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# UKRAINE COMMERCIAL LAW PROJECT

## FINAL REPORT

**May 28, 2008**

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# UKRAINE COMMERCIAL LAW PROJECT

## FINAL REPORT

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Emerging Markets Group, Ltd.

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## ACRONYMS

CIC	Court Information Center
CLC	Commercial Law Center
EMG	Emerging Markets Group, Ltd.
EU	European Union
GoU	Government of Ukraine
HECU	Ukraine High Economic Court
IACA	International Association of Court Administrators
IPR	Intellectual Property Rights
JSCs	Joint Stock Companies
MCC	Millennium Challenge Corporation
MOJ	Ministry of Justice
NATO	North Atlantic Treaty Organization
NBU	National Bank of Ukraine
NGO	Non-Governmental Organization
OECD	Organization for Economic Co-operation and Development
PSA	Product Sharing Agreement
RIA	Regulatory Impact Assessment
SME	Small Medium Enterprises
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UCL	Ukraine Commercial Law Project
UEPLAC	Ukraine-European Policy and Legal Advice Center
UNDP	United Nations Development Program
USAID	United States Agency for International Development
WTO	World Trade Organization



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## PREFACE

The Ukraine Commercial Law Project is pleased to present its end of contract report. The development of this report has been a joint effort of expatriate and Ukrainian project staff. The report includes an overview, a report on objectives and results, a description of project activities and achievements, a discussion of project impacts, and lessons learned and recommendations for Ukrainian policymakers and donor interventions in commercial law reform.

The project successfully developed the Commercial Law Center, which is now the leading Ukrainian NGO in the field of commercial law development and education. The Center works closely with the Government of Ukraine, Verkhovna Rada, the judiciary, attorneys, the business community and others. It is well-known for its technical capabilities in drafting legislation, training legal professionals, and public outreach.

The major accomplishments of the project and Commercial Law Center include drafting 28 modern commercial laws, halting passage of numerous laws that would harm economic development, providing practical training to hundreds of judges, lawyers, and businesspersons, and increasing transparency of the economic courts through IT solutions. As a result, the number of days to start a business has been reduced from 40 to 27, debt secured by mortgages has grown to over \$2.5 billion, 58,556 decisions of the High Economic Court are published and searchable on the HECU website, and 900,475 lower economic court decisions are available through the Unified Registry of Decisions. The Commercial Law Center's staff has provided high quality technical assistance, management and administrative support that led to these accomplishments.

The support of the USAID Ukraine Mission has been exceptional from the start of the project. The project would not have been so successful without the guidance and assistance of Rick Gurley, Gleb Krivenko, and support from many other staff members of USAID Ukraine. The contributions of the project's counterparts in the Government, Verkhovna Rada, and judiciary have also ensured the success of the project.

On behalf of Emerging Markets Group and the Commercial Law Center,

Joseph H. Lowther

Valentyna Danishevskaya

Chief of Party

Director

Emerging Markets Group

Ukraine Commercial Law Center



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## PROJECT OVERVIEW

### Background on Project

The United States Agency for International Development (USAID) Ukraine Commercial Law Project (UCL or “the project”), was implemented by Emerging Markets Group under Contract number 121-C-00-00-00823-00 signed on June 22, 2000. The purpose of the contract was to produce sound market-oriented commercial legislation by establishing a commercial law resource center in Ukraine. The contract was modified several times to add to the scope of work and extend the term of the project.

The project, which ended on April 30, 2008, established the Ukraine Commercial Law Center (CLC), and the project was housed within the CLC with one permanent expatriate Chief of Party working with over 15 Ukrainian CLC professional and administrative staff. The project, working within the CLC, provided technical assistance and training on a wide variety of commercial law topics, including:

- Drafting 28 commercial laws, including such key legislation as the Mortgage Law, Secured Transactions Law, Civil Code Book IV regarding intellectual property rights, Law on Registration of Businesses, and the Law on Access to Judicial Decisions
- Providing opinions on other draft legislation, which led to the Government of Ukraine or Verkhovna Rada withdrawing or rejecting numerous draft laws that would have harmed economic development.
- Training judges, lawyers, businesses and journalists on a wide variety of commercial law topics
- Developing and disseminating widely used public education materials like the Legal ABCs for Business series of booklets
- Reforming the Economic Courts through a Case Management System and Registry of Judicial Decisions.

UCL’s technical assistance and training have helped transform Ukraine’s commercial law framework so that it is conducive to private sector competitiveness and economic growth. The CLC is a modern, professional organization that is carrying on the work of the project.

### UKRAINE’S TRANSITION

In April 2008, as the USAID-founded Commercial Law Center embarks as an independent NGO, Ukraine’s economy has grown by an average of 7.5 percent per year from 2000 to 2007 and Ukraine has finally become a member of the World Trade Organization (WTO). These are significant steps in Ukraine’s transition from a Soviet Republic toward a European democracy and market economy.

On August 24, 1991, Ukraine achieved its independence as a sovereign nation, ending a seventy year period as a Soviet Republic. The ten years that followed independence were filled with slow but steady reform as the newly established government built the foundational blocks for democracy. In July 1996, the Verkhovna Rada adopted the new constitution. This represented a significant move away from Soviet era policies by providing the foundation for property rights, enabling entrepreneurship, and naming Ukrainian as the only national language. During this period, Ukraine was also challenged with economic hardships and growing social inequalities as well as corruption and “crony capitalism.”

In 2004, after the Orange Revolution, President Yushchenko’s government came into power and led a movement to more progressive policies and increased ties to the European Union. While this government brought the promise of change in the overall political environment, it quickly became mired in internal conflicts and stalemates in the Verkhovna Rada. Thus economic, political, and legal reforms have been limited and inconsistent. One result of the lack of reform impetus is the state’s continued control over a large portion of the economy: at the end of 2005 roughly 48% of the country’s capital stock was still in



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the hands of the state or municipal authorities at the end of 2005, with a further 10-11% in mixed public-private ownership.<sup>1</sup>

## UKRAINE'S COMMERCIAL LAW ENVIRONMENT

After the dissolution of the Soviet Union in 1991, Ukraine revised many of its laws. But as of 2000, much of the Soviet-era legislation was still on the books. New commercial laws were often inconsistent with the Soviet-era laws. As a result, the commercial law framework was not supportive of a market economy. In addition, courts, attorneys, and businesses lacked sufficient understanding of commercial law to properly apply it to disputes and transactions.

USAID began working in Ukraine in 1992, during a period of tremendous transition as Ukraine struggled to make the change to a democratic nation with a market economy. USAID/Ukraine helped oversee progress across a wide array of areas. USAID/Ukraine's rule of law program began in 1993 and its commercial law development program began in 1995. During the past 15 years the projects within the commercial law development program have been assisting Ukraine in its transformation by creating the commercial law infrastructure (laws, courts, government agencies, legal professionals) critical to economic growth.

USAID's efforts to improve the commercial law infrastructure were hindered at times by a difficult economic situation and resistance to change. In many cases, necessary economic and legal reforms were stymied by vested interests or a lack of understanding. For example, UCL's quest to modernize framework laws is incomplete due to resistance in some quarters to resolving some conflicts between the Civil Code and Economic Code. The Civil Code sets the foundation for commercial law. The Economic Code is considered to be more of a throwback to Soviet regulation of commercial activity. In many instances the two codes contain conflicting language. This often makes it difficult for courts to make decisions in a clear and consistent manner, and creates an uncertain business environment. UCL has had some success in working with the Government and Verkhovna Rada to harmonize these two codes through amendments. But they remain inconsistent in many areas and lawmakers have thus far failed to repeal the Economic Code, as UCL has proposed. Political discord has prevented some other crucial laws from being passed – including the Law on Joint Stock Companies. Failure to quickly enact and implement such key commercial legislation has hampered private sector development and will slow integration with the European Union and global economy.

Nonetheless, as detailed in this report, most of the laws needed to create an enabling environment for the private sector and financial sector to operate have been enacted with UCL's assistance. These reforms have caused the business environment to improve in meaningful ways. According to World Bank Doing Business 2008, Ukraine has significantly improved the legal rights of lenders since 2004, leading to increased lending. The number of days to start a business has been reduced and more businesses are registered. Shareholder protections have increased since 2006 and will increase a lot more once an amended Joint Stock Company Law is enacted.

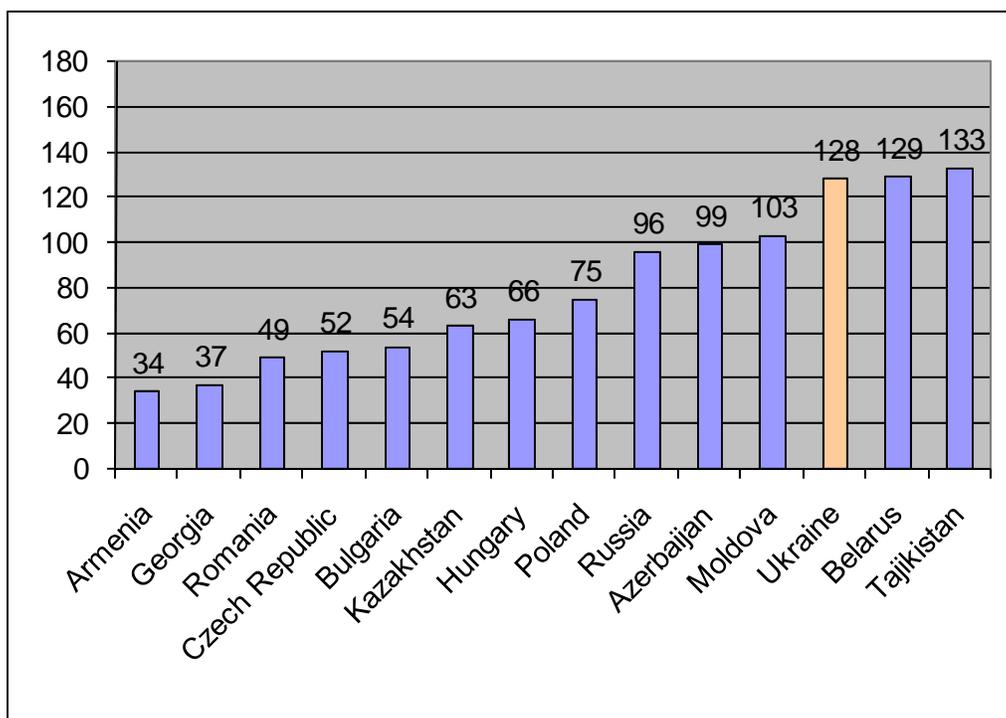
But incomplete legal and regulatory reforms, as well as an often overbearing and corrupt bureaucracy, cause the business environment to remain burdensome in other ways. For example, Doing Business reports that the time to complete bankruptcy proceedings and the cost of bankruptcy proceedings have increased in the last two years, while creditors' recovery rates in bankruptcy have decreased. The number of procedures and the time to obtain construction permits have not improved and Ukraine ranks 174<sup>th</sup> of 175 countries surveyed. In general the Ukrainian business environment lags that of most Central and East European countries according to the World Bank, World Economic Forum, and the Economist magazine.

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<sup>1</sup> OECD, Ukraine Policy Brief, September 2007.



Figure 1: 2007 World Bank Rankings on the Ease of Doing Business



### USAID’S GOALS FOR THE PROJECT

USAID’s original objectives for the UCL project were to: 1) develop the capacity of Ukrainian lawmakers to develop commercial law reforms; 2) increase the commercial sector’s understanding of sound commercial legislation; 3) promote increased transparency in development of commercial laws and regulations; 4) establish an indigenous capacity for commercial law training and information dissemination. Subsequently the objectives were restated in a contract modification for an extension as: 1) improvement of the commercial law framework; 2) contribute to a more transparent administration of justice through the courts.

### Tasks/SOW/Objectives and Expected Results

Project tasks were straightforward and provided flexibility for the project to act quickly as opportunities for commercial law reforms arose. The tasks can be summarized as follows:

- Develop a sustainable Ukrainian organization to provide commercial law drafting, training and outreach
- Provide the Government of Ukraine with expertise to develop commercial legislation
- Establish and deliver commercial law training programs for legal professionals, parliament, government, businesses, and journalists

The project provided the following technical assistance:

- Develop the Commercial Law Center
- Provide partners with expert opinions on various legal drafts
- Assist partners in developing new laws and amendments to existing laws
- Help partners understand Ukrainian laws and regulations and their affect on economic development
- Organize and facilitate dialogue and discussion of laws, drafts, and amendments with government, business, associations, and civil society
- Provide partners with access to the international best practices
- Organize and manage comprehensive information, public education and outreach programs to ensure understanding of laws
- Provide training to judges, enforcement officers and other legal professionals.



- Disseminate knowledge and information on commercial law topics to legal professionals, governments, and businesses
- Improve the system for enforcement of judgments
- Strengthen the commercial court system.

