTIVITY**

**Commercial Law Reform and
Alternative Dispute Resolution Components
Contract No. 623-C-00-98-00029-00**

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I. BACKGROUND

USAID/Madagascar awarded a 40-month contract for the Commercial Law Reform and Alternative Dispute Resolution components of the Participation & Poverty (P&P) Project's Legal, Regulatory, Judicial Reform Activity to the joint venture of ARD, Inc. and Checchi and Company Consulting, Inc. (ARD-Checchi), with an effective date of June 1, 1998.

The overall objective of the contract is to strengthen Madagascar's legal system in the area of business law and stimulate interest the use of alternative dispute resolution (ADR) mechanisms. Specific activities under the business law reform and ADR components include:

- ❑ Conducting a comprehensive review of existing legislation in four areas of business law (finance, company, property and labor) and ADR legislation;
- ❑ Drafting reform legislation in collaboration with government and private sector experts;
- ❑ Increasing awareness of public-and private-partner stakeholders of the important benefits of legal reform;
- ❑ Training members of the legal community in business law and ADR reforms; and
- ❑ Supporting the establishment of arbitration body(ies).

II. Expected Results

The inter-related activities listed above fall under the USAID Mission Goal of *Reduced Poverty*. There are three components within that Goal, two Strategic Objectives (SO) and one Special Program Objective (SPO): SO2, *Smaller, Healthier Families*; SO3, *Biologically-Diverse Ecosystems Conserved in Priority Conservation Zones*; and the SPO, *Improved Environment for Private Initiative*.

The ARD/Checchi contract falls under the SPO, *Improved Environment for Private Initiative*, which has two Intermediate Results:

- ❑ IR#1.1, *Improved Legal, Policy and Financial Conditions for Investment and Trade*
- ❑ IR#1.2, *More Informed and Responsive Public Participation in Economic and Legal Issues*

IR#1.1 contains three Sub-Intermediate Results (Sub-IRs):

- ❑ IR#1.1.1, *More Conducive Legal, Regulatory, and Judicial Framework for Business*
- ❑ IR#1.1.2, *Expanded Access to Financial Services*
- ❑ IR#1.1.3, *Improved Investment and Trade Regime*

IR#1.2 contains two Sub-IRs:

- ❑ IR#1.2.1, *Improved Public Information and Dialogue*
- ❑ IR#1.2.2, *Improved Economic Analysis for Decision Making*

ARD/Checchi's business law reform and the alternative dispute resolution systems activities contribute to USAID/Madagascar IR #1.1, and in varying degrees to all three of its Sub-IRs. In addition, to a certain extent these activities can also contribute to Sub-IR #1.2.1.

III. YEAR TWO ACTIVITIES

Building on the first year's solid foundation, in Contract Year Two, ARD/Checchi's activities met or exceeded the contract's objectives and all Year Two Workplan and Contract Milestones were met or exceeded. ARD/Checchi provided technical assistance on seven areas of business law, conducted extensive ADR training activities, sensitized the legal and business communities to legal reforms in seven of Madagascar's largest cities, and significantly supported the establishment of Madagascar's first national arbitration and mediation association and center (*le Centre d'Arbitrage et de Médiation de Madagascar*, CAMM). The following section reviews our contract activities in the second year. The milestone numbers assigned in the Second Annual Work Plan (June 1, 1999 – June 30, 2000) are set forth in ***bold italics*** in the sections describing each respective activity.

This Annual report also addresses non-milestone performance items set forth in the Contract. For example, the Contract specifies that the Contractor will work with an ADR "Working Group" that had not yet been formed at the beginning of the Contract. As discussed in Section E. 2, p. 10, ARD/Checchi helped to create working groups (called "Comités de Suivi") in seven major cities across Madagascar. The Contract also specifies that the Contractor should propose training programs in arbitration. In addition to the training and sensitization in arbitration and mediation conducted by ARD/Checchi in seven cities, we have also supported law faculties interested in initiating courses in arbitration. As a result, arbitration is addressed in the "3^{iem} Cycle" course being created at the University of Antananarivo, and there will be an arbitration course at the University of Fianaratsoa (See Sections III D. 6 and VI B.4).

A. Year Two Work Plan, Annual Report, and Review of Components I and II

In August-September 1999, and again in February-March 2000, Law Development Advisor and Project Manager Thomas R. Reynders was in Antananarivo for planning meetings with USAID, host government counterparts and ARD/Checchi's local partner, JURECO, and reviews of contract progress to date. Mr. Reynders also met with the local ADR committees formed in Tamatave and Antsirabe during the Fifth Quarter. In meetings with the CTO, the CRDA, the *Cellule technique*, JURECO and others, Mr. Reynders formulated the broad outlines for ARD/Checchi to complete all projected contract activities within the duration of the contract. He also prepared the Second Year Work Plan, updating the Milestones contained in the ARD/Checchi Contract. The updating removed no elements, but added several higher goals and made refinements to all Milestones. In December 1999, the CTO met with the ARD/Checchi Project managers in Washington and completed the six-month contract review on both Business Law Reform and ADR.

On combined administrative-substantive matters, the Project Manager had extensive briefings with the new Law Development Advisor, Professor Theodore Parnall in March 2000. In addition to introducing him to project counterparts at meetings with USAID, JURECO, and the CRDA leadership, the Project Manager established a new communication network between the new Law Development Advisor and ARD/Checchi, providing and installing new software for easier communication. The Project Manager also provided a link between the various specialists (e.g., Gary Kelly, Alexander Blumrosen), the Law Development Advisor, and the leadership at the CRDA.

The following lists those activities defined as Milestones under the Second Year Work Plan that were completed during the LDA's visits to Madagascar, the CTO's visit to Washington D.C., and during the assignment of the new LDA during his 4 month visit to Madagascar.

- 1.2.01 Second Year Work Plan (Business Law Reform)*
- 1.2.02 First Annual Report (Business Law Reform)*
- 1.2.03 Sixth Month Review with CTO (Business Law Reform)*
- 1.2.04 Quarterly Report (Business Law Reform)*
- 1.2.12 Quarterly Report (Business Law Reform)*
- 1.2.15 Quarterly Report (Business Law Reform)*
- 2.2.01 Second Year Work Plan for ADR Component*
- 2.2.02 First Annual Report (ADR)*
- 2.2.03 Sixth Month Review with CTO (ADR)*
- 2.2.04 Quarterly Report (ADR)*
- 2.2.09 Quarterly Report (ADR)*
- 2.2.13 Quarterly Report (ADR)*

N.B. The LDA reviewed both Business Law Reform and ADR for Contract Year Two with the CTO on 6/7/2000, prior to his departure from Madagascar. These reviews are Contract Year Three activities and appear in the Contract as Component I and II Milestones 3.3.

B. Statements of Work for Expatriate and Local Consultant Activities

While in Madagascar during August 1999 and again in March 2000, the Mr. Reynders drafted Statements of Work (SOWs) under the business law reform and alternative dispute resolution components and submitted them to USAID/Madagascar. He also negotiated the Contract Modification pursuant to which the remaining work under the Contract will be performed. Mr. Reynders and Professor Parnall prepared additional SOWs as necessary in conjunction with ongoing Contract activities.

C. Law Development Advisor Established at Ministry of Justice

ARD/Checchi sought several times after beginning the Contract to have Professor Parnall, a commercial law specialist, perform a multiple month Law Development Advisor assignment in Antananarivo to provide across the board, in-depth technical knowledge on business law reform, as well as close coordination and liaison with USAID and the CRDA. In early March 2000, Professor Parnall began a four-month assignment. Following introductory meetings with USAID and the leadership of the CRDA, Professor Parnall was provided with an office at the Ministry of Justice and worked closely with both the *Cellule technique* and the CRDA on drafts of business legislation and regulation under review, as well as assisting the CRDA in using the Reports of the Contractor's specialists. He also assisted other ARD/Checchi technical advisors and provided support to the ADR component, as described below.

