Fighting Corruption
in Transition Economies

Tajikistan

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Fighting Corruption in Transition Economies

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ТАДЖИКИСТАН

FOREWORD

The fight against corruption has only recently been placed on the international policy agenda, despite its long-known effects on democratic institutions and economic and social development. Today, many international organisations are addressing the global and multi-faceted challenge of fighting corruption. The main contribution by the OECD has been in the area of fighting corruption in international business transactions. The 1997 *Convention on Combating Bribery of Foreign Public Official in International Business Transactions,* together with the 1996 *Recommendations* and 1997 *Revised Recommendation of the Council on Combating Bribery in International Business Transactions* were adopted by all OECD countries and five non-OECD countries. It is a legally binding document, the implementation of which is systematically monitored. This convention has since become a powerful tool in controlling international bribery.

The *OECD Guidelines for Multinational Enterprises* and *Principles of Corporate Governance* are non-binding tools that help level the competitive playing field for companies and ensure the integrity of business operations. The OECD also addresses the demand side of bribery through its work on public governance, which includes *Recommendations on Improving Ethical Conduct in the Public Service, Guidelines for Managing Conflict of Interest in Public Service* and *Best Practices for Budget Transparency*. The *Support for Improved Governance and Management Programme (SIGMA)* helps the EU candidate and new member countries to reform their public administration, and to strengthen their public procurement and financial control systems. The OECD also fights corruption in aid-funded procurement and has endorsed the *Recommendations on Anti-Corruption Proposals for Bilateral Aid Procurement*.

The OECD supports several regional initiatives to promote anti-corruption actions in non-member countries. The Anti-Corruption Network for Transition Economies — one such initiative — assists the countries of Central, Eastern and South Eastern Europe, Caucasus and Central Asia in their fight against corruption by providing a regional forum for exchanging experience and elaborating best practices. Ministers launched the Istanbul Anti-Corruption

Action Plan in 2003 to provide targeted support to Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine. Implementation of this Action Plan includes reviewing the legal and institutional framework for fighting corruption, identifying its achievements and weaknesses, and proposing further actions.

The review was based on the OECD methodology for self-assessment and peer review. Self-assessment reports were prepared by the governments of Istanbul Action Plan countries. International teams of experts reviewed the reports and provided their assessment and recommendations. The recommendations were endorsed at review meetings, which brought together national governments of Istanbul Action Plan countries, other transition economies and OECD countries, international organisations, international financial institutions, as well as civil society and business associations involved in fighting corruption in the region. The recommendations contain country specific actions in areas such as strengthening anti-corruption policy and institutions, reforming anti-corruption legislation according to international standards, and implementing preventive measures by ensuring an ethical civil service and effective financial control.

This report presents the first systematic international anti-corruption review of Tajikistan. The results, presented in this publication, provide an important guide for this country in its anti-corruption efforts. The recommendations provide a benchmark for regular monitoring of Tajikistan's progress. This report also serves as a reference for other partners involved in fighting corruption not only in transition economies, but also in other regions of the world.

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ACKNOWLEDGEMENTS

The review of the legal and institutional framework for fighting corruption in Tajikistan was carried out within the framework of the Istanbul Anti-Corruption Action Plan for Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, Russian Federation, Tajikistan, and Ukraine.

Olga Savran, OECD Anti-Corruption Division, provided the general management for the Istanbul Action Plan, including the review process. Goran Klemencic, legal advisor to the Istanbul Action Plan, took the lead in designing the review framework, co-ordinated the expert review teams, and managed the review meeting. Nicola Bonucci, OECD Deputy Director for Legal Affairs, chaired the review meeting and ensured effective discussions which resulted in the endorsement of recommendations by consensus of all the parties.

Bobojon Bobokhonov, Prosecutor General, led the Tajik delegation at the review meeting. Dadarjon Maksudov, Deputy Prosecutor General, co-ordinated Tajik participation in the Istanbul Action Plan. Marizo Khalifaev, Office of the Prosecutor General, co-ordinated the national input for the self-assessment report and provided expert support during the review.

The team of review experts who examined the self-assessment report for Tajikistan and developed the draft assessment and recommendations included: Benjamin Allen, UNDP; Tigran Barsegyan, Legal Department of the Government of Armenia; Valts Kalnins, Centre for Public Policy Providus, Latvia; Igor Kamynin, General Prosecution, the Russian Federation; Daniel Thelesklaf, TVT Compliance Ltd, Switzerland; Mr. Papuna Ugrekhelidze, Anti-Corruption Bureau, Georgia. UNPD office in Dushanbe provided valuable coordination for the project.

The review meeting, which examined the self-assessment report and endorsed the recommendations, brought together representatives from all Istanbul Action Plan countries, as well as selected OECD countries and transition economies (Austria, Canada, Croatia, Italy, Germany, Japan, Mexico, Moldova, Switzerland, Turkey and the US), international organisations (EU, Council of Europe/GRECO, UNDP, and OSCE), civil society and business associations (ABA CEELI, Transparency International, Open Society Institute and BIAC).

Marie-Christine Charlemagne, OECD Anti-Corruption Division, provided effective assistance to the review process.

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INTRODUCTION

Istanbul Anti-Corruption Action Plan

The Istanbul Action Plan for Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine was endorsed at the 5th Annual Meeting of the Anti-Corruption Network for Transition Economies (ACN) in September 2003 in Istanbul. ACN Secretariat, based at the OECD Anti-Corruption Division, provides secretarial support for the Istanbul Action Plan. An Advisory Group was established to assist the Secretariat to develop, implement and assess the Work Programme of the Istanbul Action Plan; the Group brings together national coordinators from the Istanbul Action Plan countries, OECD members and donor agencies, international organisations, civil society and business groups.

The implementation of the Action Plan foresees several phases: review of legal and institutional framework for fighting corruption and endorsement of recommendations; implementation of the recommendations though national actions and international support; and review of progress in implementing the recommendations. The first phase – country review of legal and institutional frameworks for fighting corruption – has been conducted in 2004.

Country Reviews

The methodology of the review was based on the OECD practice of mutual examination, and took account of the experience of other organisations, such as the Council of Europe and its GRECO review programme. The Istanbul Action Plan review included the following elements: self-assessment carried out by the governments of examined countries; expert analysis of the self-assessment report by a team of peer reviewers; discussion of the assessment and recommendations developed by the experts during Istanbul Action Plan review meetings; and endorsement of country recommendations based on consensus.