## Summary of Project Activities

### PROJECT APPROACH AND METHODOLOGY

The project set up the CLC in 2001 and subsequently all project activities and technical assistance were delivered through the CLC. Technical assistance was provided by Ukrainian and international experts, including 10 to 15 Ukrainian employees at the CLC. International experts provided training and mentoring to the Ukrainian experts and as the project proceeded, more and more technical assistance and training were delivered by Ukrainians.

The project and the CLC have been demand driven, with activities based on requests from Ukrainian counterparts. The project responded to nearly 800 requests for commercial legal reform assistance from the public and private sectors, resulting in the repeated success with passage of important commercial legislation. It has received requests for assistance 39 times from members of Parliament or Parliamentary Committees<sup>2</sup>, 30 times from the NBU, 25 times from the Ministry of Justice, and 29 times from the Ukrainian Courts. The project has also worked on legislation with the Ministries of Economy and European Integration, Education and Sciences, and Finance, as well as the State Committee for Regulatory Policy and Entrepreneurship, State Commission for Regulation of Financial Service Markets, and National Bank of Ukraine.

The project used a holistic approach to commercial law reform. The CLC has adopted this approach to developing and implementing laws. In developing legislation, the CLC uses a transparent and collaborative process supported by analysis.



To assist in implementing new and existing laws and regulations the CLC provides practical, hands-on training for judges, attorneys, and businesses, develops practical resource materials to guide proper implementation of the laws, and monitors implementation of the laws to identify bottlenecks, best practices, and the need for legislative amendments.

### AREAS OF LAW COVERED

The project focused on improving laws and their implementation in the following areas:

- Framework Laws: Reconciliation of Civil and Economic Codes; Code of Commercial Procedure
- Intellectual Property Rights (Civil Code (Book IV) Access to Court Decisions
- Legislation on Finance and Investments: Mortgages; Mortgage Bonds; Secured Creditors' Rights and Registration of Encumbrances; Financial Leasing

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<sup>2</sup> The CLC has worked with the following Verkhovna Rada Committees: Legal Policy; Industrial Policy and Entrepreneurship; Economic Policy, National Economy Management, Property and Investments; and Finance and Banking Operation.



- Company Law and Corporate Governance: Registration of Businesses; Joint Stock Company Law
- Production Sharing Agreements
- Bankruptcy Law
- Enforcement of Judicial Decisions
- Non-Governmental Organizations.

#### COORDINATION WITH OTHER PROJECTS AND DONORS

The project provided support to other USAID projects to improve commercial laws that were obstacles to private sector and financial system development. The project was also part of a broader effort of the donor community to improve the commercial law system in Ukraine.

The project worked with other USAID projects to meet USAID’s goals and respond to the needs of Ukrainian counterparts. Our joint work included collaboration with the USAID Capital Markets project on drafting the Joint Stock Company Law, cooperation with the Access to Credit Initiative on training of investment professionals and development of legislation enabling municipal bonds, work with Trade, Investment and Business Acceleration Activity on improving regulations relating to Euro 2012, and cooperation with the Rule of Law Project on development of case management systems.

CLC worked with the United Nations Development Program (UNDP) Blue Ribbon Analytical and Advisory Centre in organizing and hosting seminars and round tables for professional participants of the capital market, joint stock company managers, and public officials to discuss the draft law "On Joint Stock Companies" as provided by a Memorandum of Cooperation signed in August 2007.

CLC collaborated with the Ukraine-European Policy and Legal Advice Center (UEPLAC), a project financed by the European Commission, in promoting the Joint Stock Company draft law, sound commercial legislation, in reconciling of the Civil and Economic Codes provisions, and protecting investors’ rights to ensure harmonization of Ukraine’s legislation with EU norms.

CLC also worked closely with several Ukrainian NGOs, including the Association of the Ukrainian Banks, the Ukrainian National Mortgage Association, the Pan-Ukrainian Leasing Association, and the National Association of Law Students.

The project also coordinated several multi-project efforts and discussions to improve legislation and regulations, including insurance legislation and intellectual property rights.

#### Summary of Project Results

The project drafted 28 laws, including:

Law	Assistance Provided	Enacted
Civil Code	Drafting Book IV of the Civil Code on intellectual property rights, amendments regulating legal entities, and providing opinions to eliminate bad provisions or stymie bad amendments	January 2003
Civil Procedure Code	Drafted provisions on evidence and provisional remedies for IPR infringement	March 2004
Economic Procedure Code	Drafted amendments to facilitate out-of-court settlement of commercial disputes. Edited the final draft Economic Procedure Code to incorporate all suggestions for amendments made by the experts prior to its publication in advance of parliamentary debate.	December 2006



Law	Assistance Provided	Enacted
Law On Access to Court Decisions	Participated in Parliamentary working group that drafted the law.	June 2006
Mortgage Law	Drafted the law and helped to shepherd enactment	June 2003
Law on Leasing	Helped to draft the law and educated and advocated MPs and GOU to enact	December 2003
Law on Appraisal of Property	Helped to draft amendments to the law to lessen requirements for appraisals and helped to shepherd amendments through Parliament	June 2003
Law on Forming and Circulation of Credit Histories	Led drafting of the law, including providing foreign and Ukrainian experts	June 2005
Law on Mortgage Bonds	Provided expertise to working group that drafted the law	December 2005
Law on Securing Creditors Claims and Registering Encumbrances	Drafted the law and helped to shepherd enactment	November 2003
Law on Concessions	Proposed amendments to streamline concessions that were adopted	Fall 2002
Law on Registration of Legal Entities and Physical Entities	Worked closely with the State Committee on Regulatory Policy and Entrepreneurship to develop amendments to the law in second reading.	May 2003
Law on Joint Stock Companies	Helped to draft numerous amendments to the law and educated policymakers on international standards	
Law on Bankruptcy	Drafted key amendments	March 2002
Law on Enforcement of Judgments	Assisted in drafting new law	
Law on Production Sharing Agreements	Developed concept paper and draft law	
Law on Public Private Partnership Projects	At the request of the Ministry of Economy, prepared draft law and submitted it to the Ministry.	
Draft Law on Non-Governmental Organizations	Commented on draft law, including written recommendations for amendments	

The project provided training programs for Government officials, parliamentarians and their staff, judges, attorneys, businesses, and journalists.

As detailed in Annex A, the project conducted 39 training events and provided training to 5,769 judges and public and private sector lawyers, and conducted 33 seminars throughout Ukraine for 1,305 businesspeople. More than 1,000 judges were trained in the application of the amended Civil Code and enforcement of intellectual property rights. The training was practical and focused on how to properly apply commercial laws, including the laws on Registration of Businesses, Enforcement of Judgments, Bankruptcy, and the Civil Code. The project also provided training on legislative drafting, including plain language drafting. The project has also

**Figure 2: Training Legal Professionals and Business People — 2001 – 2008**

Number of Locations	103
<b>Subject Matter</b>	<b>Number of Participants</b>
Continuing Legal Education Participants	5392
Workshops (for public and private sector lawyers)	377
Seminars for Business People	1305
<b>Total</b>	<b>7074</b>



trained trainers so that there is a group of legal experts with the ability to deliver training using modern adult education methodologies.

The project organized national conferences that helped policymakers and stakeholders understand and develop reforms in several areas, including: bankruptcy, enforcement of judgments, leasing, and credit bureaus, as well as public hearings on the Civil and Economic Codes, and Economic Procedural Code

The CLC published numerous documents that are used by judges, lawyers, and businesses. The CLC Newsletter is published quarterly and contains information about commercial legislation. The Ukrainian Commercial Law Journal contains articles by CLC staff and other experts on topical commercial law issues. The Legal ABCs for Businesspersons is a set of booklets that educate businesses on a variety of topics, including registration of an SME, copyrighting and patenting, enforcement of court judgments for entrepreneurs, compliance with tax legislation, and aspects of the Civil Code that are relevant for business.

**Figure 3: CLC Publishing: 2001-2007**

Title	Issues	Copies	Total delivered:
The CLC Newsletter	27	1000	1000 x 27
Ukrainian Commercial Law, scientific journal	8	1000	500 x 8
Legal ABCs for business persons	13	2000	2000 x 13
Manual for Lawyers	4	1000	1000 x 4
Conference/Round Table Materials	3	500	500 x 3
Advertising Pamphlet	4	1000	1000 x 4
<b>TOTAL:</b>			<b>66,500 copies</b>

In addition, the CLC completed 2 Research Studies on Gender and Commercial Law in Ukraine and presented the results at a national commercial law conference.

All CLC publications are searchable and available for download at the CLC Website, [www.commerciallaw.com.ua](http://www.commerciallaw.com.ua), which also allows for feedback from users.

The project provided equipment and technical assistance for the Registry of Judicial Decisions and Case Management System used by the Economic Courts.

The project helped Ukraine to achieve several important outcomes:

- \$2.5 billion debt secured by mortgages<sup>3</sup>
- Growth in credit has averaged about 40 percent since 2001<sup>4</sup>
- Legal rights of lenders improved to a score of 8 out of 10, which is better than the OECD average score of 6.4.<sup>5</sup>
- Domestic credit to the private sector/GDP increased to 60% in 2007 from 25% in 2004
- Number of days to start a business has been reduced from 40 to 27<sup>6</sup>

<sup>3</sup> Dyad'ko, Yevhenia, Roseman, Gary, The Current State of Ukraine's Mortgage Market, Housing Finance International, Mar 2007.

<sup>4</sup> KPMG, Investment in Ukraine, 2007.

<sup>5</sup> World Bank Doing Business 2008.

<sup>6</sup> World Bank Doing Business 2008.



- Business registration increased from 981,000 firms in January 2004 to 1,199,540 as of April 2008<sup>7</sup>
- Market capitalization of companies listed on Ukraine Stock Exchange increased from \$6 million in 2000 to \$40.3 million in 2006<sup>8</sup>
- Foreign direct investment in Ukraine increased from \$595 million in 2000 to \$5.6 billion in 2006<sup>9</sup>

"We would like to express our sincere gratitude for the efforts undertaken by the Commercial Law Center in the area of legislative regulation of entrepreneurship. Legal workshops and conferences bring fruitful results: discussions of the lawyers give rise to new ideas to improve legislative framework. The Legal ABCs for businesspersons published by the CLC are extremely popular among the Association members and other businesspersons. The ABCs are written in a manner to be a good guidance for lawyers providing legal services to businesspersons. Such CLC efforts are necessary for business development in Ukraine."

N. Kozhevina, General Director, UNITY Association for the Development of Private Entrepreneurship in Ukraine

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<sup>7</sup> State Statistics Committee of Ukraine

<sup>8</sup> World Bank, Ukraine Data Profile

<sup>9</sup> World Bank, Ukraine Data Profile



## REPORT ON OBJECTIVES AND RESULTS

UCL met all of its objectives on the project:

- ***Developed the capacity of Ukrainian lawmakers to develop commercial law reforms.*** During the past eight years the project provided continuous training on legislative drafting and technical commercial law issues to GoU officials and staff and Verkhovna Rada MPs and staff. As a result, there are a large number of policymakers and technical staff in Ukraine who fully understand commercial law issues – particularly a commercial law environment that enables the private sector to thrive in a market economy – and can draft quality legislation.
- ***Increased the commercial sector’s understanding of sound commercial legislation.*** The project targeted Ukrainian businesses for education on commercial law issues. Thus, the project provided a series of trainings on commercial law topics throughout Ukraine, in partnership with business support organizations. The project also published practical guides for business on commercial law, including the Legal ABCs for Entrepreneurs series of booklets. The project trained more than 1,300 businesspersons and 26,000 copies of the Legal ABC’s booklets have been distributed.
- ***Promoted increased transparency in development of commercial laws and regulations.*** The project fostered transparency, dialogue, and collaboration in the development of commercial laws and regulations. The CLC has been, and continues to be, an independent unbiased facilitator that has been able to bridge the divide between governmental committees and ministries. The project organized, participated in, and facilitated numerous roundtables and discussions on commercial law topics. In the early stages of the project, the project organized and facilitated most of these dialogues, but in recent years the GoU, Verkhovna Rada, and others have been organizing the discussions and there is now a culture of dialogue, openness, and cooperation in commercial law development.
- ***Established an indigenous capacity for commercial law training and information dissemination.*** The project established the CLC and developed capacity in the Ukrainian Government, judiciary, legal community, and service providers to provide training and information dissemination. The CLC is a Ukrainian managed organization staffed by Ukrainian professionals who provide high quality services, including legislative drafting assistance, training, and public outreach. The CLC has trained over 7,000 legal professionals and businesspersons and has distributed 66,500 copies of publications, in addition to constant dissemination of information through the media and the CLC website.
- ***Improved the commercial law framework.*** The project had almost 800 requests for assistance from the public and private sectors. This resulted in the project drafting 28 commercial laws, providing opinions on other draft legislation, which often thwarted draft laws that would have harmed economic development. As a result, Ukraine’s commercial law framework improved, as is evidenced by World Bank Doing Business indicators regarding legal rights of lenders and time to register a business. These improvements led to large increases in lending and registered businesses. In other areas, businesses have seen more transparent judicial decision making, better enforcement of intellectual property rights, improved enforcement of judgments, and ability to restructure insolvent businesses.
- ***Contributed to a more transparent administration of justice through the courts.*** The project’s efforts to increase transparency in administrative justice included judicial training, legislative development, and court automation. The project’s program for judicial training helped judges to

In the eight years of operation of the CLC within the project framework, over 100 expert opinions (comments) were issued for the Verkhovna Rada consideration. The USAID UCL Project has helped to meet the major objective in the national legal policy – rule of law development based on the principles of economic, political and ideological pluralism, priority of human rights and freedoms. I am grateful to David Greer, Chief of Party, and Valentyna Danishevska, Center Director, to all persons involved in this high and useful affair. I express my firm assurance that the MOJ will persistently support all the initiatives aimed at further reform of the legal system of Ukraine and its integration into the European Community and the world economy.