D. Business Law Reform

Section VII (p. 20, below) contains a tabular summary of the current status and critical dates of laws, regulations and drafts on which ARD/Checchi has worked, and an analysis of the extent to which our recommendations were incorporated into the laws and regulations sent forward by the CRDA. Section V describes the impact of these laws and regulations. Two important general results of ARD/Checchi's advisory efforts are that new legislation, whether adopted or still in draft, has moved towards recognition that business failures should not normally be viewed punitively, and that criminal law is not an appropriate tool for promoting good business practices. The following list shows completed activities that were defined as milestones under the Second Year Work Plan:

1.2.05 Commentary and Technical Assistance on Labor Code

1.2.07 Commentary on Final Draft of Company Law

1.2.08 Commentary on Bankruptcy Law

1.2.09 Recommendations for Property Law Reform

1.2.10 Preparation of Draft Leasing Law

1. Legal Reform Area 1, Finance Leasing (Credit-Bail)

My. Gary Kelly was in Madagascar for approximately seven weeks during January-March 2000. During this period, he met with banking officials, members of accounting firms and the private business community, attorneys, and officials from the Ministry of Finance and Justice as well as members of the judiciary. He also worked closely with the Contractor's local specialist, Professor Ratiaray Ramarolanto. Mr. Kelly's work related to the preparation of a new Credit-Bail (Finance Leasing) Law Draft, and a new approach to the Bankruptcy Law Draft (See item 2, below). A central focus of Mr. Kelly's work was to make a practical adaptation of business needs to the existing Leasing law and to the draft being considered by the CRDA. Mr. Kelly sought to blend economic realism with the purely law-oriented approach being taken prior to his arrival, and in doing so contributed an important element to the discussions of the CRDA not only in this area of law, but in its general approach to drafting new legislation. Mr. Kelly's final presentations to the CRDA were at meetings in which the CRDA leadership had sought input from members of the banking and business communities, as well as from Customs and Tax officials, inviting practical suggestions as to the potential impact of the draft and potential areas for improvement. The current draft of the Credit-Bail Law, now under review by micro finance experts, reflects the contributions of Mr. Kelly and Professor Ramarolanto in the areas of three-party and international finance leasing.

2. Legal Reform Area 1, Bankruptcy Law

Mr. Gary Kelly provided an in-depth comparative background for the draft of Madagascar's Bankruptcy Law during his assignment in Madagascar. Working with Professor Ramarolanto, members of the government, the judiciary, and the private sector, Mr. Kelly stressed that the importance of the economic basis of a bankruptcy law should not be overlooked in considering the purely law-oriented issues. The leadership of the CRDA requested a series of reports for background use in drafting the revised bankruptcy law. Professor Ramarolanto, who was one of the key CRDA draftsmen of this legislation, believes that Mr. Kelly's contribution has helped reduce the punitive nature of the existing law.

3. Legal Reform Area 2, Company Law

a. Technical Assistance

ARD/Checchi's Company Law team consisted of Mr. Alexander Blumrosen, Professor Ramarolanto, and Professor Parnall. Mr. Blumrosen's two initial reports on the draft code, and Professors Ratiaray's and Parnall's on-going contributions during March-May meetings of the *Cellule Technique* and the CRDA, helped assure that this major piece of legislation, a massive Code with 961 Articles, will be a positive step in Madagascar's law reform program.

The Business Law Reform Commission (CRDA) began preparing a comprehensive revised Companies Code in mid-1998. On May 4, 2000, the CRDA completed its work on the series of laws (General Partnership Law, Limited Partnership Law, Limited Liability Company Law and Law on Corporations) that make up the revised draft Code. During the final stages of its work on the draft, the CRDA discussed comments by representatives of the private sector, bank officials, legal and accounting specialists and others including, e.g., the Committee on Competitiveness (CRC), the Malagasy Association of Entrepreneurs (GEM), the World Bank and USAID/Madagascar (through its ARD/Checchi/JURECO team). CRDA meetings on the draft were held weekly on April 6, 13, 20, and 27 and May 4, 2000 and were supplemented by sometimes daily meetings of the smaller *Cellule technique*. With ARD/Checchi logistical assistance in preparing the draft for distribution, the CRDA is now submitting the draft to the Council of Government. It will then be presented to the Council of Ministers, following which it is anticipated that the proposed Code will go to the National Assembly for action during the ninety-day session that began in May 2000.

b. Training on Company-Related Laws for Judges

Milestone 1.2.06 In-service Training on Company-Related Laws¹ for Judges

While he was in Madagascar in November 1999 to provide arbitration training, ARD/Checchi international intended that expert Alexander Blumrosen and local expert Ratiaray Ramarolanto provide a day of training at the *Ecole Nationale de la Magistrature et des Greffes* (ENMG) on the Arbitration Law and the Company-Related Laws that had been the subject of ARD/Checchi commentary during Contract Year One. However, time did not permit this training, and therefore it will be rescheduled in Year Three.

4. Legal Reform Area 3, Property Law Reform

During his four-month assignment, Professor Parnall prepared a report on Real Property law. Assisted by Professor Ramarolanto and other local experts, he met with many foreign and

¹ As ARD/Checchi uses the term, "Company-Related Laws" refers to those five laws and decrees that were part of the CRDA package of laws that we received concurrently with the draft Company Law and on which we provided technical assistance during 1998. Those laws and decrees were: Tradesman's Law / *Statut du commerçant*; Competition Law / *Loi sur la concurrence*; Transparency Law / *Loi sur la transparence des entreprises*; Legal Notice for Real Property Mortgages Law / *Loi sur l'hypothèque judiciaire provisoire*; and Commercial Registry Decree / *Décret sur le registre du commerce et des sociétés*. Of these, all but the Competition Law have been adopted.

Malagasy land law and tenure specialists and reviewed the extensive reports and other documents describing the area. He also met with members of the donor community with projects related to land tenure and with members of the financial community. A major finding of the report relates to land ownership or long-term leases by foreigners. The report discovered that a commonly-held understanding that foreigners are entitled to enter into 99 year leases may be in direct conflict with a law adopted in 1995 that prohibits foreign land ownership and limits leases to a 50 year term (renewable “in case of need”). The report describes the extensive recommendations made by other donor-funded projects and recommends that the CRDA act in concert with broader reform efforts involving governance, anthropology, sociology and land-use planning, rather than addressing the area as a purely juridical issue.

5. Legal Reform Area 4, Labor Law

a. Direct Work on the Labor Code

Mr. Don Zimmerman, who spent nearly two months in Antananarivo during April-June 1999 working with the Labor Directorate of the Ministry of Civil Service, Labor and Social Laws and the tripartite *Conseil National de l'Emploi* (CNE) on a reformed Labor Code, returned to Antananarivo in mid-September. His second assignment was intended to provide the technical legal assistance believed necessary to complete a draft code. With M. Mboara Andrianarimanana from ARD/Checchi's subcontractor, JURECO, Mr. Zimmerman provided further labor code reform guidance during this second visit. However, early in his second assignment, labor and management (two-thirds of the tripartite CNE) decided to boycott further CNE meetings, reflecting labor and management dissatisfaction with two decrees issued by the Ministry concerning the Board of Directors (*Conseil d'Administration*) of the Ministry's social welfare bureau's *Caisse Nationale de Prévoyance Sociale*, (CNaPS). Both labor and management perceived these decrees as undermining the trilateral nature of the CNaPS and an illustration of the government's lack of commitment to the labor reform effort. With further drafting on the reformed Labor Code stalled, in mid-October USAID agreed with Mr. Zimmerman's recommendation that his assignment be suspended until the impasse was resolved. The International Labor Organization, which also was providing technical assistance to the CNE, agreed with this approach and it too withdrew its advisor.

By June 2000, work on the Labor Code was reactivated. Representatives of the labor, management and government agreed to a protocol under which the problems with CnaPS are to be resolved by July 15, 2000. Further, there is agreement to form an Ad Hoc Committee to temporarily replace the CNE and to complete all comments on the draft law by the end of June. The intention is to complete a revised draft law for submission to the National Assembly so that it may be acted upon by August 2000.

b. Related Labor Mediation Training and Labor Law Reform

During March 20-31, 2000, ARD/Checchi organized an innovative training program directed at resolving labor disputes. The program was organized, in close cooperation with the Directorate of Labor of the Ministry of Civil Service, Labor and Social Security, to provide training for labor inspectors and labor inspector trainees in labor mediation theory and techniques. Mr. François Hamelin, a labor mediation specialist for more than 30 years, led two courses that were the first

of their kind to be offered in Madagascar. The first course (March 20-24) included all participants in the Ecole Nationale d'Administration Malagasy's (ENAM's) two-year training program for labor inspectors. More than 30 labor inspectors from the capital and several provincial cities attended the second course (March 27-31), held at a hotel in Antananarivo. Subjects covered included the role of the state in resolving labor issues, individual and collective rights of workers, mediation as a means to preserve rights and productivity; and the significance of a climate of confidence and open communication.

During Mr. Hamelin's assignment, he and Professor Parnall met several times with the head of the Directorate of Labor at the Ministry of Civil Service, Labor and Social Security. Mr. Hamelin suggested several changes to the draft of the revised Labor Code, specifically to those sections concerning the resolution of labor disputes, including provisions on mediation and arbitration. At the request of the head of the directorate, Mr. Hamelin assisted the Directorate staff in incorporating his suggestions into the Directorate's draft Labor Code. His modifications appear in the draft that is expected to go to the National Assembly by August 2000. If enacted, the Code will eliminate delays, make the process of mediation more than a formalistic activity, and facilitate labor dispute resolution in Madagascar.