To help the governments to carry out the self-assessment, the Secretariat developed Guidelines for Status Reports. The Guidelines included a series of questions with comments, covering the following areas: national anti-corruption strategy; promotion of accountability and transparency (ethics in the public

service; public procurement; financial control; tax and customs systems; money laundering; corporate accounting and auditing; access to information; private sector and civil society involvement; political party financing); criminalisation of corruption (definition and elements of offences including active and passive bribery and other corruption related offices; sanctions; statute of limitations; definition of a public official; defences and immunities; jurisdiction; confiscation of proceeds; corruption in private sector and liability of legal persons); specialised service; investigation and law enforcement (distribution of powers between law enforcement agencies; mandatory and discretionary prosecution; investigative capacities; organised crime and corruption); international aspects and mutual legal assistance.

The self-assessment reports were developed by the governments of the Istanbul Action Plan countries, based on the inputs of their national institutions, involved in the prevention and combating corruption. The reports were supported by extracts from various legal acts. These reports provided the main basis for country examinations. Additional publicly available sources of information were used as well, such as reports developed by other international organisations. Reports specially prepared for this review by the civil society groups provided an important input.

Teams of review expert teams were established for each country. The experts were nominated by the governments of Istanbul Action Plan countries (excluding the examined country), other transition and OECD countries, international organisations and civil society groups participating in the Action Plan. The expert teams studied the reports and other available information, and developed draft assessments and recommendations for each country. The draft assessment and recommendations were presented at review meetings, which brought together some 80 participants, representing all the main stakeholders. The review meetings provided an opportunity for the national delegations to present their self-assessment report, the review team presented draft assessment and recommendations, and all the participants debated final recommendations. The recommendations were endorsed by consensus.

Assessments and Recommendations

The recommendations include general assessment and recommendations, followed by concrete recommendations in three broad areas: national anti-corruption policy and institutions; legislation and criminalisation of corruption and transparency of the civil service. The assessment and recommendations vary among the countries reflecting different national situations. While it is impossible to summarise the findings for all the countries, a number of common issues emerged during the review.

Anti-Corruption Policies and Institutions

Many countries have declared the fight against corruption a key priority in the broader framework of economic and social reforms. At the time of the reviews, Georgia and Ukraine were entering the stage of updating their existing anti-corruption strategies; Armenia has adopted its anti-corruption strategy; Azerbaijan and Tajikistan were in the process of elaborating and adopting such policy instruments. While recognising these achievements, the recommendations stress the need to improve the analytical basis for such programmes, including the need to study the patterns and trends of corruption in each country, to identify sectors and institutions where the risk of corruption is particularly high. The recommendations call for reinforcement of implementation measures, and a balanced approach of repressive and preventive measures. They further underline the importance of a participatory process for the elaboration and monitoring of anti-corruption programmes and strategies, which should involve all branches of public authorities, civil society and private sector. Finally, the recommendations stress the importance of effective monitoring and reporting mechanisms to support the implementation of anti-corruption policies.

Armenia, Georgia and Ukraine have established anti-corruption councils or committees responsible for the elaboration and/or monitoring of the implementation of anti-corruption strategies. The recommendations call to strengthen these bodies by ensuring their independence and high moral of their members, promoting public involvement in their work and providing adequate resources for their effective operations. Establishing a national multi-stakeholder anti-corruption council was recommended for Tajikistan. In addition to these policy bodies, it was recommended for all countries to establish specialised anti-corruption law-enforcement agencies, responsible for detection, investigation and prosecution, as well as for the coordination among other law-enforcement agencies involved in the fight against corruption.

The recommendations for all countries stress the importance of awareness raising among the general public and public officials, and training at all levels, including corruption-specific training for policy, prosecutors, judges and other law enforcement officials.

Legislation and Criminalisation of Corruption

The assessment of national anti-corruption legislation confirmed that all reviewed countries have developed core legislation criminalising corruption and corruption related crimes, but national anti-corruption legal standards fall short of international anti-corruption standards, such as the Council of Europe's

Criminal Law Convention on Corruption, the United Nation's Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The recommendations in the field of anti-corruption legislation require from all countries of the Action Plan to reform national legislation and to bring in line with the international anti-corruption standards, including the following recommendations:

- Criminalise offer and promise of bribe, non-material benefits and trading in influence, and bribery though a third person; clarify provisions about gifts to officials;
- Ensure adequate sanctions for corruption and corruption related offences, strengthen sanctions for active bribery;
- Ensure effective responsibility of legal persons for corruption;
- Ensure mandatory confiscation of proceeds, value based confiscation, and confiscation from third persons; consider introducing legal provisions for checking and seizure of unexplained wealth;
- Ensure sufficient statute of limitation for corruption and corruption related offences;
- Ensure that definition of a public official is broad enough to include all levels of power, state representatives on boards of companies, foreign and international officials;
- Reduce scope of immunities and categories of officials who benefit from them, clarify criteria for lifting immunities;
- Ensure effective international mutual legal assistance;
- Ratify the Council of Europe and the UN Conventions against corruption.

The recommendations call the countries to harmonise their anti-corruption legislation in order to ensure that the provisions of Laws on the Fight against Corruption, which were recently adopted in many countries, are adequately reflected in the Criminal Code and other relevant legislation, and that disciplinary, administrative and criminal corruption offences do not contradict each other, and do not leave legal gaps.

The reviews stressed that more information was needed to assess actual interpretation and implementation of the legal texts. The recommendations call the countries to evaluate continuously the application of their national anti-corruption legislation, and to develop it further based on the analysis of its effectiveness.