M.V. Onyshchuk, Minister of Justice



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properly apply laws and procedures. The project helped to develop laws like the Code of Economic Court Procedure and Law on Access to court decisions that have increased transparency in court administration and court procedures. The project helped to develop a Registry of Judicial Decisions and a Case Management System to provide, among other things, automated case assignment. The Registry has provided public access to 58,556 decisions of the High Economic Court and 2,032,131 cases through the Unified Registry.

Further details regarding the project's success in meeting its objectives are set forth throughout this report.



## PROJECT ACTIVITIES AND ACHIEVEMENTS

### Establishment of a Sustainable Commercial Law Center



*Vasyl Onopenko, Chief Justice of the Supreme Court of Ukraine, and Valentyna Danishevska, CLC Director, discussing judicial reform priorities, 2005*

Since its inception in 2000 as the USAID Ukraine Commercial Law Project, the CLC has made significant advancement in becoming a sustainable organization. Registered as an independent non-governmental not-for-profit organization in 2003, the CLC has used every opportunity to tackle the most difficult fundamental issues in commercial law reform, such as working with the Civil Code, the Economic Code, mortgage law, secured transactions law, and the financial leasing laws, among numerous others. The CLC is a unique Ukrainian legislative development and training NGO that has responded to hundreds of requests for commercial legal reform assistance from the the Government of Ukraine and Verkhovna Rada.

The results of CLC's cooperation with the Government of Ukraine and Verkhovna Rada include development of a movable property registry, a more effective bankruptcy law that allows troubled companies an alternative to liquidation by restructuring, IPR provisions in the Civil Code that conform to WTO and other international conventions, a mortgage law, a mortgage backed securities law, a law on securities and stock markets, and a law on financial leasing. In addition to commercial legislative development, CLC has educated legal professionals and the business community on applying commercial laws, improved legal education by creating a commercial law curriculum, and increased understanding of the commercial law framework through innovative public information strategies. CLC has also helped to reduce Soviet style legislation and outmoded command economy practices, replacing these with modern legislation and market oriented policies and practices. These reforms have helped facilitate increased investment and private sector growth.

Working on these commercial law reforms, often in tandem with foreign experts, has increased the competence of CLC's staff. In addition, significant investments were made in the professional development of the staff. All experts and support staff attended professional training programs including educational programs, workshops in technical fields, managerial and administrative training, and hands-on training.

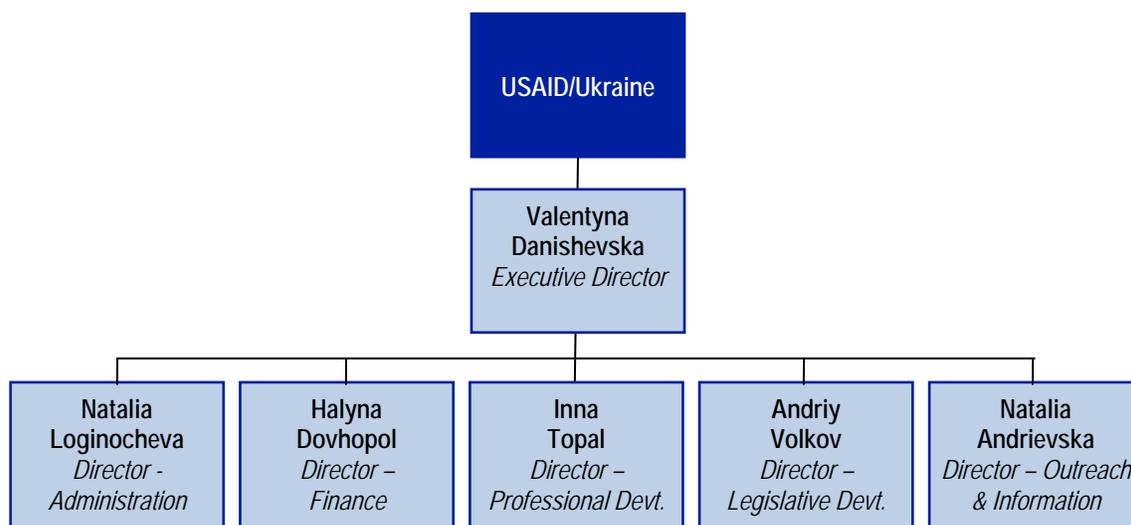
CLC's organizational structure was designed to focus on the delivery of high quality technical assistance, training and public education.

"We know that CLC is a highly professional organization that cares about the development of our civil society in Ukraine and renders all-around support to the public business sector. We hope for mutual fruitful cooperation in the future"

Yuriy Yekhanurov, former Prime Minister and previous Chairman of Verkhovna Rada Committee on Industrial Policy and Entrepreneurship



**Figure 4: Commercial Law Reform Project Staffing Plan**



A number of professionals have worked under each of these team leaders. The current number of CLC professional staff is 15. CLC selected staff through a very competitive process and was able to recruit and retain a group of top Ukrainian legal experts, training experts, and public information professionals, as well as an efficient administrative staff.

The project provided CLC with hands-on training and mentoring, as well as formal training through participation in seminars and workshops. For each legal subject matter, international experts were brought to Ukraine and were teamed with one or more CLC experts, leading to a mentoring relationship and knowledge transfer.

With the assistance of EMG, CLC developed a management and financial system that meets the standards of USAID and other donors. EMG provided training on financial management and compliance with USAID regulations. EMG ran the CLC through a practice audit and conducted post-audit debriefings for the practice audit as well as two audits conducted by Price Waterhouse Coopers. The CLC developed Personnel and Operational Manuals. The CLC passed the audits and is eligible to receive grant funding from USAID.

**CLC’s Counterparts:**

- The Verkhovna Rada (Parliament) of Ukraine Committees (on Legal Policy, on Industrial Policy and Entrepreneurship, on Economic Policy and National Economy Management, on Finance and Banking Operations)
- Ministries of Ukraine (of Economy and European Integration, of Finance, of Justice, of Education and Sciences)
- State Committee of Ukraine on Regulatory Policy and Entrepreneurship
- Antimonopoly Committee of Ukraine
- State Committee of Ukraine on Regulation of Financial Services Markets
- The National Bank of Ukraine (Central Bank)
- Supreme Court of Ukraine
- Higher of Ukraine
- Ukrainian Bank Association
- Ukrainian Mortgage Association
- Pan-Ukrainian Leasing Association
- Law faculties in leading Ukrainian universities
- National Association of Law Students
- All-Ukrainian national and regional business development associations.

CLC worked with a host of Ukrainian partners, as indicated in the adjoining text box. The CLC is valued by these organizations because as an independent, private organization it has been able to bridge the divide between governmental committees and ministries. Its counterparts rely not only on the CLC’s legislative drafting skill, but also on its complementary ability to act as an unbiased expert at



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Parliamentary hearings to present its assessment of legislative proposals. No other private, impartial, indigenous organization exists in Ukraine that can provide such services.

The CLC now has a grant under the Millennium Challenge Corporation Threshold Country Program. Under this grant the CLC is helping to streamline enforcement of judgments, but providing technical assistance to amend the Law on Enforcement of Judicial Decisions and training for the State Enforcement Service bailiffs. CLC is also working under the grant to reform the system for notaries.

The CLC has an application for a grant pending to USAID pursuant to a Request for Application. This grant would allow the CLC to continue to assist its counterparts with technical assistance and training. Current priorities for legislative drafting include the Economic Procedure Code, Joint Stock Company Law, repeal of the Economic Code, and amendments to the Bankruptcy Law.

In the longer term, CLC plans to become a sustainable organization and, among other things, consider charging for legal training and informational materials and/or other products and services to secure a stable stream of revenues. CLC is also positioned to receive grants from other donors – international and Ukrainian.

## Development of Commercial Laws

The project has been involved in developing most of the key commercial laws, amendments, and regulations in Ukraine:

### FRAMEWORK LAWS

The project helped to improve some of the laws that provide Ukraine’s basic legal concepts or court procedures.

- ***Civil Code of Ukraine.*** In addition to helping draft Book IV of the Civil Code, described below, the project proposed amendments to the Civil Code that eliminated some harmful provisions, including one that required businesses to re-register if they changed their address.
- ***Civil Procedure Code.*** The project drafted the portions regarding evidence and “provisional measures” which allow judges at the local level to prevent the infringement of intellectual property rights and prevent infringing goods from entering into commerce. The new Civil Procedural Code incorporating the CLC’s proposals was passed in March 2004.
- ***Economic Procedure Code.*** As a member of the Parliamentary working group, the CLC developed amendments to the Economic Procedure Code of Ukraine, which facilitate out-of-court settlement of commercial disputes. The CLC edited the final version of the draft Economic Procedure Code to incorporate all suggestions for amendments made by the experts prior to its publication in advance of parliamentary debate.

### INTELLECTUAL PROPERTY RIGHTS (CIVIL CODE (BOOK IV))

The project helped to develop and enact key legislation to strengthen intellectual property rights.

- ***Book IV of the Civil Code of Ukraine.*** Book IV of the Civil Code complies with the TRIPS Agreement and other international IPR protection regimes. It was enacted in January 2003.



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## ACCESS TO COURT DECISIONS

Prior to 2006, court decisions in Ukraine were not published. This led to inconsistency and unpredictability in court decisions, as judges did not know the prevailing interpretation of laws. It also led to a lack of accountability, as judges knew that no one would be able to review their decisions or rationale. The project helped to change this situation by helping to draft and enact the Law on Access to Court Decisions. The project also helped to implement the law by developing the Registry of Judicial Decisions and Case Management System, as discussed in detail in another section of this report.

- ***Law On Access to Court Decisions.*** On June 1, 2006 the Law of Ukraine “On Access to Court Decisions” took effect. This law requires courts to publicly disseminate decisions. Without this law, the question of whether the courts could publish at all was unresolved and problematic as a practical matter, as several policy makers and judges maintained that decisions could *not* be published in the absence of an enabling law. The passage of this law requires that the courts follow through with publication, and provided the necessary legal framework to ensure that publication is institutionalized. Since June 1, 2006 electronic copies of all decisions of the Supreme Court of Ukraine, high specialized courts, appellate and local administrative courts, appellate and local administrative and economic courts are filed in the Unified Registry, which presently contains 659,266 entries. The Registry can be accessed through the official web-portal of the Ukraine Judiciary at the address: <http://reyestr.court.gov.ua/>.

The Project was instrumental in drafting and steering the draft law “On Access to Judicial Decisions” through the parliamentary Committee for Legal Policy, and through the parliament as a whole. The Project worked closely with the chairman of that committee (and subsequently, Chief Justice of the Supreme Court of Ukraine) Vasiliy Onopenko. The Project organized and conducted a round table in November of 2005 at the Parliament, in partnership with the committee, in order to educate and gather support among deputies, judges, and members of the media on the importance of the law. The Necessary legislation passed, entering force on June 1, 2006. The law required the creation of a database of court decisions by general jurisdiction courts on civil, commercial, administrative and criminal cases, and the maintenance of these decisions in a Unified State Registry of court decisions. The law established a requirement that the courts make available, without restriction, public access to court decisions.

- ***Cabinet of Ministers Resolution.*** Subsequent implementing regulations were also passed. The Resolution established procedures for implementing the Registry. The Resolution established timeframes for entering decisions into the Registry (within 24 hours for Decisions generated on case management systems connected to the Registry, with weekly communication of all other decisions to the Registry administrator for entry). The Resolution, as did the law, specified that the Judicial Administration is the Registry “Holder.” Also specified, however, was the notion of a Registry “Administrator.” The differing language implicitly acknowledged that different specialized courts were (and still are) at different levels of capacity for satisfying requirements to update the registry, and by extension ratified the practice of having the Economic Courts separately maintain a Registry of Economic Court decisions.
- ***Supreme Court Methodological Recommendations on the Assignment of Cases:*** In September 2006 the Supreme Court of Ukraine prepared the draft Methodological Recommendations on case assignment for judges of all Ukrainian courts. The Recommendations sought to eliminate interference into case consideration by other judges, including those in administrative positions. The Project prepared amendments to the Recommendations to improve the concept of case assignment. In particular, the Project proposed vesting at the judges’ meeting the obligation to draft and approve the internal court regulation defining case assignment procedures (it is mandatory for the chief judges to obtain Decisions approved by the judges’ meeting).