ARD/Checchi will include intensive training on the new Labor Code at ENAM in its Year Three activities, assuming its adoption. ARD/Checchi will also assist the Directorate with the diffusion of the new Code.

6. Business Law Promotional and Sensitization Activities

Milestone 1.2.14 Public and Business Community Sensitization to Business Law Reform Milestone 1.2.16 Training, Stakeholder sensitization and Public Information Campaigns

Between March and May 2000, M. Mboara Andrianarimanana, of JURECO, conducted a series of pre-workshop discussions of the non-ADR laws being drafted by CRDA, or that had been adopted by the National Assembly or the Government. He also referred to the published articles in the widely available JURECO monthly journal dealing with these subjects. At every seminar organized for ADR training, there was therefore an increased awareness on the part of the participants as to the progress in business law reform.

In May, 2000, at the request of officials at the Ministry of Civil Service and Labor, the LDA presented a half-day seminar at ENAM on the Role of Law in Economic Development, using Arbitration Law as an example, and also addressing other laws on which CRDA is acting. The audience of 75 included future and in-service civil servants who will be dealing with issues in the area of business law reform (e.g., registration of enterprises, privatization, regulation of public offerings).

In May, 2000, the University of Antananarivo announced the establishment of an advanced-level (Troisieme Cycle) program for the study of Business Law. The initiator of the program, Professor Ramarolanto, is a ARD/Checchi's local advisor who designed the program of study to include several subjects dealt with under the contract. The announcement and curriculum appear in Attachment Three. ARD/Checchi will cooperate with the program to assure that the reports and contributions made by its international consultants are reflected in the program's content.

Moreover, Professor Ramarolanto has indicated that he would like to use visiting consultants as guest lecturers where appropriate, and has had preliminary discussions as to the appropriate use of the Year Three legal information consultant in the program.

ARD/Checchi anticipates an intensification of these training efforts in Year Three, following adoption of the major legislative texts awaiting action by the National Assembly.

E. Alternative Dispute Resolution

1. Training Activities

Milestone 2.2.05 Training for Arbitrators and Mediators

Milestone 2.2.06 In-service training for Judges on Arbitration Law

Milestone 2.2.08 Offshore training for Arbitrators as Arbitration Trainers

Milestone 2.2.11 Training for Arbiters and Mediators in Three Cities [actual was four]

Milestone 2.2.14 Training, Stakeholder Sensitization and Public Information Campaigns

a. November 1999 Training Activities

In November 1999, ARD/Checchi sent a team of four international advisors--Mr. Alexander Blumrosen, Mr. Howie Clavier, Mr. Christopher Armeniades and M. Raphaël Jakoba, and an administrative support specialist, Ms. Ericka Moerkerken, to Madagascar to conduct ADR promotional activities and arbitration and mediation training in five cities. M. Louis Rajaonera, Professor Ramarolanto and M. Mboara Andrianarimanana of JURECO assisted them. During their stay, the experts provided arbitration training to approximately 30 persons in 2 cities (Antananarivo and Tamatave) and mediation training to approximately 41 persons in 3 cities (Antananarivo, Tamatave and Antsirabe). The experts also presented the ADR overview module in 3 cities (Antananarivo, Antsirabe, Fianarantsoa) to a combined audience of approximately 41 people. The training and promotional events concluded with an information session in Antananarivo, with questions and answers, that was followed by a reception attended by some 70 people, including the Ambassador, the USAID Mission Director, and senior officials from the Ministry of Justice.

b. Magistrate Training in Company-Related Laws² and Arbitration Law

While in Madagascar in November 1999 to provide arbitration training, ARD/Checchi international expert Alexander Blumrosen and local expert Professor Ramarolanto provided training at the ENMG on the on laws and decrees related to the Companies Code that had been the subject of ARD/Checchi commentary during Contract Year One and on the Arbitration Law.

ARD/Checchi anticipates that arbitration training efforts for the judiciary during Year Three will focus primarily on the Court of Appeals of Antananarivo, the Court that will be most concerned with Arbitration Awards.

² See footnote 1, *supra*.

c. Arbitration Training in Paris

At USAID's request, ARD/Checchi identified five candidates who were interested and able to attend a five-day arbitration training course given in December 1999 given by the International Chamber of Commerce in Paris from among those individuals to whom we had provided arbitration and mediation training. One of the five could not attend, but we provided administrative support to four candidates who participated in the highly professional training. One of these candidates is a member of the CAMM's Board of Directors.

d. ADR Training in March-May 2000

During the period March 6-May 14, 2000, ARD/Checchi provided in-depth training in the resolution of commercial disputes to over 250 Malagasy lawyers, economists and members of the business community. The intensive nation-wide effort took place in six of Madagascar's largest cities. The training program was an integral part of the Contractor's strategy to assist the private sector by improving the efficiency and fairness of dispute resolution. The March-May 2000 courses were:

- A. MEDIATION, including Survey of ADR (H. Clavier):
 - March 8-10, (with M. Rajaonera) at Hilton, Antananarivo;
 - March 14-15, (with M. Andrianarimanana at Arotel Hotel, Antsirabe;
 - March 16-24, (with M. Andrianarimanana) at Soafia Hotel, Fianarantsoa;
 - March 21-23, (with Mlle. Razafinarivo) at Capicorne Hotel, Toliara; and
 - March 27,28 and 30, (with M. Rajaonera) at Hotel de France Mahajanga.

- B. ARBITRATION
 - C. Brunner:
 - March 27,28 and 30, (with Professor Ramarolanto) at Arotel Hotel Antsirabe; and
 - April 3-5, Soafia Hotel, Fianarantsoa.

 - L. Marquis:
 - March 27, 28 and 30, (with M. Jakoba) at Hilton, Antananarivo.

 - R. Jacoba:
 - April 3-5 (with M. Andrianarimanana) at Capicorne Hotel, Toliara;
 - April 10-12,(with M. Andrianarimanana) at Hotel de France, Mahajanga; and
 - May 19-20 (with M. Andrianarimanana) in Antsiranana.

2. Support for a National Arbitration/Mediation Association and Centre

Milestone 2.2.07 National Arbitration Institute Formed

Milestone 2.2.12 Support for National Arbitration Institute, Local Chapters and Arbiters

For the Arbitration Law and the training efforts to be successful in the long term, Madagascar needs a viable ADR system with qualified arbitrators and the means to deliver their services to the community. In 1999, ARD/Checchi, assisted by JURECO, began supporting the development of dispute resolution committees in several cities throughout the country. The committees were

seen as building blocks for the creation of a national arbitration/mediation center and association. The international experts who conducted the November 1999 ADR training met with local ADR steering committees, formed in conjunction with these and earlier ARD/Checchi ARD activities. These committees, assisted by the experts, developed a consensus on the concept and steps needed to create a national arbitration/mediation center.

The Madagascar Centre for Arbitration and Mediation (CAMM) was formally established on June 19-20, 2000 at a Constitutive Assembly organized by ARD/Checchi/JURECO in cooperation with Madagascar Conseil International (MCI). CAMM represents an historic first for Madagascar, and represents the culmination of an intensive two-year effort. CAMM is located in Antananarivo, with associated chapters in seven of the island's major cities. The Constitutive Assembly adopted all of the draft documentation (to which international and local advisors made significant contributions) needed to establish the Center. To begin implementing the 1998 Arbitration Law, CAMM now has the following documents: Articles of Organization (Statutes); By Laws; Arbitration Rules; Code of Ethics; and Mediation Rules (to be adopted within the first quarter of Year Three). The Constitutive Assembly also selected of the Board of Directors, President and other officers, including a Secretary General, M. Rafael Jakoba, one of ARD/Checchi's principal arbitration advisors. Attachment D lists all the Directors and officers of the Center. The Center's activities are likely to include training programs, creating a national registry of qualified arbitrators and mediators, and the coordination and provision of technical services for dispute resolution. ARD/Checchi's and CAMM's ADR activities have had significant coverage by the electronic and print media. This coverage has been important to informing the public and sensitizing the stakeholders to the importance of increased use of ADR in Madagascar.