Transparency of Civil Service

During the review of corruption prevention measure in civil service, countries have reported about their efforts in developing regulatory frameworks in such areas as merit-based civil service and management of conflict of interest; transparency and fairness in public procurement and taxation; financial control and anti-money-laundering; political party finance; and public access to information. The recommendations propose further reforms in these areas, including the following:

- Introduce unified merit-based system for appointments and promotion in the civil service, which would, to the extend practicable, limit discretional decisions;
- Elaborate and disseminate comprehensive practical guides for public officials on corruption, conflict of interest, ethical standards, sanctions and reporting of corruption; provide training on anti-corruption to officials; introduce codes of conduct for civil servants, particularly in the agencies where the risk of corruption is high; consider the introduction of an ethics supervision body/commissioner;
- Ensure effective implementation of Conflict of Interest legislation, including strengthening of monitoring of its implementation, empowering relevant institutions to verify the accuracy of submitted declaration of assets, sanctions for failure to comply with requirements; Improve the mandatory asset disclosure system for higher ranking public officials in all branches of government;
- Adopt measures for the protection of employees in state institutions and other legal entities against disciplinary action and harassment when they report legitimate suspicious practices within the institutions to law enforcement authorities or prosecutors, by adopting legislation or regulations on the protection of "whistleblowers"; improve the system of internal investigations in cases of suspected or reported corruption offences;
- Introduce measures to limit discretion in public procurement; introduce eligibility criteria to exclude from bidding companies, which had been convicted for corruption; promote electronic contracting; enhance transparency of procedures and publishing public procurement information;
- Review the regulatory framework for taxation to reduce incentives for tax evasion and to limit the discretionary powers of tax officials;

- Pursue the implementation of the FATF recommendations; adopt and enact anti-money laundering legislation; establish and strengthen Financial Intelligence Units; build expertise necessary for financial investigations in corruption-related cases, ensure coordination and exchange of information with financial control/audit institutions;
- Consider establishing an office of an Information commissioner to receive appeals under the Law on Access to information; limit discretion of officials and the scope of information that could be withheld; enhance cooperation with civil society.

Implementation of Recommendations

While these recommendations are not legally binding, they represent the commitment of the participating states, and are expected be implemented as such by their governments. Implementation of these recommendations will not only support the objectives of the Istanbul Anti-Corruption Action Plan, but will also help the countries to meet their legally binding obligations under the United Nation's Convention on Corruption and the Council of Europe's Criminal Law Convention on Corruption.

Besides, the results of the reviews provide a framework for launching the second phase of the Istanbul Action Plan, which will focus at the regular monitoring of national actions to implement the recommendations and at thematic reviews on selected priority issues; they will also provide a benchmark for review of implementation of recommendations, planned under the third phase of the Action Plan.

Following the introduction, the book presents the recommendations. Next section contains the full text of the national self-assessment report. Selected legal documents and the Istanbul Action Plan are presented in the Annexes. This publication was compiled by the OECD Secretariat; it is available in English and Russian languages. For more information, please refer to the web site of the Anti-Corruption Network for Transition Economies/OECD www.anticorruptionnet.org.

SUMMARY ASSESSMENT AND RECOMMENDATIONS

Endorsed on 21 January 2004

National Anti-Corruption Policy, Institutions and Enforcement

General Assessment

In 1999, Tajikistan started to develop core statutory instruments to address the problem of corruption. These instruments were the Presidential Decree on Additional Measures to Step up the Struggle against Economic Crime and Corruption, the Law on the Fight against Corruption, the relevant sections of the Criminal Code, the Law on Civil Service and others. The Law on the Fight against Corruption, in particular, recognizes the need to tackle corruption with both preventive (control of conflicts of interest and annual declarations of income and assets) and repressive measures.

A focused nation-wide anti-corruption plan, however, has yet to be developed and adopted, and an interdisciplinary anti-corruption coordinating body envisaged in the Presidential Decree has yet to be established. Research conducted in Tajikistan to asses the level of corruption has not been sufficient to provide an adequate analytical basis for the development of an effective anti-corruption policy.

Detection and investigation of corruption is split between a number of law enforcement agencies, with often overlapping jurisdictions and limited inter-agency co-operation: internal affairs, security service, tax police, customs, military administration and state border, agency for drug control, etc. Each law enforcement agency has units specializing, to various degrees in fighting corruption. In order to tackle corruption within the tax and customs administrations, there is a separate Anti-Corruption Division within the Tax Police Department; the Ministry for State Revenues and Duties also has an Internal Security Department, whose tasks include dealing with corruption among the Ministry's employees. Additionally, a specialised department within the Ministry of Interior and a separate anti-drug agency were established to fight transborder and drug trafficking. On the other hand, there are no specialised units/departments in the prosecution service to focus exclusively on corruption.

Neither do the prosecution services nor the law enforcement bodies have the analytical capacities to monitor the corruption situation in the country.

Implementation and enforcement of legislation remains the key challenge. When discussing anti-corruption measures, Tajikistan's limited resources should be taken into account, as well as the fact that the country has only recently emerged from internal armed conflict.

General Recommendations

Building on the Presidential Decree on Additional Measures to Step up the Struggle against Economic Crime and Corruption and the Law on the Fight against Corruption, Tajikistan should develop its first Anti-Corruption Programme (or Strategy), aiming to strengthen implementation measures. A special study or survey mapping the patterns of corruption in various segments of Tajikistan's public life and analysing the extent of corruption in specific institutions, such as the police, judiciary, public procurement, tax and custom services, the education and health systems, should be conducted. It may support the development of the Programme and help to prioritise the measures to be undertaken. The study could possibly be conducted in co-operation with academic research institutions, relevant NGOs, and the international community.

To facilitate the development and implementation of the Anti-Corruption Programme (or Strategy), Tajikistan should establish a multi-stakeholder national anti-corruption body. This body should concentrate strategic, analytical, policy, preventive and coordination tasks in the fight against corruption. Stakeholders of the body should include the representatives of the Presidency and the Government (including law enforcement and financial control branches), the Parliament, and Civil Society as equal partners. The lack of resources and a need for focused and measurable achievements in the repression of corruption may call for a concentration of administrative and criminal repressive measures against corruption in one agency, which would combine investigative and prosecutorial functions.

It is difficult to tackle corruption in all public agencies at once. Focusing efforts at a few selected institutions could demonstrate the possibility of positive changes. Such focused measures should comprise a review of regulatory and institutional settings of such agencies and their operational practices in order to identify and minimise factors which favour corruption (*e.g.* by limiting discretionary powers of civil servants, strengthening internal control, introducing preventive measures, recruiting and promoting new staff through transparent procedures, measuring and reporting improvements). Accordingly, one or two pilot projects, covering preventive and repressive aspects, could be undertaken in one or

two selected corruption-prone public institutions. Specific anti-corruption action plans should be drafted and implemented in those public agencies where corruption is considered to be particularly widespread, and where it causes the most harm for citizens (for example, in the judiciary, custom, police, tax administrations).