Other key provisions of the recommendations direct courts with automated case management systems in place to introduce automated case assignment and direct courts without automated case management systems to develop clear and comprehensive principles of random case assignment. Automated case assignment reduces subjective influence upon cases and eliminates accusations against the chief judge, as well as the judge that considers the individual case. Cases are to be assigned automatically pursuant to an established method (e.g, in alphabetic order) taking into account judges' specialization, vacations, planned medical treatment, business travels etc. Additionally, at the Project's suggestion, the Recommendations contained a caution provision to eliminate case assignment by the chief judge or the chairperson of the court chamber. All Project proposals were accepted and included into the text of Methodological Recommendations, which were promulgated by the Supreme Court.

#### LEGISLATION ON FINANCE AND INVESTMENTS

The project helped Ukraine to modernize its legal framework for finance and investments by drafting several important laws and amendments.

- ***Mortgage Law.*** A mortgage law was passed in June 2003, which is an important step toward fostering long-term lending and driving down interest rates. The adoption will make it easier for small and medium size businesses to gain access to much needed credit and will facilitate the financing of private housing. The law allows for inexpensive and expedient extra-judicial foreclosure and incorporates methods for assignment of mortgages and the creation of mortgage bonds, which will be useful in creating a secondary mortgage market. The CLC was instrumental to the drafting and passing of this law. The law has allowed the financial sector to provide \$11 billion in loans backed by mortgages.
- ***Law on Leasing.*** In December 2003, a law on financial leasing passed which allows a more flexible method for financing the acquisition of capital equipment than commercial bank loans. Small and medium size businesses may more readily qualify for this financing, because the lessor remains the owner of the equipment through the lease term and may repossess the leased asset more easily than is the case for foreclosure on loan collateral. The CLC was instrumental to the drafting and passing of this law. The CLC also proposed a rational tax framework to encourage financial leasing including provisions for accelerated depreciation and investment tax credits, and will continue work to adopt the provisions that would facilitate development of leasing industry in Ukraine.
- ***Law on Appraisal of Property, Property Rights and Appraisal Activity.*** Amendments to the Law "On Appraisal of Property, Property Rights and Appraisal Activity in Ukraine" were proposed eliminating the time consuming and expensive need for mandatory appraisal of property pledged as collateral in small loan transactions. This amendment was merged into the law introduced by the National Bank of Ukraine and passed by the parliament in June 2003. The CLC was instrumental to the drafting and passing of this law.
- ***Law on Forming and Circulation of Credit Histories.*** The credit information and histories law that provides for establishment of a private entity open to lenders who choose to participate and include positive as well as negative information regarding a borrowers' credit performance was passed in June 2005 with the CLC playing the leading role.
- ***Law On Mortgage Bonds.*** This initiative offers proposals to develop a system for mortgage bonds

"The CLC helped to draft the Law on Credit Histories and helped us pass the law through Parliament. To help mobilize support for the law, they organized meetings with diplomats, parliamentary committees on banking and finance, and organizations that work in the market (with banks, insurances, credit unions, and pay card businesses.) We prepared information that we gave to the banks and presented seminars and there provided information on international best practices of credit bureaus. In the Ukraine, a credit history. was a completely new idea. Now, 50 banks are using credit bureaus."

Antonina Palamachuk, General Director,  
The First Credit Bureau of Ukraine



and the pooling of loans for secondary market transactions to provide liquidity to lenders to meet the demand for mortgage financing was passed in December 2005.

- **Law on Securing Creditors' Claims and Registration of Encumbrances.** A new secured transactions law passed in November 2003 containing an expansion of the concept of security interest and rights that can be used as collateral, defining proper registration procedures and priority provisions, reducing the information required for registration of a security interest, improving the mechanisms for enforcement of collateral, and lessening the opportunity for court interference with enforcement of collateral. The CLC was instrumental to the drafting and passing of this law.
- **Law on Concessions.** The CLC proposed amendments to the Law “On Concessions” for improving the transfer of state and communal property to private entities awarded a concession, making the procedures less complicated and time-consuming, and establishing certain guarantees protecting the rights and interests of concessionaires were passed by the Parliament in the fall 2002 session.
- **National Bank Resolution on Lending.** The CLC helped draft the NBU Resolution that required banks to provide borrowers with complete information about lending terms and conditions. The Resolution went into effect on June 5, 2007.
- **Law on Factoring.** The project and CLC drafted the Concept for the Draft Law on Factoring and submitted it to the State Commission for Regulation of Financial Services.

#### COMPANY LAW AND CORPORATE GOVERNANCE

The project helped to streamline business start up, particularly registration. The project is also working to develop a modern Joint Stock Company law that meets international standards for corporate governance.

- **Law “On State Registration of Legal Entities and Physical Entities – Entrepreneurs”.** In May 2003 a unified business registration law was passed providing a single venue for the registration of all business entities, formalizing and reducing the number of documents that must be submitted with the registration application and reducing the time it takes for a business to register. It also facilitates identification of legal entities, disclosure of authorized signatories, and service of process in civil actions. The CLC together with its partner – the State Committee on Regulatory Policy and Entrepreneurship – worked on amendments to the law during the second reading. The CLC worked to further improve the draft law, which resulted in implementation of a “one stop shop” for registration of businesses. The project helped to change the philosophy of business registration from controlling businesses to regulating businesses. There are now 1,199,540 businesses registered in Ukraine, an increase of 22 percent since the law was enacted in 2003.
- **Law “On Joint-Stock Companies”.** CLC legal experts analyzed possible versions for this draft law development, and envisioned two approaches to developing legislation that will regulate companies:
  - A draft law may be developed using the existing draft “On Joint Stock Companies”.
  - An alternative is to develop a new draft law “On Public Companies” (open JSCs) which would regulate the operation of joint stock companies with listed stock.

“I am much grateful for the CLC’s active participation in preparation of this draft law “On State Registration of Legal and Physical Entities - Entrepreneurs” for the second reading. Suggestions and comments made by the CLC experts were implemented in the final version of the Law and contributed to its great support.”

Y. Yekhanurov, Chairperson, Verkhovna Rada Committee on Industrial Policy and Entrepreneurship

After the draft law was registered, CLC experts were invited to be members of the working group set up at the VR Committee on Economic Policy to elaborate the draft law. The CLC have prepared the Analytical Note to the draft law, which analyzes how the draft law complies with the EU legislation and practices, and how the minority shareholders’ rights are protected, etc.



- ***Protection from Illegal Corporate Raiders.*** CLC assisted the American Chamber of Commerce to draft the White Paper on illegal corporate raiders. The document contains information that highlights issues and remedies which require the joint efforts of Ukrainian executive and legislative authorities, the foreign and domestic investment community, representatives of the judiciary, as well as experts and scientists who are engaged in the sphere of economic and corporate governance reform. The recommendations put forth are directed towards the prompt and effective implementation of a transparent system of property rights protection governed by the rule of law in Ukraine.

#### **PRODUCTION SHARING AGREEMENTS**

- ***Law on Production Sharing Agreements.*** USAID asked the project to assist the Ministry of Economy with the development of legislation on Production Sharing Agreements that would reflect international best practices. An international expert was brought in to work with the CLC on the development of legislation, and a draft law was developed. The draft law was presented to the Ministry of Economy and the law and all materials were submitted to the USAID project “Consulting PSA Support to Ukrainian Government” to undertake all further efforts. The UCL project expert also provided comparative analyses of the Production Sharing Agreement legislation of Ukraine, Kazakhstan and the Russian Federation, and a legal analysis of the conduct of state tenders for exploration and production rights, as well as Model Production Sharing Agreements for India, Pakistan and Turkmenistan, which we have translated into Ukrainian for use by the Government of Ukraine.

#### **BANKRUPTCY LAW**

- ***Law “On Restoring the Debtor’s Solvency or Declaring It Bankrupt”.*** The CLC drafted key amendments to the bankruptcy law passed in March 2002, which set clear deadlines, transparent publication rules, differentiates post-bankruptcy creditors from pre-petition creditors greatly enhancing the possibility for reorganization, and clearly defines the status and powers of arbitration managers.
- ***Lobbying against “bad” draft laws concerning bankruptcy.*** The CLC provided 22 expert opinions to stop laws and amendments relating to bankruptcy from being passed by the Verkhovna Rada. None of these laws and amendments was enacted.
- ***HECU Presidium explanatory note.*** The CLC helped prepare the HECU Presidium explanatory note “On Practical Application of the Law ‘On Restoring the Debtor’s Solvency or Declaring Bankruptcy.’”

#### **ENFORCEMENT OF JUDICIAL DECISIONS**

- ***Law “On Enforcement of Judicial Decisions”.*** The CLC is preparing Amendments to simplify burdensome and non-essential information in writs of execution, eliminate pretexts arbitrarily used by bailiffs for not enforcing judicial decisions, and remove formal obstacles to seizing a judgment debtor’s property to recover on a money judgment.
- ***Supreme Court Presidium Resolution.*** The CLC helped prepare the Supreme Court Presidium Resolution “On Practical Application of the Law ‘On Judicial Enforcement.’”
- ***Lobbying against “bad” draft laws concerning enforcement of judicial decisions.*** The CLC provided 20 expert opinions to stop harmful laws and amendments relating to enforcement of judicial decisions from being passed by the Verkhovna Rada. None of these laws and amendments were enacted.



## Training Legal Professionals and Businesspersons

Good commercial legislation is only the first stage of improvement of the commercial law environment. The second stage is to properly implement the legislation. Thus, training is necessary to ensure that those who must implement the law – judges, government bureaucrats, lawyers, and businesspeople – understand the law and are able to properly apply it.

Thanks in part to the efforts of the project, Ukrainian legal professionals, businesses, and the public have come a long way in the past few years in terms of their understanding of commercial laws and their ability to apply them.

"Several months ago our lawyers got an opportunity to attend your training course. We were quite satisfied to take part in this professionally useful and well-prepared venue."

*O. Pysarenko*, Senior Legal Adviser, ELIT CONTRACT Legal Bureau



*Unique professional development program for state enforcement officers run by the Commercial Law Center (Luhansk)*

The CLC conducts workshops and continuing Legal Education events to develop the capacity of Ukrainian lawmakers and institutions, and to initiate and implement market-oriented commercial law reforms. The Center has worked closely with various counterparts including the Ministry of Economy, the Ministry of Finance, the High Economic Court, the Ministry of Justice, and several Ukrainian associations. In partnership with the major law schools of Ukraine, the CLC has also completed a model commercial law curriculum. The CLC has conducted training workshops for judges to educate them in applying the market principles introduced by the new Civil Code, the Bankruptcy Code, and other new legislation. Seminars have been held for state bailiffs to improve the execution of judgments rendered by the courts.

Beginning in 2002, the project conducted regular training of State Enforcement Officers on enforcement of judgments. This practical training was aimed at providing the Officers with an understanding of the Law on Execution of Judgments and the procedures that they should apply in enforcing judgments. This training was subsequently included in the grant that the CLC received from USAID to improve enforcement of judgments under the MCC Threshold Country Program.

The project targeted businesses for practical training on commercial law issues so that they could enter into enforceable agreements and would understand how to enforce those agreements. These training programs



*Yuriy Yekhanukov, then Governor of Dnipropetrovsk Oblast, at the SME workshop (CLC Legal Education Program for Entrepreneurs), July 2005*



have been conducted in cooperation with chambers of commerce, business associations, and business support organizations, and have taken place throughout Ukraine.

The project provided comprehensive and practical training for judges and lawyers in many aspects of commercial law reform, including general commercial law, intellectual property rights, bankruptcy, court procedures, enforcement of judgments, and company law.

To ensure that Ukraine has well-trained commercial lawyers in the future, the project provided training and technical assistance to improve the commercial law curriculum in Ukrainian law schools. In addition, CLC helped the Law Department of the National University Kyiv-Mohyla Academy to develop a Legal Clinic Consulting Center. The project also assisted a commercial law moot court competition for law students. The CLC also had student interns working on commercial law reforms under the guidance of CLC professionals.

The project also trained journalists so that they could effectively inform SMEs about commercial law developments. Training activities included hosting regular press-clubs in Kyiv and other regions of Ukraine, holding Internet-conferences (with Interfax-Ukraine) and roundtables.