IV. ASSESSMENT OF USE OF DRAFT REFORM TEXTS AND LEGAL ASSISTANCE

A. General

The D&EG Performance Data Table 2 (March 17, 2000), Result IR1.1 (See Section II of this Report), describes as a unit of measure the "number of laws modernized in major areas of business law". The following summary review of the work performed under the Contract, together with an assessment of the manner in which the CRDA and the National Assembly has made use of this work, documents effective, productive activities during Year Two. The CRDA has made extensive use of the draft legal reform texts and other technical assistance provided by ARD/Checchi. The CRDA's operating pace over the past two years has required close coordination of efforts in order to assure timely technical assistance from local and international specialists. ARD/Checchi notes that the continuing efforts of our local specialists have been critical to enabling the CRDA to meet its schedule. By providing international specialists to work with the local specialists, we have been able to raise purely international aspects of the drafts with the CRDA for its members' consideration. Technical input by the local and international specialists, such as draft texts, background reports, and discussions with CRDA members became a part of the work product (i.e. the final drafts themselves) of the CRDA. Thus, drafts adopted by the National Assembly are the result of the CRDA's deliberative process in which the local and international specialists played their respective roles. Moreover, four months of continuous presence of a senior US business law specialist, in daily contact with MOJ officials

and always available to members of the CRDA and the *Cellule technique*, enhanced the use of reports prepared by the other specialists.

Note that in the case of the Labor Code, the CRDA was not involved, and that the Labor directorate and an Ad Hoc Committee are overseeing the drafting process.

B. Draft Legislation in Year Two

The draft legislation considered by the CRDA in Year Two were:

1. General Partnership Law
2. Limited Partnership Law
3. Limited Liability Company Law
4. Corporations Law
5. Financial Leasing Law
6. Bankruptcy Law
7. Civil Associations Law
8. Labor Law [non-CRDA]
9. Competition Law

Items 1-4 are part of a 961 Article “Companies Code”. The National Assembly is expected to act on this Code during the session that began in May 2000. Items 5-6 may be sent to the Assembly at a subsequent session. Following a suspension of action for several months (see discussion above), item 8 is now with a provisional Ad Hoc Committee that has incorporated the modifications made by one of the Contractor’s advisors and intends submit the draft to the National Assembly by August 2000. Action on item 9, the Competition Law, is at present suspended because the Ministry of Commerce has placed a hold on further action on it until a new draft Consumer Law is ready for concurrent submission.

C. Texts Adopted in Year Two

The following series of laws and decrees were adopted in Year Two:

- ❑ Law No. 99-018 of August 2, 1999, on the Status of Merchants
- ❑ Law No. 99-025 of August 19, 1999, on the Transparency of Enterprises
- ❑ Law No. 99-024 of August 19, 1999, on Legal Mortgages [no Contractor input]
- ❑ Decree No. 99-716 of September 8, 1999, on the Commercial and Company Registry
- ❑ Decree No. 99-717 of September 8, 1999, on the Registration of Personal Property Security Interests

These laws resulted from the CRDA’s research and drafting efforts in Year One, and reflect, in part, the successful cooperation of ARD/Checchi’s local and international specialists. As a result of these efforts, both the CRDA and the decision-makers of the National Assembly and the Government have been exposed (either directly through an examination of the reports, or indirectly through discussions with the local specialists) to a significant comparative input prior to adopting the ultimate law or decree. (The sole exception to the forgoing is the Law on Legal Mortgages, for which no Contractor input was sought or provided.) Our inputs have resulted in:

(i) a significant lessening of the tendency to criminalize business activities; (ii) simplified registration, organizational and other formal requirements; (iii) a consequent reduction in formal regulatory barriers resulting; and (iv) increased practicality of the information in the registry now available to the business community.

V. IMPACT OF THE LAWS

A. Impact of Laws Adopted in Year Two

ARD/Checchi, in implementing USAID's Legal, Regulatory and Judicial Reform Activity, has worked with Malagasy ministries and agencies concerned with reducing unnecessary costs that result purely from the inefficiencies of the legal system. Having an inefficient and ineffective legal framework presents an added hurdle to an international marketplace in which it is already difficult enough to compete. An efficient legal framework for economic activity avoids general, vague laws that are incomplete, out-of-date, or that simply state broad economic policies, because such laws invite adverse governmental rulings and inadequate implementation. Since rulings and implementation practices may be difficult to locate and are certainly difficult to predict, private investors cannot foresee the consequences of their economic actions. These risks increase the costs of economic actions, leading inevitably to fewer actions, less economic activity, fewer jobs and fewer opportunities.

The basic elements of an effective legal framework are:

- ❑ **TRANSPARENCY** of the laws, court decisions and administrative rulings of various levels, including implementation procedures: This enables economic actors such as investors to have access to the rules that will affect their investments.
- ❑ **CLARITY** of the legal framework: This enables economic actors to understand which laws are applicable to their situation, and what their specific meaning is.
- ❑ **PREDICTABILITY** in the application of the rule of law: This reduces the risks caused by changing interpretation, implementation or enforcement of the laws.
- ❑ **FAIRNESS**, with the possibility of legal recourse: This provides access to an independent, efficient and impartial dispute resolution mechanism.

Without the elements of transparency, clarity, predictability, and fairness available to all potential economic actors through an adequate legal framework, the few may seek alternative means to assure these pre-conditions for private economic activity, which will produce a higher cost economy. In its approach to business law reform in Madagascar, ARD/Checchi has strived to introduce and/or reinforce these elements. The five "Company-related" laws and decrees adopted in Year Two cited above are fundamental to business activity. They represent a long-needed updating of Madagascar's business laws, without which it would be unrealistic to expect non-selective implementation of legal rules to business activity. The old laws and decrees were so distanced from business reality, leading to a general sense that unpredictable administrative and regulatory discretion would prevail over out of date laws. Most Malagasy laws date from the early nineteenth century, based on French laws that have long since been repealed or revised. It is too early to attempt to quantify the long-range effects of these reforms, but the overall result of ARD/Checchi's contributions is an improved, modernized set of commercial laws. The impact of those laws should be a gradually improving business climate. To the extent that net foreign

private investment in Madagascar has increased since 1998, that increase must be due, at least in part, to the improved legal framework. (i.e., investors see the country moving in the right direction by trying to improve its legal system).

The Law on the Status of Merchants is now Book I of Madagascar's new Commercial Code. It defines the scope of commercial law, the conditions for entering commercial activity and the legal framework for commercial acts. It provides a body of accepted principles for business activity, including up-to-date provisions on accounting responsibilities, with sensible exemptions for micro enterprises.

The Law on the Transparency of Enterprises is now Book II of the Commercial Code. It defines new rules for assuring public notice of commercial information in the up-dated Commercial and Company registry established under the ***Decree on the Commercial and Company Registry***. To appreciate the impact of these laws and decrees, it must be kept in mind that the former Malagasy law on the Registry was based on the French Law of 1919. The Registry at that time was simply a posting- board for information, with no legal effect, so the information had little value to the business community. While French law had been up-dated to address these weaknesses, Madagascar's had not been until the CRDA-sponsored texts adopted in 1999.

The Decree on the Registration of Personal Property Security Interests was another significant reform, as it makes possible a system of increased credit based on non-possessory security interests. Assuming action during Year Three on a Secured Transactions law, this decree may serve to enable far greater credit delivery in a country that is traditionally short on the use or availability of credit.

Three major impacts of the above laws and decrees may be summarized as follows:

- ❑ The reform of the Registry and the Decree on Personal Property Security Interests should help to create a climate of confidence and encourage more complete disclosure of information about Malagasy enterprises;
- ❑ The new provisions of the Registry will simplify registration requirements, thus reducing administrative and bureaucratic constraints to business activity (the simplification of organizational requirements in the draft Companies Code - see below - is another example of Madagascar's attempt to reduce formalistic, non-substantive procedures); and
- ❑ The laws and decrees conform to 1997 pilot models put in place in Antananarivo that will now be extended throughout the country.

The adoption of this legislation is a positive step, but even more impressive was the nature of the deliberative drafting process developed by the CRDA. This process includes broad participation from economists, accountants, businesspersons and legal specialists from Madagascar and abroad. The continued use of this process will be one a valuable means of assuring an ongoing strengthening of Madagascar's business law framework and, in turn, a more favorable environment for economic development through increased business activity.

B. Impact of the Draft Laws Worked on in Year Two

The Draft Companies Code

The current draft Companies Code contains 961 Articles, and its 150-plus pages cover much more than the subject matter of a U.S.-style "Corporations" or "Company" statute. The draft deals with business forms such as general and limited partnerships, and also includes material that is left to special securities or capital markets legislation in some jurisdictions. In this respect, the draft Code takes the more comprehensive approach favored by both French and United Kingdom models.

A revised Companies Code will be an important complement to the contributions made by USAID/Madagascar to the December 1998 Arbitration Law, the 1999 laws and decrees on the Commercial and Company Registry, as well as to the pending drafts of a revised Bankruptcy Law and Leasing Law. If the draft Companies Code is adopted in substantially its current form, it will represent a significant advance for Madagascar's written legal framework for private sector economic activity.