Specific Recommendations

1) Elaborate and adopt a comprehensive Anti-Corruption Programme (or Strategy), which will build on and further develop the Presidential Decree and the Law on the Fight against Corruption aiming to strengthen the implementation of anti-corruption measures. The Anti-Corruption Programme should build on an analysis of the patterns of corruption in the country and be developed in a participatory process. It should propose focused anti-corruption measures or plans for selected institutions. The Programme should also envisage effective monitoring and reporting mechanisms.

2) Establish a national multi-stakeholder Anti-Corruption Council to facilitate the development and implementation of the Anti-Corruption Programme (Strategy). Stakeholders of the body should include the representatives of the Presidency and the Government, the Parliament, and Civil Society as equal partners.

3) Consider establishing a Special Anti-corruption Department, which would be empowered to detect, investigate and prosecute corruption offences, as an autonomous Department with a special status integrated in the Prosecutor's Office with officers seconded from the main law enforcement agencies. This Department should have investigative, prosecutorial, administrative and analytical tasks. It is important that such a Department would include specialised prosecutors. Apart from working on actual corruption cases, one of the main tasks of this Department would be to enhance inter-agency cooperation between a number of law enforcement, security and financial control bodies in corruption investigations (*e.g.* by adopting clear guidelines for reporting and exchange of information, introducing a team-work approach in complex investigations, etc.). It should also seek to increase analytical capacities and ensure more efficient statistical monitoring of corruption and corruption-related offences in all spheres of the civil service, the police, the Public Prosecutor's Offices, and the Courts on the basis of a harmonised methodology, which would enable comparisons among institutions.

4) Adopt guidelines for increased cooperation, exchange of information and resources between the agencies responsible for the fight against organised crime and trans-border trafficking, including drug trafficking on the one hand, and agencies responsible for the fight against corruption on the other hand.

5) Organize corruption-specific joint trainings for police, prosecutors, judges and other law enforcement officials; provide adequate resources for the enforcement of anti-corruption legislation; ensure the possibility of effective search and seizure of financial records.

6) Conduct awareness raising campaigns and organise training for the public, state officials and the private sector about the sources and the impact of corruption, about the tools to fight against and prevent corruption, and on the rights of citizens in their interaction with public institutions.

Legislation and Criminalisation of Corruption and the Related Money-Laundering Offence

General Assessment

The Law on the Fight against Corruption defines corruption as: "actions (inaction) of persons authorized to fulfil governmental functions, or equivalent persons, aimed at using their position and related opportunities for gaining material and other advantages and benefits not envisaged by law, as well as illegal provision of these advantages and benefits by individuals and legal entities." (Article 2). The Law further specifies a number of corruption offences involving illegal receipt of benefits and advantages, and provides for disciplinary sanctions for violators in the form of removal from office or another form of suspension from fulfilling governmental functions. On the other hand, the Criminal Code of Tajikistan includes the main criminal offences relating to corruption, including active (Article 319) and passive (Article 320 and 325) bribery of domestic public officials, abuse of official authority, money laundering, private corruption etc.

However, bribery offences fall short of international standards (such as the Council of Europe's Criminal Law Convention on Corruption, the United Nation's Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions). For instance, the subject of the bribe is limited to material benefits, and thus would not extend to non-pecuniary and non-tangible benefits. Offers or promises of a bribe are not criminalised, neither is the solicitation of a bribe. Only some forms of trading in influence are criminalised (as part of provisions on active and passive bribery).

The Criminal Code provides for dissuasive sanctions, including prison sentences ranging up to 15 years (for grave offences), fines, confiscation of property, and deprivation of the right to occupy certain positions or to engage in certain activities.

The Criminal Code also provides that the Court shall remit the punishment of the perpetrator of active bribery who had promised or gave the bribe after being extorted by the public official to do so, providing that such a perpetrator had reported the act to the competent law enforcement authority before the crime was detected. In addition, general and specific defences include entrapment, execution of order; and the Law on the Fight against Corruption provides an exception for social courtesy gifts and appears to provide one in cases of "effective regret". Accordingly, there is a need to review general and specific defences such as entrapment, execution of an order, and extortion to ensure that they are not too broad to permit misuse. Bribery of foreign or international public officials is not criminalised.

While money laundering has recently been criminalized as a separate offence in the Criminal Code, law enforcement bodies have problems accessing information on financial transactions, and banks and other financial institutions have no obligation to report suspicious transactions to the authorities; a Financial Intelligence Unit has yet to be established. Moreover, the money laundering offence in the Criminal Code does not appear to cover all manners of concealing, transferring, etc. the proceeds of crime.

Confiscation of proceeds from crime is possible for all criminal offences, including the proceeds of corruption and corruption-related offences – in cases of which it is mandatory according to the Law on the fight against corruption. The system is both property- and value-based: if the benefit to be confiscated is not available, the corresponding value can be confiscated. Confiscation of proceeds from third parties is also possible. The confiscation system under the Criminal Code extends beyond confiscation of proceeds from crime and preserves the old system of confiscation of property as a punishment (confiscation not linked to proceeds of crime); such a system could be considered over-broad.

The existing legislation does not provide for the administrative or criminal liability of legal entities for offences including corruption related cases. Recognising that the responsibility of legal persons for corruption offences is an international standard in all international anti-corruption conventions, there is a need to study, with the assistance of international organisations experienced in the implementation of the concept of liability of legal persons, such as Council of Europe and the OECD, how to introduce into the legal system an effective liability of legal persons for corruption.

Specific Recommendations:

7) Harmonise and clarify relationships between violations of the Criminal

8) Ensure effective measures for the provision of international m Code and the Law on the Fight against Corruption.

9) Amend the incriminations of active and passive bribery in the Criminal Code to correspond to international standards and criminalise trading in influence.

10) Harmonise the concept of "official" from the Criminal Code and the Law on the Fight against Corruption, ensuring that the definition encompasses all public officials or persons performing official duties in all bodies of the executive, legislative and judicial branch of the State, including local self-government and officials elected or nominated to a representative body, as well as persons representing the state interests in commercial joint ventures of on board of companies.

11) Introduce the criminalisation of bribery of foreign or international public officials, either through expanding the definition of an "official" or by introducing separate criminal offences in the Criminal Code.

12) Consider changing the existing confiscation regime to allow for confiscation of proceeds of corruption, or property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect. Review the provisional measures to make the procedure for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases efficient and operational.

13) Ensure that the immunity granted by the Constitution to certain categories of public officials does not prevent in the investigation and prosecution of acts of bribery.