The trainings included:

- 89 International and National Conferences and Training Seminars
- 6 workshops for State Registrars reaching over 560 employees
- 15 workshops, five of which were held jointly with the High Economic Court, and 29 other training events to address specific areas of commercial law as well as more general topics of legal drafting and the role of legislation in a market economy. 30 seminars for over 900 representatives of small and medium enterprises held in different regions of Ukraine.
- Workshops under the continuing legal education program for Economic Court judges.
- 12 seminars for business persons covering “Contractual Law”, “The Resolution of Business Disputes” and “Legal Regulation of Settlements in Business”.
- Assistance in establishing Commercial Law as a legal specialty in 6 Ukrainian Schools of Law



*Representatives of Supreme Court, High Economic Court, VRU, High Judiciary Qualification Commission, USAID, and CLC on a Study Tour with the International Association of Court Administrators Annual International Conference in Verona, Italy. 2006*

- Trained over 80 Journalists on Commercial Law Topics
- Direct technical advisory services and training of Ukrainian insolvency practitioners,

The project also sponsored or assisted in important study tours, including:

- Legislative Drafting” training program, United States
- Commercial Law Curriculum Working Group training program, Spain
- International Conference on Credit Bureaus, Kazakhstan
- Judicial Enforcement, Germany
- Annual International Association Of Court Administrators International Conference Italy

A table setting forth the date, subject matter, and participants in each study tour is attached as Annex B.



## Public Outreach about Commercial Law and Procedures

The project, through the CLC, implemented a creative, effective public outreach and information dissemination program. Preparation and dissemination of information regarding the laws played a key role in providing legal practitioners, entrepreneurs and the public with the tools necessary to understand and properly apply the law, make well-informed business decisions and protect their rights in a market economy. The CLC has provided legal professionals with in-depth information and analysis of commercial law issues, through its regular publications. It has also provided businesses with easy-to-use guides to commercial laws.

The CLC’s publications included:

- **Guides for businesses.** More than 2,000 copies of the Center’s four volume popular series, “Legal ABC’s for Entrepreneurs”, have been distributed to key stakeholders. The publication includes topics such as Licensing of Entrepreneurial Activities in Ukraine, How to Register Businesses, A Simplified Taxation Systems for Subjects of Entrepreneurship, and How to Protect Your Rights and Interests in Economic [Commercial] Courts. These guides inform SMEs about commercial law developments in a form that is easily understood by owners and managers of SMEs. They introduce concepts and provide step-by-step instructions to apply recent legislative developments.
- **Commercial Law Journal.** The CLC publishes, on ad hoc basis, a commercial law journal that addresses a particular legal issue(s).
- **Commercial Law Center Newsletter.** The CLC publishes the “Commercial Law Center Newsletter,” quarterly. It is the publication through which the CLC informs partners and others in its large distribution list about its current activities and recent legal developments. It is also useful in attracting new partners for future work with the CLC.
- **Guides for lawyers.** The project provided several guides for lawyers in various commercial law areas, to enable them to understand how to properly apply the laws. These include manuals on Competition Law and Bankruptcy.
- **Materials for the Media.** The project, through the CLC, regularly issued press releases on commercial law developments and events. The project also worked closely with leading Ukrainian law periodicals to publish articles by the CLC staff and others on commercial law issues.
- **Website.** All educational and technical reference materials have been placed on the CLC web site ([www.commerciallaw.com.ua](http://www.commerciallaw.com.ua)), the website is updated on a daily basis to reflect all the major developments in the commercial law sphere.



Figure 5: Project Website “Publications Page”

The CLC’s publishing statistics are summarized above on page 7.

To ensure that reforms and trainings meet the demand and needs of counterparts, the CLC conducted *surveys* of judges, lawyers, and businesses. For example, in 2002 the project conducted a survey of attorneys and businesses regarding the effectiveness of procedures for the enforcement of judicial decisions has been completed and obstacles to enforcement.



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The project also began the *CLC Legal Club*, which brings together leading lawyers, judges, academics, CLC experts, and law students to discuss important commercial law issues. The Club is quite popular and has discussed issues like state registries, void transactions, factoring, business entities' rights, and court administration.

The project helped to foster a new culture of dialogue on policy and legislative issues. The project organized, participated in, and/or facilitated numerous roundtables and discussions on commercial law topics. In the early stages of the project, the project organized and facilitated most of these dialogues, but in recent years the GoU, Verkhovna Rada, and others have been organizing the discussions and there appears to be a culture of dialogue, openness, and cooperation in commercial law development. Recent examples of dialogue include a roundtable on bankruptcy proceedings and ongoing dialogue and collaboration on a Joint Stock Company draft law.

## Commercial Court Administration

The project provided a variety of assistance to improve court administration in Ukraine's economic courts. In addition to training judges on how to apply laws and procedures, the project helped to develop a Registry of Judicial Decisions and a Case Management System to provide, among other things, automated case assignment.

### BACKGROUND

Ukraine's courts are widely believed to be corrupt. According to the Millennium Challenge Corporation Baseline Survey in 2007, only 10 percent of Ukrainians have confidence in the judicial system; the unfairness of the judicial system was viewed as a serious problem by 79.3 percent of respondents; and 49 percent perceived the court system as corrupt – the worst rating which was followed by the Prosecutor's Office (42.9 percent), and notaries (22.8 percent).<sup>10</sup>

There are many reasons for the high degree of corruption: courts are understaffed, judges are underpaid, the university system that produces judges is itself corrupt, judges are not accountable for their decisions, and business interests and others influence case administration and decisions. The project addressed the latter two problems by helping to establish a Registry of Judicial Decisions and a Case Management System with automated case assignment.

Prior to 2006, court decisions in Ukraine were not published. The publication of decisions is important to the development of a uniform judicial practice that ensures predictability, uniformity and stability of judicial decisions and the legal reasoning of judges in like or identical cases. (For example, in practice, shareholder's rights were treated differently by different judges and courts in cases involving cooperatives or privatizations). Additionally, the publication of decisions is enormously useful to law firms and attorneys, as well as business, (notwithstanding that Ukraine's civil law system does not recognize judicial decisions as legal precedent), because it allows lawyers and business to see at least how *not* to make the same mistakes in organizing their transactions. As importantly, the complete transparency of the judicial decision-making process exposes questionable judicial practice, insufficiencies in legislation, and potential corruption to the public and the legal profession. Transparency leads to improvements in the law, the practice of law, and the resolution of commercial disputes. Publication serves the judiciary as well, disciplining judges in their reasoning and application of the law, allowing broader sharing within the courts of judicial practice, and combating perceptions of corruption in the courts.

The automated assignment of cases is integral to reducing the influence of the Chief Judges of courts over the disposition of individual cases, and results in much greater efficiency in the administration of courts

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<sup>10</sup> MCC Baseline Survey for Ukraine 2007, p. 12 & 41.



by relieving the Chief Judge of what is a vastly time consuming and onerous administrative task. Perceptions of corruption in the assignment of cases are inordinately high for Ukraine, and the role of the Chief in assigning cases is widely considered to be the most susceptible to the exercise of “telephone justice.” Most advanced and developed court systems utilize some form of random assignment, and automating this function through the development of an additional functional module to be added to the existing “Dilovodstvo” CMS was the most efficient and effective way to reduce or eliminate the role of Chief Judges.

In developing a Registry of Judicial Decisions and a Case Management System with automated case assignment, the project worked with Ukrainian counterparts to develop legislation to enable the systems to properly function. The project then helped to implement the Registry and System.

## **DEVELOPING LEGISLATION**

Development and passage of underlying legislation was a fundamental and ongoing concurrent part of efforts in judicial reform. The project helped to draft the Law on Access to Judicial Decisions and steer it through the Verkhovna Rada Committee for Legal Policy, and through the parliament as a whole. The legislation passed, entering force on June 1, 2006. The law requires the creation of a database of court decisions by general jurisdiction courts on civil, commercial, administrative and criminal cases, and the maintenance of these decisions in a Unified State Registry of court decisions. The law established a requirement that the courts make available, without restriction, public access to court decisions.

The project also helped to develop regulations and rules to implement the law. A Cabinet of Ministers Resolution established procedures for implementing the Registry, established timeframes for entering decisions into the registry, and enabled the Economic Courts to separately maintain a Registry of Economic Court decisions. Supreme Court Methodological Recommendations on the Assignment of Cases provided that judges could not interfere in case consideration by other judges, and provided further guidance on case assignment as well as direction to courts to introduce automated case assignment.

## **DEVELOPING THE REGISTRY OF JUDICIAL DECISIONS AND CASE MANAGEMENT SYSTEMS FOR THE ECONOMIC COURTS**

Initial USAID tasks called for the creation of a CMS and establishment of a Registry of Commercial Court cases in select pilot courts in the Economic Court System. However, closer analysis of existing court administration practice and the assessment of needs in the Economic Courts revealed that greater successes could be achieved by building upon an existing CMS that was already in place in the Economic Courts. The Project advocated shifting strategy in order to considerably and significantly expand the reach of both publication and improvements not only in case assignment, but in overall court administration generally.

During 2005, the Project worked closely with the High Economic Court to gather information sufficient to assess the current status of the Case Management System in the economic courts, including a number of site visits to selected courts at both the appellate and trial level to ascertain the level of usage of CMS and the courts’ level of computerization.

In order to establish a basis to determine how best to provide for improving the use of CMS, and for the Registry of Judicial Decisions, the Project contracted with an independent software firm to conduct an assessment of the existing programs. The initial assessment favorably evaluated the CMS, but recommended that some additional work be conducted in order to improve the system, and especially, to complete and enable the random assignment function. The assessment less favorably evaluated existing Registry software, and recommended that considerable software architecture improvements and the migration of the database to a more contemporary program, in addition to the development of a number of features to improve workflow, the generation of reports, etc.



The Project determined that the two components, Registry and CMS, were logically best approached in conjunction with one another due to the synergy realized by doing so. The CMS governs internal court activities, including the receipt and registration of complaints and court filings, as well as the electronic archiving of all case filings and even digital recordings of oral arguments. Most importantly, the CMS, when utilized at full capacity, was determined to be the platform on which *all* judges and judicial support staff generate case documents and final decisions (in contrast with some courts, where the level of technology is lower and word processing software is used). Ultimately, the CMS was required of judges for the writing of decisions, and the universal usage significantly speeded the publication of decisions. CMS, in its final form a supported by the Project, automatically publishes, *daily*, decisions to the Registry. This ensures complete and total public access to all decisions by all Economic Courts on a virtually real time basis.

### Assistance to the Economic Courts of Ukraine in developing CMS and Registry

Three separate procurements were identified to provide this support. Software development for both the CMS and Registry tasks was tendered together, in order to integrate the two functions and provide that, once completed, the two functions would seamlessly and automatically realize both expected outcomes. Two separate tenders were designed to provide hardware for the Registry and the CMS respectively. Hardware procurement for the Registry provided servers which store the Registry data and make it freely available and context searchable through the HECU website. The hardware procurement for CMS envisioned providing sufficient capacity in each individual Economic Court to enable the universal use of the Dilovodstvo CMS, and the creation of a wide area network (WAN) encompassing the entire commercial court system. The development of a WAN enables daily updates to the registry and superior courts, and data sharing between all courts in the economic court system.

The software developed: 1) created and provided for access to information of cases contained in the “Court Dilovodstvo” database; 2) developed a site “Access to court decisions of economic courts” via the internet; 3) developed scientifically substantiated average standards for case consideration depending on category (specialization, e.g., bankruptcy, intellectual property, transactions, ect.), and based on these standards created an algorithm for automated case assignment; and 4) improved the program’s text editor; and also addressed several other, minor issues with the existing system.

Upgrades to the “Dilovodstvo” CMS resulted in substantial improvements to the system. Its ability to manage workflow and to generate statistics and reports is superior to the previous version. The most valuable feature is the option for automated case distribution between judges. It is a component of “Dilovodstvo” system that makes possible to randomly distribute cases between judges in line with an algorithm developed that takes into account judicial specialization and case complexity in assigning cases. Because commercial courts are organized around discreet specialized practice areas (e.g., bankruptcy, transactions, intellectual property, etc.), it was an absolute requirement that the random assignment function take into account specialization. Because many chief judges, and rank and file judges, expressed concerns about highly complex cases being assigned to inexperienced judges, the function was also designed to assess case complexity. Using historical data and performing comparisons to a statistically valid level of sophistication, the function is able to determine case complexity based on the number of legal issues the amount of time that should be committed to a case.

The High Economic Court (HECU) Registry of judicial decisions, and case management systems “Dilovodstvo” (CMS) therefore are two components of a unified court automation strategy. The HECU Registry is supported locally at the High Economic Court, and is capable of more flexible context searches than the registry maintained by the State Judicial Administration (the “Unified State Registry”). Economic Court decisions are “fed” to the Unified Registry as well. The Unified Registry can be accessed through the official web-portal of the Ukraine Judiciary to the address: <http://www.reyestr.court.gov.ua/>. Search can be made by the following parameters: court name,



judge's name, litigants' names, type of court, form of court decision, case number, decision-making date, etc. The HECU web site contains the HECU database at <http://www.arbitr.gov.ua/>.