MAJOR REFORMS OF THE DRAFT CODE

The general policy of the CRDA has been to provide maximum flexibility for entrepreneurs both with respect to choice of organizational form and methods of finance. For this reason, the draft includes laws on several well-recognized forms of business enterprise:

- ❑ "Societe de Fait" (de facto partnership)...Articles 901-905;
- ❑ "Societe en Commandite (simple and par actions) (two variants of limited partnerships)...Articles 280-296 and 875-890;
- ❑ "Societe en Nom Collectif (variant of general partnership-registered)... Articles 257-279;

- ❑ “Societe en Participation (variant of general partnership---informal)...Articles 891-900;
- ❑ “Groupement d’interet Economique (Joint Venture)... Articles 906-925;
- ❑ “Societe a la Responsabilite Limitee or S.A.R.L. (close corporation or limited liability company) ...Articles 297-378; and
- ❑ “Societe Anonyme” or S.A. (corporation-with the possibility of being a publicly-held entity)...Articles 379-874.

The bulk of the draft is thus concentrated on the two business forms that have traditionally had the greatest value to the business community, the “Limited Liability Company”(S.A.R.L) and the potentially larger “Corporation”(S.A.). The draft contains several innovations as to permissible organizational form: both the SARL and the S.A. may be “one-person” entities, and it will be possible to have an S.A. with a general administrator who administers and directs the enterprise without formalistic references to the traditionally required administrative council or board of directors.

The final stages of the CRDA’s work produced at least the two following additional reforms that should be of great value to the Malagasy business community:

Widening the Scope of Companies with Variable Capital

The final draft (Articles 63-63.7) permits any company (except those having shares sold in a public offering) to elect variable, instead of fixed, capital. This should be helpful to those entrepreneurs who begin their activities with only limited capital, but plan to take advantage of opportunities to grow by seeking investors who may add to their capital. The founders of a company now have increased flexibility to plan for growth outside of the more rigid regime requiring “fixed capital” for all companies, regardless of their stage of development. The addition by the revised draft of this concept of “authorized but un-issued shares” (which was until now unknown in Malagasy law) is thus now a potential tool for economic development.

Significant Reduction of Criminal Penalties

Part Three of the revised draft, until the final CRDA meeting on May 4, imposed heavy penalties upon any business person found in violation of the provisions of the law; e.g., Article 926 made it a criminal offense to issue shares if a company’s registration was secured either fraudulently or “irregularly,” the penalty ranging from a fine of 5 million Fmg to two years imprisonment. The revision limits this to cases of fraud only (eliminating cases of “irregular” registration) and eliminates the imposition of imprisonment for this offence. Moreover, in an attempt to decriminalize what are essentially civil wrongs, the revised draft eliminates the threat of imprisonment from all but the most serious cases of fraud, and also lessens the fines payable. As the prison terms in the former draft ranged up to five years, this is a significant step in bringing Malagasy law into conformity with international standards.

In addition to the above, the following are the major reforms made by the draft Code:

- ❑ **EASING THE PROCESS FOR CREATING AN ENTERPRISE:** the by-laws or articles of association may be either by notarial act or by signature of the parties. The

requirement of a notarial declaration may be replaced by a non-notarized declaration of organization.

- ❑ **CLARIFYING THE RIGHTS AND OBLIGATIONS OF PARTIES DURING THE PROCESS OF ORGANIZATION:** upon its creation, the company must assume undertakings by the organizers of an enterprise. Until such an assumption, or absent an assumption, the organizers remain jointly and severally liable for such undertakings.
- ❑ **CLARIFYING THE STATUS OF A BRANCH OF A COMPANY:** there is a suggestion that, although a branch of a company, unlike a subsidiary, does not have an independent legal personality for the principal company, it may nevertheless be registered in the commercial and company registry.
- ❑ **INCREASING THE PROTECTION OF THIRD PARTIES IN CASE OF FAILURE OF A COMPANY TO MEET CERTAIN REQUIREMENTS:** this is a reduction of the ability to void or nullify company actions because of clauses limiting director powers.
- ❑ **INCREASING THE PROTECTION AVAILABLE TO MINORITY INTERESTS:** the draft provides for increased information for all participants, scrutiny of potential conflict of interest transactions, as well as increased power to the commissioner of accounts.
- ❑ **INCREASING FLEXIBILITY IN THE TYPES OF SECURITIES THAT A COMPANY MAY OFFER:** the draft provides that different classes of shares may be assigned different voting rights, as well as preferred dividend rights. Non-voting shares are also permitted, as are other types of securities.
- ❑ **DEFINING CONTROL GROUPS AND ESTABLISHING PROCEDURES FOR MERGERS AND CONSOLIDATIONS:** the draft defines “company groups” by using the concept of “control” and specifies formalities for mergers and consolidations to follow.
- ❑ **STRENGTHENING THE CONCEPT OF A COMPANY AS A LEGAL ENTITY WITH FULL LEGAL CAPACITY:** with respect to third parties, members of a company’s management or its directors, are able to make binding commitments on its behalf without reference to special authorizations. Limitations set forth in a company’s internal articles or by-laws are ineffective with respect to third parties without notice of such limitations.
- ❑ **ESTABLISHING REASONABLE CAPITAL REQUIREMENTS:** In the case of a SARL having more than one associate, the minimum capital is set at FMg 10,000,000; for one-person SARL (Societes Unipersonnelles) the minimum is FMg 2,000,000. In the case of an S.A. with more than one shareholder, the minimum is FMg 100,000,000; for sole-shareholder S.A.s the minimum is FMg 10,000,000 .The CRDA has also worked with a group of accounting experts in developing an innovative option for companies to have a variable capital in lieu of the mandatory fixed capital requirements.
- ❑ **SIMPLIFICATION OF PUBLICATION REQUIREMENTS:** the draft abolishes the requirement of publication in the official gazette, and requires only that an announcement be made in a newspaper in which legal announcements are usually made.
- ❑ **CLARIFICATION OF THE CONDITIONS UNDER WHICH PUBLIC OFFERINGS OF SECURITIES MAY BE MADE:** the draft anticipates that companies may sell their securities to the public and provides a basic structure for such sales.
- ❑ **EASING THE PROCESS FOR TRANSFORMING ONE TYPE OF COMPANY INTO ANOTHER:** the draft allows, for example, a SARL to be transformed into an S.A. without burdensome restrictions.

A revised Companies Code will be an important complement to the contributions made by ARD/Checchi to the December 1998 Arbitration Law, the 1999 laws and decrees on the Commercial and Company Registry, as well as to the pending drafts of a revised Bankruptcy Law and Leasing Law. If the draft Companies Code is adopted substantially in its current form, it will represent a major advance for Madagascar's written legal framework for private sector economic activity.

VI. RESULTS

A. Business Law Reform

ARD/Checchi notes that before the start of the contract we expected to assist the CRDA in determining which business laws required reform and to promote interest in adopting a new Arbitration Law. However, by the time of the start the CRDA was well into an examination of the Company Law and other related laws, there was enthusiasm for ADR and a draft Arbitration Law to promote it. These factors did not substantially change the thrust of the contract, but instead of analyzing all business laws and recommending specific areas for reform, we went directly to assisting the CRDA and the *Cellule technique* in their drafting work. And instead of using the first year trying to gain support for ADR law reform, we had a reform law to review. These factors meant that ARD/Checchi has been able to exceed the first two years results projected in the contract. As Madagascar strengthens those of its written substantive laws that provide a legal framework for private business activity, it is important to assure that the USAID resources available under our Contract are directed to issues of the greatest relevance to a successful market economy.

One can never say that business law reform is "completed," as witnessed by the continuing efforts in the U.S., Western Europe and other countries with well-developed legal systems. However, given limited resources of time and funding, it is reasonable to develop priorities for any law reform effort. The work of ARD/Checchi in assisting the CRDA, accordingly, reflects a focus on substantive laws that strengthen four general elements of a market-oriented legal framework:

- ❑ Business Entry (laws that provide for easier organization, management, transfer and capitalization of enterprises);
- ❑ Business Exit (laws that provide for the orderly termination of unsuccessful enterprises);
- ❑ Improved Access to Credit (laws that provide for increased security for creditors, resulting in increased credit opportunities); and
- ❑ Improved Enforcement of Contracts (laws providing for fairer and more efficient means for resolution of those disputes that inevitably increase as economic transactions increase).

Concentration on the above four elements does not mean that there are not other important legal areas that Madagascar will need to review during the coming few years. Competition laws, laws affecting Commercial Paper (financial documents; e.g., checks and promissory notes) and Consumer Protection law belong on any list of substantive laws requiring attention. Moreover, a workable Civil Procedure Code, as a means of assuring the effectiveness of any substantive law, is also a critical component of the legal framework for business activity. The above four

elements, however, have been viewed by ARD/Checchi and the CRDA, as the fundamental “Block” of business-related laws that are of the highest priority. In effect these laws: (1) CREATE the enterprise, (2) provide it with ACCESS TO CREDIT for its operations, (3) ENFORCE ITS CONTRACTS when disputes arise, and (4) TERMINATE it with as little damage as possible to others when and if it fails.