14) With respect to money-laundering, continue efforts towards the establishment of a Financial Intelligence Unit; review the money-laundering offence in the Criminal Code to ensure that it is broad enough to capture all forms of concealing of the proceeds of corruption.utual legal assistance.

Transparency of the Civil Service

General Note

The Information which was provided under this heading is not sufficient to support a comprehensive assessment. Therefore, only recommendations on selected sections can be made. It is recommended to further develop and elaborate these sections for the second review meeting, aiming at the publication of the report that would contain comprehensive information.

Specific Recommendations:

15) Prepare and widely disseminate comprehensive practical guides for public officials on corruption, conflicts of interest, ethical standards, sanctions and reporting of corruption. Strengthen the capacities of the tax and custom authorities by instituting regular basic in-service training for its officials.

16) Strengthen the School of Public Administration, which should conduct in-service training for public officials and the curriculum of which would include topics related to ethics and anti-corruption measures.

17) Adopt measures for the protection of employees in state institutions against disciplinary action and harassment when they report suspicious practices within the institutions to law enforcement authorities or prosecutors by adopting (basic) regulations on the protection of "whistleblowers", and launch an internal campaign to raise awareness about those measures among civil servants. Additionally, study the application of the offences of defamation and insult in the Criminal Code to ensure that they do not present an obstacle to the reporting of offences.

18) Ensure an effective enforcement of the provisions of the Law on the Fight against Corruption that concern the declaration of assets and prevention of conflict of interest, by assigning an independent institution (possibly the Anti-corruption Council) and empowering it to monitor the implementation of the mentioned regulations. At the same time, make enforcement of these provisions manageable — obligations for asset declarations should be limited only to high-level officials and officials working in corruption exposed institutions.

19) Review the public procurement law to enhance the transparency of the procurement procedures, raise their efficiency, and limit the discretion of procurement officials in the selection process. To the extent possible, enhance the capacity of the procurement agency so that it is able to carry out supervisory functions. Ensure that the eligibility criteria for bidding in the public procurement and privatisation processes include the absence of a

conviction for corruption. Under the condition of the legal protection of fair competition, consider establishing and maintaining a database of companies that have been convicted for corrupt practices to support such limiting eligibility criteria.

20) Strengthen the capacity, resources and independence of the Committee of State Financial Control and enhance its reporting obligations to the Parliament and to the public in general.

21) Consider creating an independent office of an Information Commissioner to receive appeals under the Law on Access to Information, conduct investigations, and make reports and recommendations. Revise the Access to Information legislation, to limit discretion on the part of the public officials in charge, and to limit the scope of information that could be withheld.

SELF-ASSESSMENT REPORT

National Anti-Corruption Plan (Strategy) Against Corruption

Tajikistan proclaimed its national sovereignty on 9 September 1991 and has begun to develop a democratic law-governed state with a mixed market economy, private property, entrepreneurship, competition, and foreign trade.

New economic conditions have generated new problems requiring prompt responses. An example is corruption which, if unchecked, can undermine the social foundations and thus hinder economic growth and people's confidence in social justice.

Tajikistan is improving its recently created legislative framework to ensure a successful fight against crimes related to the economic sphere and to corruption. Legislative acts specifically devoted to these issues include:

- Law of the Republic of Tajikistan On Fighting Corruption of 11 December 1999, No.875,
- Criminal Code of the Republic of Tajikistan (in sections Crimes against the Interests of Civil Service, Crimes in the Sphere of Economic Activities, Crimes against Property), and
- Decree of the President of the Republic of Tajikistan of 21 July 1999, No.1262 On Additional Measures to Step Up Fighting Crime in the Sphere of Economics and Corruption.

Measures aimed at eliminating corruption are also provided for by the Laws On Civil Service, On State Financial Control, On Audit Activities, On State Support and Development of Entrepreneurship, On the Privatization of Public Property, Tax, Customs, and Civil Codes, and other legislative acts, Presidential Decrees, and Regulations of the Government.

The Law On Fighting Corruption provides a concrete definition of corruption. In this Law, corruption is understood to be an action (inaction) on the part of persons authorized to discharge public functions or of equivalent persons aimed at using his or her position and position-related opportunities to

derive improper material or other benefits and advantages; and as an illegal provision of these benefits and advantages to natural and legal entities. This Law determined areas of offences related to corruption and where civil servants are authorized to discharge public functions. The offences that have been specified are those that facilitate corruption and entail liability, as well as those pertaining to illegal receipt of benefits and advantages.

The measure of liability has been stipulated for ministries and departments, public bodies, enterprises, institutions, organizations failing to adopt measures, within their mandate, and as stipulated by this Law, with respect to their subordinates guilty of corruption or implementing measures in breach of the provisions of the law.

State power and administration bodies, local executive power agencies (Hukumaty), and all persons authorized to perform public functions are obliged to fight corruption. A broad strata of the population, citizens' associations and mass media shall also be involved in fighting corruption.

Detection and investigation of corruption offences is the responsibility of the agencies of the Office of the Prosecutor General, Ministry of Interior, Security Service, Tax, Customs bodies, military administration and state border units, and the Drug Control Agency, each within their relevant statutory mandates. A single specialized enforcement agency for fighting corruption has not been created.

The legislators have created the Coordinating Council of Law-Enforcement Agencies headed by Prosecutor General of the Republic of Tajikistan, the authority coordinating work in this area.

The Prosecutor General and public prosecutors of the relevant administrative territorial units coordinate the activity of law-enforcement agencies by developing and implementing joint activities, discussing the pace of implementation, and setting new tasks.

At the same time, with a view to the experience of other countries and the recommendations of the Anticorruption Network, the Government may consider the possibility of creating a specialized authority in the Republic to monitor (and perhaps co-ordinate) the implementation of anti-corruption plans and the status of work in this sphere. Should this indeed occur, the President of Tajikistan shall be entitled to set up such an anti-corruption coordination agency, and determine its status and jurisdiction.

To date, there is no integrated nation-wide anti-corruption plan (strategy) in the Republic and law enforcement agencies plan and implement anticorruption measures on their own.

The adoption of the Anti-Corruption Action Plan proposed by the Anticorruption Network may necessitate the elaboration and adoption of such Nation-Wide Anti-Corruption Plan (Strategy).