It bears mention that as the CMS was developed by the Court Information Centers (CIC) of the Economic Courts, no training on the CMS was conducted by the Project. This role, in addition to maintenance and administration of the IT systems in the economic courts is and was performed on an ongoing basis by the CIC.

As a result of the project's assistance, the public has access to judicial decisions. As of the preparation of this report, 58,556 decisions of the High Economic Court are available and fully context searchable on the HECU website. More impressive are the quantity of commercial court cases that are available through the Unified Registry: of 2,032,131 total cases, 900,475 are from the economic courts.

The random assignment of cases is being piloted in only one Chamber of the High Economic Court as of this writing, although the software is capable of performing this function throughout the economic courts. It is believed that once a new Chief Judge is nominated and confirmed, this function will be expanded throughout the system.

### Public Outreach

On August 3, 2006 a press conference was held in the High Economic Court of Ukraine with the participation of US Ambassador to Ukraine William Taylor. It was a milestone event for the Ukrainian media, US Ambassador William Taylor, Chief Justice of the High Economic Court Serhiy Demchenko, Supreme Court Justice Barbara and representatives of the Project spoke on the registry and court reform, and answered questions. Over 50 reporters were present at the press conference, which was widely covered in electronic and print media.



*US Ambassador William B. Taylor, Chairman of the High Economic Court of Ukraine Serhiy Demchenko, and CLC Director Valentyna Danishevskaya speak at a press conference about the launch of the Registry of Judicial Decisions*

On November 13-15, 2006 the annual IACA Conference was held in Verona, Italy, attended by 130 judges, politicians, legal professionals, and academics from over 30 countries, including the USA, Italy, Canada, the UK, the Netherlands, Moldova, Ukraine, Russia, Macedonia, Egypt, Bosnia, and others.

Ukraine's delegation included: Deputy Chief Justice of the Supreme Court of Ukraine, Chair of the Supreme Court of Ukraine Administrative Chamber Viktor Kryvenko; MP, member of the Verkhovna Rada Committee for Justice Vladyslav Zabarsky; Justice of the High Economic Court of Ukraine, member of High Judiciary Qualification Commission Ihor Vasyschak; CLC Director Valentyna Danishevskaya; Chief of Party of USAID Ukraine UCL Project David Greer, USAID Legal Advisor Gleb Kryvenko; and UCL Project Legal Advisor Lesia Kochergina. Issues discussed at the Conference covered



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the automation of case management and case assignment, and the improvement of court management by instituting professional court administrators, among other topics. A significant part of the conference discussion was focused on the issues of automated case assignment as a guarantee of judges' independence and a safeguard against administrative pressure. The participation of this delegation confirmed to senior policy makers on issues of court reform that the path Ukraine has taken with USAID assistance reflects international practices.



## PROJECT IMPACT

The project has been instrumental in modernizing commercial laws and streamlining the court and administrative procedures that businesses must deal with. This has helped to improve the overall business environment in Ukraine, as evidenced by several important indicators. Since 2004, Ukraine has steadily improved in the World Economic Forum Global Competitiveness Index. In the EBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS), Ukraine improved in almost every indicator of the business environment between 2002 and 2005.<sup>11</sup> While Ukraine's overall ranking in the World Bank Doing Business Report has not improved, indicators have improved in several Doing Business areas, including Getting Credit, Starting a Business, and Registering Property.

The project's assistance also helped Ukraine to move forward in several specific areas.

### IMPROVED LEGAL FRAMEWORK FOR FINANCE

As detailed in previous sections of this report, the project helped to develop and implement laws on mortgages, secured transactions, mortgage securities, and financial leasing, and credit bureaus. These laws have spurred rapid development of financial institutions, financial products, and access to finance.

- \$2.5 billion debt secured by mortgages<sup>12</sup>
- Growth in credit has averaged about 40 percent since 2001<sup>13</sup>
- Legal rights of lenders improved to a score of 8 out of 10, which is better than the OECD average score of 6.4.<sup>14</sup>
- Domestic credit to the private sector/GDP increased to 60% in 2007 from 25% in 2004

### IMPROVED ENABLING ENVIRONMENT FOR STARTING AND OPERATING A BUSINESS

As discussed above, the project helped to develop the Law on Registration of Businesses and Joint Stock Company Law. The project also provided training for judges, lawyers and businesses on these laws. As a result of the laws and their proper implementation:

- Number of days to start a business has been reduced from 40 to 27<sup>15</sup>
- Business registration increased from 981,000 firms in January 2004 to 1,199,540 as of April 2008<sup>16</sup>
- Market capitalization of companies listed on Ukraine Stock Exchange increased from \$6 million

"We would like to express our sincere gratitude for the efforts undertaken by the Commercial Law Center in the area of legislative regulation of entrepreneurship. Legal workshops and conferences bring fruitful results: discussions of the lawyers give rise to new ideas to improve legislative framework. The Legal ABCs for businesspersons published by the CLC are extremely popular among the Association members and other businesspersons. The ABCs are written in a manner to be a good guidance for lawyers providing legal services to businesspersons. Such CLC efforts are necessary for business development in Ukraine."

N. Kozhevina, General Director, UNITY Association for the Development of Private Entrepreneurship in Ukraine

<sup>11</sup> EBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS), February 2006.

<sup>12</sup> Dyad'ko, Yevhenia, Roseman, Gary, The Current State of Ukraine's Mortgage Market, Housing Finance International, Mar 2007.

<sup>13</sup> KPMG, Investment in Ukraine, 2007.

<sup>14</sup> World Bank Doing Business 2008.

<sup>15</sup> World Bank Doing Business

<sup>16</sup> State Statistics Committee of Ukraine



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in 2000 to \$40.3 million in 2006<sup>17</sup>

- Foreign direct investment in Ukraine increased from \$595 million in 2000 to \$5.6 billion in 2006.<sup>18</sup>

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#### **IMPROVED PROCESS FOR CLOSING A BUSINESS**

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Through direct technical advisory services and training of Ukrainian insolvency practitioners, the CLC's staff has contributed to the settlement of more than 60 bankruptcy cases, building on prior work to overhaul Ukraine's insolvency legislation and bankruptcy infrastructure

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#### **TRANSPARENT JUDICIAL DECISIONS**

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Universal transparency and public access to judicial practice and decisions is a direct result of the efforts of the Project. As a result of the legislation and assistance to the Economic Courts, ongoing publication of decisions is a simple fact in Ukraine. As of the preparation of this report, 58,556 decisions of the High Economic Court are available and fully context searchable on the HECU website. More impressive are the quantity of commercial court cases that are available on through the Unified Registry: of 2,032,131 total cases, 900,475 are from the economic courts. Although the commercial courts are just 38 of Ukraine's 666 total courts, economic cases account for nearly half of the total published decisions, an achievement that would not have been realized without USAID assistance. And without the legislative drafting assistance the Project provided, this level of general transparency might never have been realized this rapidly in Ukraine.

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#### **RANDOM ASSIGNMENT OF CASES**

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The random assignment of cases is being piloted in only one Chamber of the High Economic Court as of this writing, although the software is capable of performing this function throughout the economic courts. It is believed that once a new Chief Judge is nominated and confirmed, this function will be expanded throughout the system.

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#### **PUBLIC-PRIVATE DIALOGUE**

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The project helped to institutionalize public-private dialogue on important laws and policies. The project and CLC typically brought the private sector into development of laws, through participation in working groups, public hearings, or public education activities. The Government of Ukraine and Verkhovna Rada saw the benefits that dialogue brings and they now often instigate dialogue with the private sector and legal experts when developing legislation.

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<sup>17</sup> World Bank, Ukraine Data Profile

<sup>18</sup> World Bank, Ukraine Data Profile



## LESSONS LEARNED AND RECOMMENDATIONS

### Lessons Learned

#### 1. DEVELOP INDIGENOUS CAPACITY FROM PROJECT INCEPTION

The project began with a goal of developing a sustainable Ukrainian organization to provide commercial law drafting, training and outreach. Thus the contractor and the Ukrainian staff were committed from day one to developing staff and management capabilities to provide the technical assistance. The contractor and all of its expatriate experts were charged with training and mentoring local staff and developing a sustainable Commercial Law Center. The project also had a sustained focus on developing Ukrainian counterparts' capacity to develop and implement commercial laws. Thus, the project provided a strategic training program for legislative drafters, policymakers, judges, lawyers, and businesses, along with constant advice and support on issues that arise as legislation is implemented.

As a result, at the end of the project the Commercial Law Center is a well-managed institution with Ukrainian experts that are working at a level of international experts. The CLC has grants from USAID and the MCC to provide technical assistance and training. Project counterparts are able to draft effective commercial legislation, engage in dialogue on policy issues, and properly implement laws.

#### 2. DEVELOPING A SUSTAINABLE INSTITUTION REQUIRES A VARIETY OF ASSISTANCE

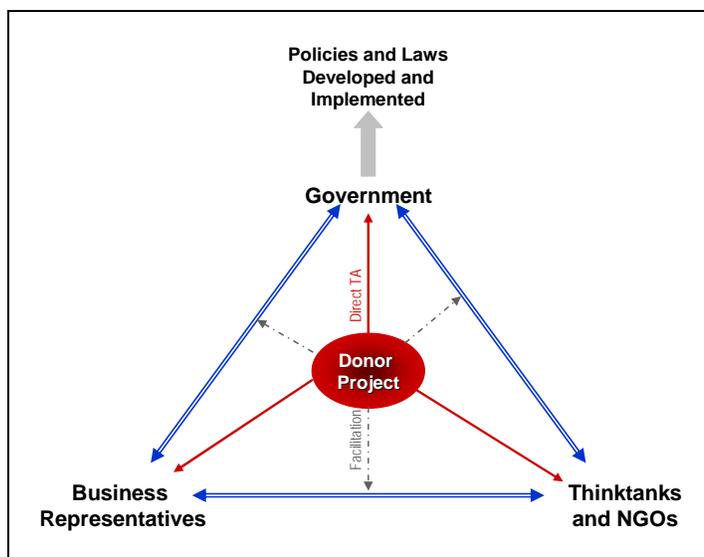
The project provided the CLC with training, mentoring, and consulting on management and technical issues. This assistance was provided by a resident Chief of Party and expatriate short-term subject matter experts. This hands-on training and regular feedback on performance helped the CLC steadily develop outstanding capabilities in delivering technical assistance and management and financial capabilities that meet USAID standards for direct grantees.

#### 3. BE FLEXIBLE IN PROVIDING TECHNICAL ASSISTANCE

The project had broad goals to help improve commercial laws in Ukraine. This allowed the project to be flexible in providing technical assistance based on continual evaluation of demand for reforms and assistance by our counterparts. For example, the project worked closely with financial institutions and the National Bank to identify laws that they wanted to develop or amend. Based on this demand the project was able to quickly begin assistance to develop key financial legislation like the laws on mortgages, leasing, appraisal of property, credit histories, mortgage bonds, and secured transactions. By not targeting certain laws in the task order, USAID ensured that the project would not waste time fighting losing battles to enact and implement legislation that the Ukrainian counterparts did not necessarily demand or support.

#### 4. DONOR PROJECTS CAN HELP ESTABLISH SUSTAINABLE TIES BETWEEN GOVERNMENT, BUSINESS, AND INDIGENOUS SUPPORT ORGANIZATIONS

The project facilitated important permanent cooperation and relationships between





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governments of different levels, the business community and NGOs, think tanks, and other support organizations. This cooperation, as depicted in the figure in the adjoining text box, helps a country to develop sustainable means to develop quality policies and laws. By providing research, analysis, drafting expertise and other assistance, the think tanks, NGOs, and other experts can support business representatives and government to develop commercial laws and regulations that meet the goals of regulating business activity while fostering growth. Projects like UCL can provide assistance to strengthen each of the three types of institutions and facilitate their cooperation.

#### **5. FACILITATE A COLLABORATIVE PROCESS IN LEGISLATIVE DRAFTING**

The project and CLC assisted working groups to draft legislation. Most of the working groups were organized by the GoU or Verkhovna Rada, and the project successfully encouraged them to consult with representatives of the business community, judiciary, and attorneys in developing legislation. Means for accomplishing consultation and collaboration included workshops, circulation of draft laws, and inclusion in working groups. This consultation and collaboration has become ingrained in GoU ministries and the Verkhovna Rada and they are now collaborating with stakeholders in most legislative development.

#### **6. ELIMINATING BAD PROPOSALS FOR LAWS IS AN IMPORTANT FUNCTION OF A LEGAL REFORM PROJECT**

The project spent a significant amount of time helping to eliminate proposals for legislation in the Verkhovna Rada that would have hampered economic development and hindered the ability of businesses to grow. The project's efforts included providing opinions on the laws, advocating for rejection of the proposed laws, and recommending alternatives. Eliminating poor legislation is often as important as developing new, high quality legislation as bad laws and amendments can do great damage.