The CRDA has focussed on BUSINESS ENTRY with its draft Companies Code and its several component laws (Limited Liability Company Law, Partnership Law, Limited Partnership Law, and Corporations Law). The 1999 Decree on the Commercial Registry is also relevant to the formation of enterprises, as it establishes a simplified means for sole proprietors, partnerships and companies to become a part of the commercial community. The CRDA’s efforts in drafting a Bankruptcy Law will go a long ways towards improving the economy’s ability to deal with business failures and is thus part of the BUSINESS EXIT element, while the 1998 Arbitration Law (and all of the related training and institution –building activities of ARD/Checchi) represent a good advance in IMPROVED ENFORCEMENT OF CONTRACTS. The CRDA is also working in the area of IMPROVED ACCESS TO CREDIT with its draft Leasing Law, and its planned development of a draft Secured Transactions Law.

The other major law -drafting result was the revision of the articles dealing with the settlement of labor disputes in the revised Labor Code, which the Labor Directorate intends to submit to the National Assembly by August 2000.

B. Alternative Dispute Resolution

The activities undertaken by ARD/Checchi during Year Two, as described in Section III D, have included training and establishing a broadly-based Arbitration Association and Center. The positive results of Year Two derive from ARD/Checchi’s three-part strategy to strengthen Madagascar’s private sector by improving the efficiency and fairness of dispute resolution:

1. Attention to Legislative Texts

In Contract Year One, the ARD/Checchi team worked with Malagasy specialists to improve the underlying written legal framework for commercial arbitration and mediation, including labor mediation. The December 1998 Arbitration Law, as well as the recent suggested revisions to the current draft labor code, reflect sound international standards for dispute resolution and have been positively viewed by the ARD/Checchi specialists during their consultations with Malagasy drafting teams. With ARD/Checchi/JURECO urging, the 1998 law incorporates key UNCITRAL principles, including minimal intervention by the judiciary, and the mandatory nature of the agreement to arbitrate and the resulting arbitral award.

2. Sensitization and Training

Legislative texts on dispute resolution are only effective to the extent they are used by the community. ARD/Checchi has accordingly both sensitized the legal and business communities to the potential positive roles of the various forms of ADR techniques and conducted training for people to use them on a practical level. The results have been increased public awareness of ADR and the creation of a limited pool of persons trained in basic arbitration and mediation

techniques. As an example of the timeliness and practical value of these courses, of the approximately 30 participants in the intensive arbitration course given in Antananarivo, several were active members of the commercial bar who were dealing with on-going disputes. At least one of these was among the first Malagasy lawyers who called upon to arbitrate a case using both pre- and post 1998 Arbitration Law principles.

3. Establishment of a National Arbitration/Mediation Association and Center

For the Arbitration law and the training efforts to be successful in the long term, Madagascar needs a viable ADR system, with qualified arbitrators and a means of delivering their services to the community. In 1999, ARD/Checchi, assisted by JURECO, began supporting the development of dispute resolution committees in cities throughout the country. These committees were the initial units for creating a national mediation/arbitration center and association. As a direct result of these preliminary actions, on June 19, 2000, Madagascar's first Arbitration and Mediation Association and Center was created.

4. Incorporating Arbitration Training into University Law Faculties

There are at least two indications that law faculties in Madagascar have been motivated by the ARD/Checchi activities to establish courses on ADR in their law faculties:

- Professor Ramarolanto has developed an advanced level business-law program of study at the University of Antananarivo that will be introduced in the 2000-2001 school year. As indicated in the curriculum set forth in Attachment Three, ADR will be one of the courses in the program;
- Of the three University law professors who attended the arbitration training in Fianarantsoa, one of them, Ms. Rakotoniaina, has discussed the initiation of an arbitration or ADR course at her law faculty and may become involved in teaching and promoting ADR in Fianarantsoa.

VII. LEGISLATION MONITORING AND TRACKING TABLES

A. Status, Critical Dates and Events of Legislation Reviewed by ARD/Checchi

	Law/Regulation Name- English/French	Drafting / Comment	CRDA / Other	Further Comment	Council of Gov't	Council of Mins	NA Adopt	Official Public- ation
1	Arbitration Law / <i>Loi sur l'arbitrage</i>	8/98	9/98				11/11/98	12/21/98
2	Companies Code / <i>Loi sur les sociétés commerciales</i>	9/98	5/00	3/00	6/00			
	Law/Regulation Name- English/French	Drafting / Comment	CRDA / Other	Further Comment	Council of Gov't	Council of Mins	NA Adopt	Official Public- ation
3	Tradesman's Law / <i>Loi sur le statut du commerçant</i>	8/98	9/98				8/2/99	8/16/99
4	Competition Law / <i>Loi sur la concurrence</i>	8/98	9/98					
5	Transparency Law / <i>Loi sur la transparence des entreprises</i>	8/98	9/98				8/19/99	8/30/99

6	Legal Notice for Real Property Mortgages Law / <i>Loi sur l'hypothèque judiciaire provisoire</i>	8/98	9/98				8/19/99	8/30/99
7	Commercial Registry Decree / <i>Décret sur le registre du commerce et des sociétés</i>	8/98	9/98					1/3/00
8	Bankruptcy Law / <i>Loi sur les procédures collectives d'apurement des passifs</i>	4/99	Ongoing	2/00-4/00				
9	Labor Code / <i>Code du travail</i>	6/99	*	9/99-10/99 3/00				
10	Leasing Law / <i>Loi sur le crédit bail</i>	2/00-4/00						

* Most recent version of Labor Code approved by Ad Hoc Committee on 5/6/00

B. Business Law Reforms and ARD/Checchi Contributions

Law/Regulation English/French	Purpose	Status	ARD/Checchi Activities
Arbitration Law/ <i>Loi sur l'arbitrage</i>	Establishes legal framework for arbitration	Adopted and promulgated	Extensive commentary provided, notably on using key UNCITRAL model law principles for international arbitration, including: minimum intervention by judiciary; right of parties to select arbiters; mandatory nature of Arbitral Award. The ARD/Checchi/JURECO contributions had been discussed with proponents of the final version of the law.
Companies Code/ <i>Loi sur les sociétés commerciales (including General Partnership Law, Limited Partnership Law, Limited Liability Company Law and Corporations Law)</i>	Defines the legal forms of business enterprises	CRDA completed drafting process, draft text under review by commentators	Extensive commentary provided, notably on forms of business enterprises, including the benefit of the one-person corporation. Also suggested removal of requirement that ALL incorporators be required to be residents of Madagascar, and insertion of more extensive Corporate Governance principles. Suggested reference to separate proxy rules for larger enterprises in order to assure informed shareholder input. Successfully advocated reduction or lessening of criminal penalties for what are in effect civil wrongs
Tradesman's Law / <i>Statut du commerçant</i>	Defines what a business is and who may engage in business	Adopted and promulgated	Commentary on inclusion of foreign businesses and technical aspects of draft. Articles 3.1 to 3.7 (dealing with accounting requirements that will clarify and help unify local standards) contributed by ARD/Checchi /JURECO team.

Competition Law / <i>Loi sur la concurrence</i>	Defines fair and unfair competition practices	CRDA action completed but blocked by Ministry of Commerce	Extensive commentary aimed at liberalizing and increasing specificity.
Transparency Law/ <i>Loi sur la transparence des entreprises</i>	Specifies the kinds of information that a business make available to the public	Adopted and promulgated	Article 5.4 (on the ability of a sole proprietor to become a part of the registry—and therefore of organized business--) contributed by ARD/Checchi/JURECO team.
Decree on Legal Notice for Personal Property Mortgages/ <i>Décret sur la Publicité du Crédit Mobilier</i>	Provides for public notice of liens on the personal property of business enterprises	Adopted and promulgated	Article 20 (dealing with creating a means of assuring that registrations are kept up-to-date and reviewable, thus making the registry more of a practical tool for the business community, rather than a formal procedure) contributed by ARD/Checchi/JURECO team.
Commercial Registry Decree/ <i>Décret sur le registre du commerce et des sociétés</i>	Establishes commercial register for assuring public notice of on-going acts of business enterprises, including registration of security interests and Credit-Bail transactions.	In force after publication in Official Gazette	Suggestions regarding structure and organization that reinforce the principles suggested by the ARD/Checchi/JURECO team in the related laws and decrees (on Transparency and on Credit Mobilier--see above): in Articles 5, 28, 58, 59 and 60 there are now provisions on sole proprietors on-going registration requirements, as well as several other requirements to keep the registry up-to-date).
Bankruptcy Law/ <i>Loi sur les procédures collectives d'apurement des passifs</i>	Establishes legal framework for commercial enterprises to declare bankruptcy	Under review by CRDA	General guidance provided on theory and best international practices. ARD/Checchi now providing further technical assistance during the drafting process. Contributions reduced the penal nature of earlier efforts.