In accordance with the Decree of the President of the Republic of Tajikistan No.1262 of 21 July 1999 On Additional Measures to Step Up Fighting Crime in the Sphere of Economics and Corruption, the Office of the Prosecutor General makes quarterly reviews of the pace of implementation of the Law On Fighting Corruption and the said Decree by law-enforcement agencies. The results of these reviews are made available to the President through quarterly reports and to the public by way of the press.

In pursuit of this goal, the Office of the Prosecutor General constantly monitors the changes, forms and spheres of manifestation, circumstances leading to crimes, the damage inflicted by these crimes, number and status of criminal investigations, and sanctions imposed. The analysis is based on the information provided by subordinate prosecution offices and relevant units of the central staff of the Office of the Prosecutor General, as well as statistical reports of law-enforcement agencies.

As for the results of the judicial examination of these cases and the sanctions applied, present statistical reporting by the courts makes it impossible to determine the number of cases and the sanctions imposed for them.

Improving investigational and court statistics, particularly concerning criminal statistics on cases of corruption, is recognized as a priority task of state statistical bodies, the public prosecutor's office, justice authorities, and the courts.

The topic of combating corruption, the extent of corruption in the country, and specific manifestations of corruption are extensively covered by mass media. A testimony to this is the recognition by the international organisation *Reporters sans frontières* that Tajikistan was ranked in 2003 the CIS leader in terms of freedom of both expression and the press.

Statistical Data on the number of investigated cases of office abuse, corruption, theft, crimes in the sphere of economic activity from 2001 to 2003 referred to court

Crime category	Total cases completed			
	2000	2001	2002	2003
Abuse and other malfeasances	178	196	150	165
Bribery	42	45	31	19
Theft (embezzlement / misappropriation)	521	538	347	373
Crimes in the economic sphere	894	627	501	680

Crime category	Referred to court							
	Number of cases				Number of persons			
	2000	2001	2002	2003	2000	2001	2002	2003
Abuse and other malfeasances	134	100	106	129	156	129	150	157
Bribery	33	31	27	18	38	36	35	28
Theft (embezzlement / misappropriation)	460	415	279	244	529	472	338	289
Crimes in the economic sphere	859	527	460	642	882	547	491	693

Notes:
1. There is a difference between cases the investigation of which has been completed and the cases were referred to court and cases terminated on grounds envisaged by law.
2. Due to a lack of special statistics on corruption-related cases:
a) Line 1 of the table, Abuse and other malfeasances, includes negligence among other mercenary crimes committed by officials.
Negligence (article 322 of the Criminal Code) means non-mercenary inadequate fulfilment of official duties by an official, not connected with the gaining of any material or other benefit, entailing the violation of the rights and interests of citizens or the state. Therefore this offence cannot be recognized as corruption.
b) Line 3, Theft (embezzlement, misappropriation), includes along with embezzlements and misappropriations of property and valuables by public officials also similar actions of public employees who are not officials of government agencies (rank-and-file employees of government agencies or state-owned enterprises), e.g. theft of cattle, wasting of public property by ordinary employees, etc.; embezzlement and misappropriation of joint property of nongovernmental collective companies and firms both by their leaders (directors, managers, etc.) and by rank-and-file employees.
c) Line 4, Crimes in the economic sphere, include all 40 forms of crime in the economic sphere envisaged by chapter 27 of the Criminal Code (from Art.258 to Art.297).
The articles in this chapter envisage along with corruptive offences committed by officials in the public and private sectors also the crimes perpetrated by common citizens, such as illegal entrepreneurship (Art.259), illegal transaction with foreign currency (Art.286), tax evasion (Art.293), etc.
Therefore, not all crimes indicated in the table are corruptive or corruption-related.

Parliament takes anticorruption measures by updating and developing the legislative framework, systematic hearing of reports of law-enforcement agencies on law enforcement status, including the struggle against corruption. It has no specialized standing committees or commissions within its structure for investigating facts of corruption. Applications and reports addressed to Parliament are generally referred for consideration by law-enforcement agencies. When necessary, parliamentary committees or *ad hoc* parliamentary commissions on specific issues conduct their investigation.

On 22-24 May 2002, an international conference on the struggle against economic crime and corruption was held in Dushanbe on the initiative of the Government, Majlisi Oli (parliament), and the Prosecutor General's Office jointly with OSCE, with financial support of the Open Society Institute and the US Agency for International Development (USIAD). This conference was attended by over 160 representatives of all branches of authority, law-enforcement agencies, banks, control and audit agencies, nongovernmental organizations, foreign embassies, students, the press, and representatives of law-enforcement agencies of the Russian Federation, Kazakhstan, and Kyrgyzstan.

The conference discussed the problems of combating corruption, methods of neutralizing economic crime, corruption and tax-related offences in the banking system. Experiences were exchanged concerning anti-corruption measures between law-enforcement agencies of Central Asian countries and the Russian Federation.

The national conference on anti-corruption measures was organized at the Tajik National University in November 2003 with the active participation of staff and students. Representatives of the Presidential Executive Staff, the Majlisi Oli and chiefs of the law-enforcement bodies also took part in the conference.

At the same time, anticorruption law requires further development. The Law On Fighting Corruption No.875 of 11 December 1999 does not explicitly define the notion and does not envision all possible forms of corruption. In matters of fighting corruption, the Law places executives of nongovernmental organizations on the same footing as government officials. In the absence of relevant clauses and, possibly, a detailed differentiation, this can be interpreted as extending rules and restrictions instituted for government officials (the requirement of a declaration of income when hired or for promotion, inadmissibility of joint service of relatives, simultaneously holding two executive positions, acceptance of invitations for tours, medical and health building trips at the expense of private companies, etc.) on executives of nongovernmental and commercial organizations.

Many provisions of the Law, not backed by the norms of the Criminal, Administrative, and Labour Codes, because they have no enforcement mechanism cannot make a significant impact on improving efficiency of the fight against corruption.

In this connection, on the proposal of the Office of the Prosecutor General, and instruction of the President of the Republic of Tajikistan, a government commission was set up in January 2003 to elaborate the new Draft Law and it has since completed its work. The discussion of the Draft Law in the Government is scheduled for early 2004.

The enhancement of the efficiency of struggle against economic crime and corruption is also hindered by the lack of a republican or other regulatory act, obliging all controlling authorities and regulators to submit audit materials to law-enforcement agencies in the event of uncovering corruption and other offences, and instituting a single procedure and order of submitting these materials. Because of the absence of such act, many controlling authorities, financial institutions (including its audit services, too), banks, regulators, and internal security services of ministries and agencies, and local authorities do not refer the materials on serious corruptive offences uncovered in the process of their activity to criminal investigation bodies.