#### **7. USAID PROGRAMS CAN BE COORDINATED THROUGH SEPARATE PROJECTS**

There has been a move in recent years toward consolidated, large economic growth projects that cover numerous sectors. The advantage to these projects is economy of scale in administration and the ability to connect several technical areas (e.g., providing assistance in pension reform with capital markets and commercial law reforms under the same "roof"). The varying programs can be well coordinated, e.g. industry sector development can be coordinated with commercial law reform. However, these projects in some cases do not develop sufficient focus and sustainability in certain areas. Separate projects can bring specialized expertise to a technical area or counterpart along with a focus on a limited set of outcomes. The USAID Ukraine Economic Growth programs demonstrated that separating projects into specialized areas does not mean that they will not be well coordinated. The UCL project worked closely with the USAID Capital Markets project, Access to Credit Initiative, Trade, Investment and Business Acceleration Activity, and Rule of Law Projects. In most cases, the project and CLC provided legislative drafting assistance for laws that were necessary for the other projects to move forward toward their goals.

#### **8. IMPLEMENTATION OF LAWS REQUIRES A HOLISTIC APPROACH**

Proper implementation requires a holistic approach with various activities, including an information and awareness campaign, training of judges, government officials, lawyers, and businesses in the new law, preparation of new manuals and procedures, and monitoring implementation and identifying problems and best practices. Implementation should have more emphasis in future commercial law reform programs in Ukraine.



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## **9. INFORM REFORMS WITH INTERNATIONAL EXPERIENCES**

The project disseminated relevant information on the reform experiences of other countries, particularly others in transition. This allowed policymakers to draw upon evidence to make more informed choices about policies and laws. However, the experiences of other countries cannot be blindly applied: it is important to consider that solutions that work in one context need to be adapted to suit another.

### **Recommendations for Further Commercial Law Reforms in Ukraine**

#### **1. INCREASE THE USE OF ASSESSMENTS AND DIAGNOSTICS TO GUIDE LEGAL AND REGULATORY REFORMS**

Assessments and diagnostics are valuable tools to identify priorities for reform, develop demand for reforms and gain commitment from stakeholders, identify and analyze the main stakeholders, and collect baseline data against which the outcomes of reforms and projects can be measured. Although tools and methodologies for commercial law and regulatory assessments and diagnostics abound<sup>19</sup>, there has been little use of these tools in Ukraine. Future projects should use such tools and build the capacity of governments, business associations, consulting firms, universities, and NGOs and think tanks to carry out their own assessments of the business environment. They should also build on the work done by the USAID BIZPRO project to establish Regulatory Impact Assessment (RIA) and apply RIA to commercial laws.

#### **2. FOCUS ON IMPROVING PROCEDURES AND PROCESSES TO STREAMLINE CASES.**

Ukraine continues to suffer from slow and difficult procedures to resolve legal issues. Thus, future commercial law reform work should focus on improved procedures to streamline cases. For example, reforms of the bankruptcy law should include setting deadlines for certain court procedures, eliminating other unnecessary procedures, and providing creditors and trustees with more power to administer assets without court involvement.

#### **3. FOCUS ON IMPLEMENTATION OF LAWS AND REGULATIONS**

The project did an excellent job of drafting new laws that meet international standards and should enable private sector growth. Ukraine has good commercial laws on the books but many are not being properly and consistently applied by courts, government agencies, lawyers, or businesses. The project conducted an outstanding training program for judges, lawyers and businesses as well as a tailored and extensive public education program. But more can be done to ensure proper implementation, including preparation of new manuals and procedures, and monitoring implementation and identifying problems and best practices. In general, implementation should have more emphasis in future commercial law reform programs in Ukraine.

#### **4. INCREASE EMPHASIS ON ELIMINATING CORRUPT PRACTICES AND REDUCING INFORMALITY**

Future commercial law and regulatory reform initiatives should identify and eliminate opportunities for corrupt practices and barriers that prevent informal enterprises graduating to the formal economy. Examples of initiatives that can eliminate corrupt practices include more transparent and fair auction procedures in enforcement and bankruptcy laws, elimination of the need for notaries in most transactions, and simplifying regulations and procedures relating to licenses, permits, hiring employees, and other

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<sup>19</sup> For example, there are now over thirty survey instruments for assessing aspects of the business environment. See [www.businessenvironment.org/dyn/be/besearch.details?p\\_phase\\_id=69&p\\_lang=en&p\\_phase\\_type\\_id=1](http://www.businessenvironment.org/dyn/be/besearch.details?p_phase_id=69&p_lang=en&p_phase_type_id=1) for a list of these instruments.



areas. Some of the areas of business environment reforms that provide incentives to graduate to the formal economy include simplifying business registration and licensing procedures and improving land titles, registers and administration.

#### **5. HELP TO INCREASE DEMAND FOR COMMERCIAL LAW AND REGULATORY REFORMS**

The project and CLC have done an excellent job of informing businesses and other stakeholders about the new commercial laws and how to apply them. The project and CLC did less public education work targeted at building demand for commercial law and regulatory reforms. To develop demand by businesses and other stakeholders for important commercial law and regulatory reforms, future efforts in commercial law public education should include more emphasis on the need for certain reforms, including the costs of the status quo and benefits of reforms.

#### **6. ELIMINATE THE DISCREPANCIES EXISTING BETWEEN CIVIL CODE AND ECONOMIC CODE**

The CLC continues to advocate for repeal of the Economic Code or at least elimination of discrepancies between the Economic Code and Civil Code. The Economic Code is outmoded and causes problems in defining property and contractual relations between business entities. The main contradictions are:

- Definition variations (e.g. definitions of a contract)
- Differences in types and corporate forms of legal entities<sup>20</sup>
- Differences in specific fields (ownership rights, funding, bank accounts, etc.)

The most effective solution would be to eliminate the Economic Code and integrate all norms regarding relations between business entities into the Civil Code.

On January 16, 2003, the Verkhovna Rada passed the Civil and the Economic Codes. However, the President vetoed this legislation based on the objection that the revisions provide different legislative regulation of the same private legal relationships, i.e. the Civil Code legislates private relationships and therefore the Economic Code, which is primarily to regulate public relationships, must not encroach into the area of private law. Unfortunately this situation still has not been resolved and the Economic Code continues to invade private relationships and often contradicts the Civil Code. Significant inconsistencies remain respecting the treatment of property of subjects of legal relationships, and types and organizational structures of legal entities. The major inconsistency between the Economic Code and the Civil Code is how they regulate relationships with legal entities. Each law is based upon a different theoretical perspective. The Civil Code gives priority to freedom of contract and private relationships regarding rights and property, whereas the Economic Code emphasizes state planning and state regulation of these relationships. The Economic Code has a soviet style and planned economy orientation. Since 2003, the CLC has helped to advocate for repeal or amendment of the Economic Code, and those efforts continue.

#### **7. IMPROVE THE JOINT STOCK COMPANY LAW**

The CLC continues its efforts to amend the draft Joint-Stock Companies Law to fit OECD principles. This would stimulate the creation of joint-stock companies, ensure adequate protection of the basic shareholders' rights and minority shareholders' rights, and eliminate abuse of the rights. The draft law has not yet been passed by the Verkhovna Rada. Necessary amendments to the Law include:

- Clarify conditions and shorten transition time for transformation of the existing forms of incorporation into private and public joint-stock companies
- Reduce mandatory minimum capital for joint-stock companies
- Improve minority shareholder rights protection by giving them the right to initiate independent audits

<sup>20</sup>See, Economic Code Article 63, Civil Code Article 83



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- Require that the Board of Directors be elected via cumulative voting, and reduce the threshold for including items on the agenda
  - Regulate the keeping and provision of information and introduce criminal penalties for its non-provision or distortion
  - Require public disclosure of acquisition of shareholding exceeding 50%
  - Eliminate the opportunity for joint-stock-companies' managing bodies to abuse their rights by giving greater authority to the board of directors and limit the authorities of the general meeting and regulate its processes.

## **8. IMPROVE BANKRUPTCY PROCEDURES**

The Bankruptcy Law should be updated to streamline bankruptcy procedures and eliminate opportunities for fraud. Amendments should include:

- Simplify and speed up bankruptcy procedures, including clarifying the definition of the automatic stay, providing more administrative powers to the trustee and creditors and reducing court administration, and setting and enforcing deadlines for hearings and decisions
- Better define the status and remuneration of the trustee
- Make state-owned companies subject to bankruptcy
- Enact provisions to undo or provide liability for fraudulent transfers and define a parent company's responsibilities towards non-payments of its daughter company
- Eliminate discrepancies between the Bankruptcy Law and laws regulating enforcement, tax and labour-related legal relations
- Clarify ambiguities in some parts of the Law (e.g., adding new creditors to the register after it had been finalized and approved).

## **9. HELP TO IMPROVE THE ENABLING ENVIRONMENT FOR REAL PROPERTY OWNERSHIP AND TRANSACTIONS**

The development of Ukrainian land and real estate markets is hindered by a number of factors: the moratorium on sales of agricultural lands, the gap between supply and demand; a lack of a national register of titles to land and improvements; a long and complicated procedure for transfer of title to land and property rights, limitations on purchasing farmland, complex and non-transparent zoning procedures, and complex and opaque procedures for sale of land and improvements owned by government. Revision of the laws should:

- Create a common register of titles to land and real estate property that is available in electronic form with publicly available information
- Eliminate all constraints on sale of farmland and non-agricultural lands
- Introduce a “one-stop-shop” within a common agency dealing with electronic registration of transactions in real property
- Amend the Land Code to remove the moratorium on sale/purchase of agricultural land and allow purchase of non-agricultural land
- Simplify and accelerate the procedure for changing the use of land, with clear and transparent criteria
- Simplify the procedure for sale of state-owned and communal land plots and real estate property owned by governments.



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## **10. IMPROVE QUALITY, LEGALITY, AND TRANSPARENCY OF JURIDICAL DECISIONS ON COMMERCIAL DISPUTES**

The European Union, World Economic Forum, World Bank, and even NATO, as well as the Government of Ukraine, have pointed out the corruption and poor quality of Ukraine's court system. It appears that there are several major problems that require action:

- Independence of judges is still a problem. Further efforts should be made to eliminate control or influence by the government, including increasing transparency in the judicial appointment, promotion and dismissal processes.
- Performance of judges should be monitored based on objective criteria and continuous performance evaluation. This should include systematic data gathering, objective disciplinary criteria, and a clear complaints mechanism.
- Clear procedures for appointment, professional development and promotion of judges and court staff should be elaborated, including clear education requirements, selection and promotion criteria, professional development programs, and increased financing and improved budgeting processes.
- Improve and clarify jurisdiction criteria with regard to commercial deals as well as jurisdiction of commercial courts in order to avoid simultaneous proceedings in courts of different levels.
- Increase use of the Judicial Decisions Registry to require publication of all commercial courts' decisions on the Internet.
- Improve alternative dispute resolution to reduce backlogs in the commercial courts and provide competition in resolution of commercial disputes.

Some of these improvements will require amendments to the Commercial Procedural Code and Laws "On the Status of Judges" and "On Judicial Organization".