Law/Regulation English/French	Purpose	Status	ARD/Checchi Activities
Labor Code/ <i>Code du travail</i>	Provides comprehensive framework for labor/management relations	Being drafted by Conseil National de l'Emploi	Extensive technical assistance provided on theory and best international practices. International Labor Law Expert n assisted in preparation of most recent draft. ARD/Checchi/JURECO Labor Mediation specialist contributed several key draft provisions to dispute-resolution portion of the draft that may, if adopted, strengthen the ability of labor mediators to resolve disputes.
Draft Law on Finance Leasing / <i>Projet de loi sur crédit-bail</i>	Improves Legal Framework for Finance Leasing	Under review by CRDA and microfinance specialists	General guidance provided on theory and best international practices. ARD/Checchi now providing further technical assistance during the drafting process.

VIII. Levels of Effort Provided, by CLIN

A. Eighth Quarter

CLIN #	SOW/ Work Order	Description of Work Order	Consultant Name	# of Days
0001-1 U.S.-Finance	15 18	Bankruptcy / Leasing Law Advisor Law Development Advisor	Gary Kelly Theodore Parnall	7.00 28.25
0001-2 U.S.-Company	18	Law Development Advisor	Theodore Parnall	14.5
0001-3 U.S.-Property	18	Law Development Advisor	Theodore Parnall	9.875
0001-4 U.S.-Labor	18	Law Development Advisor	Theodore Parnall	4.875
0001-5 Local-Finance	15	Local Law Development Advisor	Ratiaray Ramarolanto Louis Rajaonera	55.00 20.00
0001-6 Local-Company				
0001-7 Local-Property				
0001-8 Local-Labor				
0001-9 U.S.-ADR Support				
0001-10 U.S.-ADR Sensitization	21	International ADR Specialist	Christoph Brunner	15.50
0001-11 Local-ADR Association	21&23	Local Law Development Advisor	Raphaël Jakoba	30.00
0001-12 Local-ADR ToT	21&23	Local Law Development Advisor	Raphaël Jakoba	30.00
0001-13 Local Follow-Up				
0001-14 Local Management				

B. Cumulative to Date (Quarters One through Eight)

CLIN #	Maximum Days	Cumulative Days
0001-1: U.S.-Finance	125	145.30
0001-2: U.S.-Company	125	79.5.00
0001-3: U.S.-Property	125	19.47
0001-4: U.S.-Labor	125	118.60
0001-5: Local-Finance	175	111.00
0001-6: Local-Company	175	115.25
0001-7: Local-Property	175	7.25
0001-8: Local-Labor	175	97.25
0001-9: U.S.-ADR Support	100	145.6125
0001-10: U.S.-ADR Sensitization	75	102.0625
0001-11: Local-ADR Association	50	49.75
0001-12: Local-ADR ToT	50	47.50
0001-13: Local Follow-Up	100	6.00
0001-14: Local Management	25	6.00
Totals	1600	1050.545
International Experts	675	610.55
Local Experts	925	440.00

These totals include the figures in the previous table.

C. Year Two SOWs and Reports

SOW No.	Topic Covered	Implementation Dates	Consultants	Reports
12	Labor Law	June 1999	Don Zimmerman (Checchi) Mboara Andrianarimanana (Jureco)	<ul style="list-style-type: none"> Background Report on the Revision of the Madagascar Labor Code, Interim Report on the Revision of the Madagascar Labor Code The Revision of the Madagascar Labor Code and the American Labor Law System La révision du Code du Travail Rapport sur le Système Américain du Droit du Travail (Supplement to: Rapport Sur le Systeme Américain du Droit du Travail, June 11, 1999)
13	Alternative Dispute Resolution	November 1999	Christopher Armeniades (Checchi) Alexander Blumrosen (ARD) Howie Clavier (ARD) Raphael Jakoba (ARD) Louis Rajaonera (Jureco) Mboara Andrianarimanana (Jureco) Ramarolanto Ratiaray (Jureco)	Scope of Work No. 13 – Report
14	Property Law		Ratiaray Ramarolanto (Jureco)	See SOW 18 – Theodore Parnall
15	Crédit-Bail		Gary Kelly (Checchi)	The Imperative of Credit-Bail Reform / Les impératifs de la réforme sur le crédit-bail.
16	Bankruptcy Law	Feb-April 2000	Gary Kelly (Checchi)	<p>A Reform Bankruptcy Law for Madagascar: Commentary and Review / La réforme des procédures d'apurement des passifs à Madagascar: il est temps. - <i>including</i>:</p> <ul style="list-style-type: none"> Review of the Draft Bankruptcy Law/Revue de l'avant projet de loi sur les procédures collectives d'apurement des passifs Bankruptcy Reform in Madagascar/La réforme de l'apurement des passifs à Madagascar The Nature and Structure of a Reform Bankruptcy Law for Madagascar/ Plan d'action: la nature et la structure d'une réforme de la loi sur l'apurement du passif pour Madagascar
17	Analysis of Draft Company Law	Feb-March 2000	Alexander Blumrosen (ARD) Ratiaray Ramarolanto (Jureco)	[Blumrosen Memo: Observations relatives au nouveau projet de loi malgache sur les sociétés commerciales]
18	Finance Law, Company Law, Property Law, Labor Law	Feb-June 2000	Theodore Parnall (Checchi)	Reforms in Madagascar's Real Property Tenure and Law: Improved Implementation or More Legislation? / Réforme du droit foncier malgache. Nouvelle législation ou amélioration de l'application des textes existants?
19	Law Development Advisor		Thomas Reynders (Checchi)	
20	Local Law Development		Ratiaray Ramarolanto (Jureco)	

SOW No.	Topic Covered	Implementation Dates	Consultants	Reports
21	Alternative Dispute Resolution (training)	March 2000	Christoph Brunner (Arbitration) Howie Clavier (ADR and Mediation) Louis Marquis (Arbitration) Raphael Jakoba (see SOW #23)	Madagascar Participation & Poverty (P&P) Project: Legal, Regulatory, Judicial Reform Activity Scope of Work No. 21: Reports
22	Training in Mediation for Labor Inspectors	March 2000	François Hamelin Mboara Andrianarimanana	Commande No. 22: Formation en médiation pour inspecteurs et élèves-inspecteurs du travail à Madagascar
23	Set up activities for Centre d'Arbitrage et de Mediation de Madagascar (CAMM)	March-June 2000	Raphael Jakoba (Madagascar Conseil International)	Travaux en Vue de la Mise en Place d'un Centre d'Arbitrage et de Mediation a Madagascar (CAMM): Rapport Final

Additional Publications

Quarterly Reports

Fifth Quarter, July 1, 1999 – September 30, 1999

Quarterly Performance Monitoring Report (Sixth Quarter): October 1, 1999 - December 31, 1999

Quarterly Performance Monitoring Report (7th quarter): January 1 - March 31, 2000

Annual Report

First Annual Report: June 1, 1998 - June 30, 1999

Workplan

Second year Work Plan (and revisions) – July 1, 1999 through June 30, 2000

IX FINANCIAL

Contract Value	\$ 1,452,136.00
Expenditures to Date	\$ 945,627.39
Expenditures in 8th Quarter	\$ 249,198.14

ATTACHMENT 1: YEAR TWO WORK PLAN MILESTONES

A. Business Law Reform Milestones

	Milestone	Month
1.2.01	Second Year Work Plan for Business Law Reform Component completed	Oct-99
1.2.02	First Annual Report submitted	Oct-99
1.2.03	Sixth Month Review with COTR held	Sep-99
1.2.04	Fifth Quarterly Report submitted	Oct-99
1.2.05	Commentary and technical assistance on Labor Code completed	Oct-99
1.2.06	In-service training on Company-Related Laws for judges completed	Nov-99
1.2.07	Commentary on final draft of Company Law provided	Nov-99
1.2.08	Commentary on Bankruptcy Law provided	Nov-99
1.2.09	Recommendations for Property Law reform completed	Mar-99
1.2.10	Draft Leasing Law prepared	Dec-99
1.2.11	Sixth Month Review with COTR	Dec-99
1.2.12	Sixth Quarterly Report submitted	Jan-00
1.2.13	Training in Arbitration and Company-Related Laws provided to legal profession and business leaders	Feb-00
1.2.14	Public and business sensitized to business law reform efforts	Feb-00
1.2.15	Seventh Quarterly Report submitted	Apr-00
1.2.16	Training, stakeholder sensitization, public information campaigns and/or training held	May-00
1.2.17	Analysis of adoption and use of draft legal reform texts by CRDA and National Assembly prepared	Jun-00