To rectify this situation, the Office of the Prosecutor General has developed and submitted for consideration of the Government the Draft Stature of the Order of Referring to Law-Enforcement Agencies the Materials of Checks and Audits in the Event of Uncovering Offences, which envisages the obligation to refer such reports and materials to relevant authorities. The draft is presently at the stage of consideration.

A significant flaw in anticorruption work is the lack of specialized criminal legal statistics in this area. In the absence of such statistics, and without lengthy summation procedures of judicial and investigative practice, it is impossible to clearly and operatively define the dynamics of the uncovered corruption crimes and offences, and differentiate their types (active and passive bribery, abuse, etc.), spheres of incidence (government and private sector), investigation methods (using special equipment or without it), categories of persecuted and convicted persons (police officers, judges, ministers, etc.), the nature of sanctions imposed, other parameters of corruption manifestations and status of the struggle against it.

There is another problem hindering the solution of this issue – the lack of a single criterion for qualifying offences as corruption. There are no notions of corruption and offences recognized as “corruption” by the Criminal Code.

Although the Code envisages a whole set of crimes, which can be referred to as corruption offences by its elements, there is no uniform definition (no is there such a definition in the neighbouring republics). Therefore, it is necessary to work out these criteria within the framework of developing an anticorruption practice, and develop criminal, administrative, disciplinary, civil and other statistics of corruption offences, their solution, pre-trial investigation, legal consideration, and relevant penalties.

Other legal acts also require improvement as far as the institution of responsibility for corruption offences is concerned. For instance, the Code of Administrative Offence of Tajikistan does not stipulate what is a corruption offence or responsibility for it. The adoption of the Law On Fighting Corruption in its new edition necessitates the inclusion of a special section in this Code, devoted to corruption offences.

The Labour Code does not qualify a corruption offence as grounds for dismissal of a civil servant, does not envisage the transfer to another job in case of emergence of obstacles for occupying this job (kinsmanship with a superior or subordinate official).

The Civil Code does not envisage special sanctions for corruption offences committed by legal entities.

Other laws and departmental regulations also have loopholes for corruption, the detection and elimination of which requires special analyses.

Promotion of Accountability and Transparency

Ethics in the Public Service

Republican law envisages measures directed at creating an efficient public service, transparency in selection and placement of personnel, rules and restrictions designed to prevent corruption within the system of public administration. The legal basis for the organization of the civil service was established by Law of the On Civil Service of 13 November 1998, N°687. This Law extends to persons holding public positions with:

- Committees and staff of Majlisi Oli;
- Executive staff of the President;
- Judiciary and Prosecutor General bodies' staff;
- Public bodies immediately reporting to the President;

- Ministries, State Committees;
- State bodies set up by the Government;
- Organizations set up by the Government subordinated to Ministries and State Committees;
- Local executive state power bodies and structural units thereof, staff of Chairpersons of the Gorno-Badakhshan Autonomous Region, Regions, city of Dushanbe, towns and districts (districts);
- Staff of local self-government bodies in residential settlements and villages (*jamoats*).

This Law does not extend to persons holding public positions whose legal status is determined by the Constitution of the Republic of Tajikistan, Constitutional and other laws, such as the President; Chairman of Majlisi Oli, his First Deputy and Deputies, chairmen of Committees, their Deputies, chairmen of standing Commissions of the Majlisi Oli, people's Deputies; Chairman, his Deputies and judges of the Constitutional Court, Supreme Economic Court, Military Court chairmen, their Deputies and all other all courts.

Under the Constitution, and in the part that has not been regulated by this Law by the Constitutional Laws and other legislative acts, the legal status is determined for: the Prime Minister and members of the Government; Chairman of the Gorno-Badakhshan Autonomous Region, regions, the city of Dushanbe, towns, and district; Chairman of the National Bank of Tajikistan and his Deputies; the Prosecutor General, his Deputies and the lower-rank prosecutors and Office of Prosecutor General investigators; Chairman, Deputy Chairman, Secretary and Members of the Central Election Commission for elections and referenda; employees of the diplomatic service, notary offices, agencies and units of the National Bank of Tajikistan, Security Service and the Ministry of Interior, Tax and Customs bodies, and military servicemen.

Recruited to the civil service shall be citizens of the Republic of Tajikistan 18 years or older, having the relevant educational background, and meeting the requirements of the law for civil servants. Before admission to civil service an applicant shall submit his/her personal application, an identification document, workbook, education certificate, statement from relevant tax agencies of his/her property status, medical certificate, and other documents provided for by law. A citizen cannot be admitted to civil service and hold a civil service position if he/she:

- has been recognized as legally incapable or possessing limited capability pursuant to an effective court ruling;

- has been convicted for committing intentional crimes incompatible with holding a public position;
- has refused to undergo the procedure for authorizing access to data constituting public, service and other secrets, or if the discharge of service duties under the public position a citizen wishes to occupy involves the use of such data;
- is a close relative (parents, espouses, brothers, sisters, sons, daughters as well as brothers, sisters, parents and children of an espouse) with a public servant if their public service involves immediate subordination or accountability of one to another;
- is a foreign citizen, except for cases, where the access to civil service is regulated on a reciprocal basis by bilateral agreements;
- is subject to other cases established by laws and regulatory acts of the Republic of Tajikistan.

Data submitted under the present Law during a citizen's admission to public service and when addressing the issue of his/her appointment to the highest and first category public positions, shall be verified pursuant to the procedure stipulated by laws and normative-and-regulatory acts of Tajikistan.

A citizen shall be admitted to the civil service on the basis of the labour agreement (contract) concluded in accordance with the Labour Code of the Republic of Tajikistan.

The admission of a citizen to the civil service shall be documented subject to the established procedure based on the decision of a relevant public body (official) on the appointment of a citizen to the public position of public service.

Contests to fill out vacant public positions shall be held to ensure equal access of citizens to public service. A decision to hold a contest shall be taken by a government agency or official whose competence includes the appointment to the position in question.

The terms and procedures of holding competitions and tenders for top executive positions in the civil service shall be defined by the Public Service Administration under the President of the Republic of Tajikistan.

A competition may assume the form of the competition documents (to fill vacant public positions of the highest, first, and second categories) or the competition-test (for filling vacant public positions of third and fourth categories).