## ANNEX A: SEMINAR STATISTICS

### Continuing Legal Education (Public Sector Lawyers)

Date	Place	No. Invited	No. Participants	No. State Employees Participating	% of State Employees
<b>I year</b>					
12/22/2000	Kiev	42	30	20	67%
1/26/2001	Kiev	45	37	30	81%
2/27/2001	Kiev	40	35	23	66%
3/23/2001	Dnipropetrovsk	53	49	43	88%
4/20/2001	Lviv	41	38	25	66%
5/18/2001	Odessa	41	36	13	36%
5/25/2001	Kharkiv	31	22	17	77%
29.05.01-30.05.01	Kiev	29	20	12 Leg.draft	60%
2.07.01-3.07.01	Kiev	35	20	13Leg.draft	65%
7/24/2001	Lviv	41	35	20	57%
<b>II year</b>					
3/10/2001	Odessa	40	29	21	72%
20.10.01-21.10.01	Kiev	20	20	Train.of Trainers	
30/10/2001	Kiev	46	34	26	76%
31.10.01-1.11.01	Kiev	24	29	Leg.draft	100%
2.12.01	Kiev	100	87	Nat.Confer.	
7/12/2001	Kiev	40	20	12	60%
15/01/2002	Kiev	45	38	10	12%
25.01.02	Kiev	9	9	Train.of Trainers	
29.01.02-30.01.02	Kiev	34	34	Leg.draft	65%
21.02.02-22.02.02	Kiev	35	35	Judges Sem	
5.03.02-6.03.02	Kiev	20	17	14	82%
March, 2002	Kiev	12	12	Train.of Trainers	
19.03.02-21.03.02	Yaremcha	25	25	Judges Sem	
21.05.02-22.05.02	Lviv	30	30	Leg.draft	
<b>III year</b>					
2.10.02-4.10.02	Foros	25	25	Judges Sem	
30.10.02	Kiev	12	12	Train.of Trainers	
21.11.02-22.11.02	Kharkiv	54	33	Bailiffs	100%
18.12.02-19.12.02	Kharkiv	54	24	Bailiffs	100%
15.01.03-16.01.03	Kharkiv	54	40	Bailiffs	100%
6.02.03-7.02.03	Dnipropetrovsk	35	40	Leg.Draft	100%
12.03.03-13.03.03	Kharkiv	54	42	Bailiffs	100%
09.04.03-10.04.03	Odesa	30	26	Leg.Draft	100%
15.04.03-16.04.03	Zaporyzhya	30	28	Leg.Draft	100%
14.05.03-15.05.03	Kharkiv	40	40	Bailiffs	100%
29.05.03-30.05.03	Kiev	70	70	Judges Sem	100%
<b>IV year</b>					
24.09.03-26.09.03	Yalta, Crimea	80	47	Judges Sem	100%
8.10.03-9.10.03	Kharkiv	40	40	Bailiffs	100%
13.10.03-14.10.03	Kiev	50	50	Acad.of Judges	100%



Date	Place	No. Invited	No. Participants	No. State Employees Participating	% of State Employees
15.10.03-16.10.03	Odesa	85	65	Judges Sem	100%
21.10.2003	Kiev	100	65	Confer.	70%
19.11.03-20.11.03	Kharkiv	80	80	Judges Sem	100%
2.12.03-3.12.03	Kharkiv	54	50	Bailiffs	100%
10.12.03-11.12.03	Dnipropetrovsk	79	70	Judges Sem	100%
22.01.04-23.01.04	Lviv	111	96	Judges Sem	100%
04.02.04-05.02.04	Donetsk	83	83	Judges Sem	100%
24.02.04-25.02.04	Kharkiv	54	39	Bailiffs	100%
03.03.04-04.03.04	Zhytomyr	70	70	Judges Sem	100%
14.04.04-15.04.04	Kharkiv	54	35	Bailiffs	100%
14.05.04-15.05.04	Odesa	40	42	Judges Sem	100%
24.05.04	Kiev	17	17	Bailiffs	100%
1.06.04	Kiev	22	22	NBU, leg.draft	100%
03.06.04	Kiev	18	18	Bailiffs	100%
27.07.04-28.07.04	Kiev	18	18	Training of trainers	0%
<b>V year</b>					
04.08.04-05.08.04	Donetsk	91	91	St.registrators	100%
09.09.04-10.09.04	Kiev	37	29	Confer.,Judges	100%
16-17.09.04	Kharkiv	108	99	St.registrators	100%
21.09.04	Kiev	54	54	Bailiffs	100%
10/14/2004	Kiev	30	25	Leg.dr./Scient.discuss./Econ.Proc.Code	
21.10.04-22.10.04	Yalta, Crimea	88	83	St.registrators	100%
11/9/2004	Kiev	70	60	Conf./ Non-Profit Organizations	
10.11.04	Kiev	40	39	Bailiffs	100%
09.12.04-10.12.04	Lviv	121	118	St.registrators	100%
22.12.04-23.12.04	Ivano-Frankivsk	69	69	St.registrators	100%
25.01.05	Kiev	47	38	Bailiffs	100%
27.01.05-28.01.05	Kiev, Pushcha	38	33	Judges Sem	100%
10.02.05-13.02.05	Yaremcha, Iv.-Frank.	65	60	Conference	17%
17.02.05-18.02.05	Dnipropetrovsk	120	115	St.registrators	100%
17.03.05-18.03.05	Kiev	54	53	Bailiffs	100%
12.05.05-13.05.05	Kiev	54	50	Bailiffs	100%
18.05.05-19.05.05	Yalta, Crimea	50	44	Confer.,Judges	100%
6/10/2005	Kiev	80	64	Hearing	100%
<b>VI year</b>					
10/25/2005	Odesa	50	39	Bailiffs	100%
11/4/2005	Kiev	78	51	Round Table	80%
11/25/2005	Kharkiv	60	69	Bailiffs	100%
12/21/2005	Ivano-Frankivsk	45	44	Bailiffs	100%
12/22/2005	Ivano-Frankivsk	50	44	Bailiffs	100%
2/15/2006	Lviv	45	41	Bailiffs	100%
2/16/2006	Lviv	45	43	Bailiffs	100%
3/23/2006	Mykolajiv	48	60	Bailiffs	100%
4/5/2006	Luhansk	50	44	Bailiffs	100%
4/6/2006	Luhansk	45	34	Bailiffs	100%
4/27/2006	Zaporizhja	50	49	Bailiffs	100%



Date	Place	No. Invited	No. Participants	No. State Employees Participating	% of State Employees
4/28/2006	Zaporizhja	45	41	Bailiffs	100%
5/23/2006	Uzhgorod	50	43	Bailiffs	100%
5/24/2006	Uzhgorod	50	47	Bailiffs	100%
6/8/2006	Dnipropetrovsk	50	51	Bailiffs	100%
6/9/2006	Dnipropetrovsk	50	48	Bailiffs	100%
7/12/2006	Lutsk	50	49	Bailiffs	100%
7/13/2006	Lutsk	50	49	Bailiffs	100%
9/20/2006	Simferopol	50	38	Bailiffs	100%
9/20/2006	Simferopol	50	46	Bailiffs	100%
10/4/2006	Ternopil	50	46	Bailiffs	100%
10/5/2006	Ternopil	50	44	Bailiffs	100%
11/15/2006	Kirovograd	50	47	Bailiffs	100%
11/16/2006	Kirovograd	50	47	Bailiffs	100%
11/30/2006	Kyiv	50	53	Bailiffs	100%
12/5/2006	Zhytomyr	50	51	Bailiffs	100%
12/6/2006	Zhytomyr	50	35	Bailiffs	100%
12/13/2006	Poltava	50	50	Bailiffs	100%
12/14/2006	Poltava	50	49	Bailiffs	100%
1/24/2007	Rivne	50	74	Bailiffs	100%
1/25/2007	Rivne	50	22	Bailiffs	100%
2/7/2007	Sumy	50	51	Bailiffs	100%
2/8/2007	Sumy	50	48	Bailiffs	100%
2/21/2007	Kyiv	70	67	Conference/Enform.	
2/27/2007	Kyiv	50	50	Conf (works for leg community)	
13.03.-14.03.2007	Donetsk	30	30	Judges/Academy	100%
4/4/2007	Kherson	50	50	Bailiffs	100%
4/5/2007	Kherson	50	50	Bailiffs	100%
26-27.04.2007	Kyiv	40	35	Judges/Academy 35\17	54%
23-25/05/2007	Yalta	35	51	Judges/Academy 51\28	55%
6/7/2007	Khmel'nytsky	50	46	Bailiffs	100%
6/8/2007	Khmel'nytsky	50	45	Bailiffs	100%
6/20/2007	Cherkasy	50	38	Bailiffs	100%
6/21/2007	Cherkasy	50	40	Bailiffs	100%
7/10/2007	Chernivtsi	50	48	Bailiffs	100%
7/11/2007	Chernivtsi	50	44	Bailiffs	100%
7/26/2007	Vinnytsja	50	49	Bailiffs	100%
7/27/2007	Vinnytsja	50	50	Bailiffs	100%
<b>Total</b>		<b>5993</b>	<b>5392</b>		

### Workshop (for Public and Private Sector Lawyers)

Date	Place	N of Invited	N of Participants (Received Certificate)	No. State Employees (invited)	% of State Employee	No. Non-Kiev	% of Non-Kiev	No. of Lecturers
<b>I year</b>								
11.12.00 - 15.12.00	Kiev	30	21	19	90%	1	5%	12
5.02.01 - 9.02.01	Kiev	46	42	29	69%	2	5%	8



12.03.01-16.03.01	Kiev	44	32	26	81%	2	6%	8
14.05.01-18.05.01	Kiev	45	39	30	81%	3	8%	
11.06.01-15.06.01	Kiev	55	46	37	70%	5	11%	
9.07.01-12.07.01	Kiev	49	30	33	81%	4	13%	
<b>II year</b>								
13.11.01-15.11.01	Kiev	52	50	35	70%			
11.12.01- 14.12.01	Kiev	48	33	25	76%			8
<b>III year</b>								
18.02.02-20.02.02	Kiev	47	39					
12.11.02-13.11.02	Kiev	50	45		90%		90%	
<b>Total</b>		<b>466</b>	<b>377</b>	<b>234</b>	<b>77%</b>	<b>17</b>	<b>5%</b>	<b>36</b>

### Seminars for Businesspeople

Date	Place	No. Invited	No. of Participants	No. of Lecturers
<b>I year</b>				
11/28/2000	Kiev	35	21	2
12/1/2000	Lviv	35	28	2
2/28/2001	Kiev	22	22	
16 семінарів OID			400	
<b>II year</b>				
22.11.01-23.11.01	Simpferopol	30	25	4
29.11.01-30.11.01	Dnipropetrovsk	30	24	3
4.12.01-5.12.01	Cherkassy	30	28	3
18.12.01-19.12.01	Chernivzi	30	28	3
26.03.02-27.03.02	Cherkasy	35	32	
16.04.02-17.04.02	Dnipropetrovsk	30	25	
18.04.02-19.04.02	Chernivzi	30	28	
24/04/02-25.04.02	Simpherpol	31	31	
11.06.02-12.06.02	Simpherpol	30	30	
25.06.02-26.06.02	Cherkassy	30	30	
8.07.02-9.07.02	Chernivzi	30	27	
1.08.02-2.08.02	Dnipropetrovsk	30	20	
<b>III year</b>				
4.12.02-5.12.02	Mykolaiv	30	27	
19.12.02-20.12.02	Chernivzi	33	32	
25.02.03-26.02.03	Simpherpol	30	28	
4.03.03-5.03.03	Lutsk	25	25	
2.07.03-3.07.03	Mykolaiv	25	18	
17.07.03-18.07.03	Simferopol	30	30	
<b>V year</b>				
23.03.05-24.03.05	Ivano-Frankivsk	35	30	
14.04.05-15.04.05	Lviv	30	28	
26.05.05-27.05.05	Donetsk	35	35	
14.07.05-15.07.05	Dnipropetrovsk	35	42	
<b>VI year</b>				
27.09.05-28.09.05	Simpheropol	40	38	
29.03.06-30.03.06	Vinnytsa	30	28	



Date	Place	No. Invited	No. of Participants	No. of Lecturers
31.05.06-01.06.06	Donetsk	40	39	
<b>VII year</b>				
29.01.07-30.01.07	Zhytomyr	35	35	
4-5.07.2007	Kharkiv	35	41	
12-13.07.2007	Chernivzi	30	30	
<b>Total</b>		<b>976</b>	<b>1305</b>	<b>17</b>

#### Seminar Grand Totals

Seminars	No. Invited	No. of Participants
103	7435	7074

#### Round Tables

Date	Place	No. Invited	No. of Participants	No. of Main Speakers	
10/20/2000	Kiev	26	20	4	
1/29/2001	Kiev	11	7		Focus group (Natalia Andrievska)
2/7/2001	Kiev	18	15		Focus group (Natalia Andrievska)
2/13/2001	Kiev	30	25		Law Discussion (Dmytro Shcherbynsky)
2/20/2001	Kiev	10	10		Round Table (Myroslava Antonovych)
2/26/2001	Kiev	30	30		Law Discussion (Dmytro Shcherbynsky)
3/1/2001	Kiev	15	12		Round Table (Myroslava Antonovych)
3/20/2001	Kiev	8	8		Round Table (Myroslava Antonovych)
3/11/2001	Kiev	41	28	2	Round Table (Dmytro Shcherbynsky)
4/11/2001	Kiev				Round Table (LDD, Semenov, Hiposition)
5/31/2001	Kiev				Round Table (LDD, Rudenko, Intellectual Property))
7/25/2001	Kiev				Round Table (LDD, Slusarevsky, Consecion)



## ANNEX B: STUDY TOURS

Date	Topic	Location	No. of Participants	From which organizations
November 13-15, 2006	International Association of Court Administrators Annual International Conference	Italy	14	Supreme Court of Ukraine, High Economic Court of Ukraine, MPs- member of the VRU, High Judiciary Qualification Commission, USAID, CLC
May 23-30, 2004	Judicial Enforcement	Germany	14	Verkhovna Rada of Ukraine, Ministry of Justice, USAID, Supreme Court of Ukraine
January 27-31, 2003	International Conference on Credit Bureaus	Kazakhstan	14	National Bank of Ukraine, Association of Ukrainian Banks, Verkhovna Rada of Ukraine, NGOs, CLC
June 9-16, 2002	Commercial Law Curriculum Working Group training program	Spain	14	Educational Institutions
April 20- May 5, 2002	Legislative Drafting" training program	USA	14	Verkhovna Rada of Ukraine, Administration of the President of Ukraine, Supreme Court of Ukraine, Kyiv Institute of Economics and Law, Association of Ukrainian Banks, other NGOs