B. ADR Milestones

	Milestone	Month
2.2.01	Second Year Work Plan for ADR Component completed	Oct-99
2.2.02	First Annual Report submitted	Oct-99
2.2.03	Sixth Month Review with COTR held	Sep-99
2.2.04	Fifth Quarterly Report submitted	Oct-99
2.2.05	Training for arbiters and mediators	Nov-99
2.2.06	In-service training on Arbitration Law for judges completed	Nov-99
2.2.07	National Arbitration Institute formed	Nov-99
2.2.08	Offshore training for arbiters to become arbitration trainers delivered	Dec-99
2.2.09	Sixth Quarterly Report submitted	Jan-00
2.2.10	Sixth Month Review with COTR	Dec-99
2.2.11	Training for arbiters and mediators in three additional cities held	Feb-00
2.2.12	Support for National Arbitration Institute, local chapters and arbiters provided	Mar-00
2.2.13	Seventh Quarterly Report submitted	Apr-00
2.2.14	Training, stakeholder sensitization, and public information campaigns	May-00

ATTACHMENT 2: YEAR TWO CONTRACT MILESTONES

A. Business Law Reform Milestones

	Month
1.2.01 Second Year Work Plan for Business Law Reform Component completed	Oct-99
1.2.02 First Annual Report submitted	Oct-99
1.2.03 Sixth Month Review with COTR held	Sep-99
1.2.04 Fifth Quarterly Report submitted	Oct-99
1.2.05 Commentary and technical assistance on Labor Code completed	Oct-99
1.2.06 In-service training on Company-Related Laws for judges completed	Nov-99
1.2.07 Commentary on final draft of Company Law provided	Nov-99
1.2.08 Commentary on Bankruptcy Law provided	Nov-99
1.2.09 Recommendations for Property Law reform completed	Mar-99
1.2.10 Draft Leasing Law prepared	Dec-99
1.2.11 Sixth Month Review with COTR	Dec-99
1.2.12 Sixth Quarterly Report submitted	Jan-00
1.2.13 Training in Arbitration & Company-Related Laws for legal profession & business leaders	Feb-00
1.2.14 Public and business sensitized to business law reform efforts	Feb-00
1.2.15 Seventh Quarterly Report submitted	Apr-00
1.2.16 Training, stakeholder sensitization, public information campaigns and/or training held	May-00
1.2.17 Analysis of adoption & use of legal reform texts by CRDA & National Assembly prepared	Jun-00

B. ADR Milestones

	Month
2.2.01 Second Year Work Plan for ADR Component completed	Oct-99
2.2.02 First Annual Report submitted	Oct-99
2.2.03 Sixth Month Review with COTR held	Sep-99
2.2.04 Fifth Quarterly Report submitted	Oct-99
2.2.05 Training for arbiters and mediators	Nov-99
2.2.06 In-service training on Arbitration Law for judges completed	Nov-99
2.2.07 National Arbitration Institute formed	Nov-99
2.2.08 Offshore training for arbiters to become arbitration trainers delivered	Dec-99
2.2.09 Sixth Quarterly Report submitted	Jan-00
2.2.10 Sixth Month Review with COTR	Dec-99
2.2.11 Training for arbiters and mediators in three additional cities held	Feb-00
2.2.12 Support for National Arbitration Institute, local chapters and arbiters provided	Mar-00
2.2.13 Seventh Quarterly Report submitted	Apr-00
2.2.14 Training, stakeholder sensitization, and public information campaigns	May-00

ATTACHMENT 3: ADVANCED BUSINESS LAW CURRICULUM

- Mémoire de 3^{ème} cycle portant sur l'un quelconque des enseignements dispensés dans l'année

D – recrutement des candidats : sur dossier et entretien

E – conditions de candidature : être titulaire d'une Maîtrise en droit privé (toutes options confondues)

F – réception des dossiers de candidature : du 15 mai au 15 juin inclus , délai de rigueur. Tout dossier reçu après cette date sera automatiquement rejeté. Les candidats doivent s'assurer 1) de la durée d'acheminement du courrier 2) de leur disponibilité effective pour le test d'entretien dans la période du 20 au 30 juin . Les dates définitives du test d'entretien seront communiquées ultérieurement par voie d'affichage à la faculté de droit. **Aucune convocation individuelle ne sera adressée. Seuls les candidats retenus à l'issue de la sélection sur dossier seront admis à passer le test d'entretien. Tous les résultats seront proclamés par voie d'affichage exclusivement à la faculté DEGS.**

G – Frais :

- Frais de gestion du dossier (non-remboursable): 35.000 fmg (à envoyer avec le dossier de candidature sous forme de mandat-poste)
- Frais d'inscription (à devoir uniquement au moment de l'inscription pour les étudiants admis à l'issue du test d'entretien): 100.000 fmg (les dates des inscriptions seront communiquées ultérieurement par voie d'affichage)

H – Composition du dossier de candidature (prévu en F ci-dessus) :

- 1 (une) enveloppe timbrée à l'adresse du candidat
- 2 photos d'identité
- 35.000fmg de frais de gestion de dossier
- photocopie certifiée conforme de l'ancienne carte d'étudiant ou d'une carte d'identité nationale
- photocopie certifiée conforme de l'acte ou du bulletin de naissance

Le tout à envoyer à l'adresse suivante :

D.E.A droit des affaires
Faculté DEGS
Université d'ANTANANARIVO
B.P.905
ANTANANARIVO 101

TOUT DOSSIER INCOMPLET SERA AUTOMATIQUEMENT REJETE.

ATTACHMENT 4: CAMM OFFICERS AND DIRECTORS

Les membres issus des comités locaux d'arbitrage et de médiation:

- Me Irène RALALASOA (Tananarive)
- Me RAMAMONJISOA Rija (Tananarive)
- Me JAILANY Salim (Majunga)
- M. Rabe Régis Marius (Majunga)
- M. RAZAFINDRAKOTO Tôty (Antsirabe)
- Me RAMASITERA Voahangy (Antsirabe)
- M. RASOLOMAHEFA Edmond (Fianarantsoa)
- Me RALAY Antoine (Fianarantsoa)
- M. RAZAFINDRAKOTO Longin (Tuléar)
- M. FARATINA Eustache (Tuléar)
- Me RAKOTONOMENJANAHARY Jean (Tamatave)
- M. BARDY Jean Louis (Tamatave)
- M. Rolland SYLVAIN (Diégo)
- M. Saïd HOUSSEN (Diégo)

Personnalités issues des milieux juridiques et d'affaires:

- M. Henri RAHARIJAONA, Premier Président honoraire de la Cour d'Appel
- Me Alisaonina RAHARINARIVONIRINA, Professeur agrégé de droit
- M. Louis RAJAONERA, Directeur JURECO
- M. Raphaël JAKOBA, Directeur Cabinet MCI
- Me Jean RAKOTOARISON, Avocat
- M. Jérôme SAMBALIS, Opérateur économique
- M. Alphonse RALISON, Président du FIVMPAMA
- Mme Florette ANDRIAMIARISATRANA, Présidente du Comité de Réflexion pour la Compétitivité (CRC)
- M. Bruno DE FOUCAULT, Président du Groupement des Entreprises franches (GEFP)
- Mme Céline RABEVAZAHA, Représentant du Groupement des entreprises de Madagascar (GEM)

Les membres du bureau de CAMM:

- Président : M. Henri RAHARIJAONA
- Vice-Présidents :
- M. Jérôme SAMBALIS,
- Me JAILANY Salim.
- Secrétaire Général du Comité technique d'arbitrage : M. Raphaël JAKOBA
- Conseillers :
- M. Tôty RAZAFINDRAKOTO
- M. Rolland SYLVAIN
- M. Edmond RASOLOMAHEFA
- Trésorier: M. Louis RAJAONERA

Les membres du comité d'arbitrage du CAMM:

- M. Raphaël JAKOBA
- Mme Elisa RAMAMONJISOA
- M. Lanto RASOLONJATOVO MICHEL

Les membres du comité scientifique du CAMM:

- M. RAMAROLANTO Ratiaray
- Me Alisaonina RAHARINARIVONIRINA
- Mme Céline RABEVAZAHA -RABEKORIANA
- M. Jean RAKOTOARISON
- M. Mboara ANDRIANARIMANANA
- Me RALAY Antoine
- Me Voahangy RAMASITERA
- Me Jean RAKOTONOMENJANAHARY
- Me Pascalette MAHATEZA
- Mme Laurence Nirina RATOVOMANANA
- Me Irene RALALASOA
- M. Raymond BEZAFY
- M. Louis RAJAONERA
- M. Clovis RAVELOSON