The competition documents shall be organized by the a panel which shall assess participants based on their education documents, civil service records, and other labour activity documents taking into account recommendations, testing results, as well as other documents submitted pursuant to the decision of relevant public bodies. The test shall be conducted by a commission and may include tests and internships in a relevant civil service position.

Information on the date, venue and terms of said competition may be published by the press.

The decision of the commission may be grounds for appointing a citizen to a relevant public position in the civil service or refusing such an appointment.

A final decision on the appointment shall be made by a government agency or official whose competence includes the appointment to the position in question.

Each contest participant shall be informed about the competition results in writing within a month the date it is held. The Commission's decision may be appealed in court.

According to the general rule, the appointment of heads of departments and offices of ministries and agencies shall be made after discussion of candidates by the boards of ministries and agencies. Other less important positions within the staff of ministries and agencies shall be filled by direct appointment.

It should be mentioned that the republican law has not yet developed provisions establishing concrete spheres of administration and categories of positions requiring obligatory public competition for vacancies.

In many cases, the holding of competitions depends on the decision on an authorized agency (official). Although there are no specific statistics on the methods of filling vacant positions, it is obvious that the number of vacancies filled through competitions is not comparable to those filled by direct appointment. The procedure of holding competitions is imperfect and non-transparent. The practice of publishing announcements and advertisements of contests for vacancies is rare.

In this connection, it is necessary to develop the law to include a list of executive positions filled exclusively through competitions and in turn make these truly public and transparent.

Conditions shall be created for the training, re-training and advanced training of civil servants in relevant educational establishments and through internship. Procedure for and terms of training, re-training, and advanced training, and for internships shall be stipulated by the Directorate for Civil Service and the President on the basis of proposals by relevant public authorities.

Advanced training courses for employees are decentralized and are part of the structure of different ministries and agencies. Depending on these training courses' level of independence and financing methods, they fall into the following categories:

- regular courses – Advanced Training Institutes financed from the budget as independent items, having their own teaching staff (the Institute of Advanced Training of MGDS workers, the Institute of Advanced Training for workers of the system of the Education Ministry, the Interior Ministry Academy, advanced training courses of employees at the Security Ministry, etc.);
- temporary courses financed from the budget on the basis of an estimate drawn up by the central staff of the ministry (agency), only having a regular administration and involving teachers and trainers mainly from the ministry or agency employees.

Periodic attestations of civil servants shall be conducted to improve the activity of the public service, improve personnel training, selection, and employment, and ensure their eligibility to occupy their positions, stimulate the improvement of professional skills, and raise the quality and efficiency of their work, except for officials occupying the highest and first category positions.

Procedures and terms for conducting the attestation of civil servants shall be established by laws and other normative-and-regulatory acts of Tajikistan.

The civil service contract shall be terminated with the dismissal of a civil servant, or his/her retirement or resignation.

The term of a public official (departments and services head) in office is not linked to the minister's term of office.

Apart from the grounds envisaged by the Labour Code, a civil servant may be dismissed on the initiative of a public body director in the following cases:

- a civil servant has been recognized incapable or restricted in capacity by a court decision that has entered into legal force;

- a civil servant has reached the age limit for the civil service;
- a civil servant has revoked his/her Tajikistan citizenship;
- his/her term in public office or labour contract validity has expired;
- he/she has divulged state, service or other secrets protected by law;
- his/her failure to comply with obligations and limitations envisaged by law;
- other circumstances provided for by the law arise.

A civil servant shall be dismissed by a relevant public body (official) empowered to appoint staff to public positions in the civil service.

Should a civil servant be dismissed illegally, he/she shall be entitled to the protection of his/her rights by the court.

Civil servants shall have the right to resignation. The resignation is a termination of the execution of public service duties by employees, which occupy the highest or first category public positions in the civil service in accordance with his/her written application. The grounds for the resignation include:

- forcing a civil servant to execute a decision of a public body or a superior official, which contradicts the legislation and the fulfilment of which may inflict material or moral damage on the state, legal or natural entities;
- political barriers to subsequent civil service;
- the state of a civil servant's health, confirmed by a medical certificate that forbids the execution of service duties.

The resignation shall be accepted or rejected by the public body or the official who had appointed the civil servant to his/her position, with a validated statement of reasons for rejection. The decision to accept or reject the resignation shall be made within two weeks of the filing of a relevant verbal application. Should a resignation petition be declined, the concerned civil servant shall continue execution of service duties and shall be entitled to dismissal pursuant to the procedure provided for by the Labour Code.

Public bodies shall create a personnel reserve for the timely recruitment of civil servants to vacant public positions and for ensuring the promotion of public servants.

A personnel reserve shall be formed of civil servants who have improved their professional skills or have taken an internship training, possess a relevant qualification rank, and have been recommended for promotion based on the attestation outcomes, specialists of local and self-government public bodies in residential settlements and villages, in industrial, social-cultural, and research sectors, as well as graduates of relevant educational establishments.

The procedure for the creation and organization of work with the personnel reserve shall be determined by the Regulations on the Civil Service Personnel Reserve approved by the President.

According to data of the Finance Ministry, on 10 March 2004 bodies of government authority and management, other government institutions financed from the state budget, had 19 868 employees on its staff, including 17 318 civil servants and 2 550 attendants.

The average monthly salary of civil servants is 46.4 somoni. The average level of monthly salary of civil servants serving in ministries is 49.2 somoni; in State Committees, committees and agencies it is 42.5 somoni; in superior courts (the Supreme Court, the Higher Economic Court and the Constitutional Court) it is 90 somoni; in regional, municipal and district courts it is 35.7 somoni; in offices of the public prosecutor it is 45.2 somoni; and in local executive bodies (Hukumaty) it is 34.2 somoni.

The institutional structure for public administration management is the Civil Service Directorate. The Directorate is appointed and dismissed from his position by. The Chief of the Directorate has a deputy appointed and dismissed from office by the President on the request of the Chief of the Directorate.

The structure of the central staff of the Civil Service Directorate includes: the management, the civil service legal support department, the civil service personnel department, the department for working out qualification requirements and the civil servants' labour remuneration system, the training and information department, the administrative and general service department.

The administration of a relevant public agency shall exercise immediate management of civil service personnel through its personnel service on the basis of the Integrated Regulations on the Personnel Service, approved by the President.

Control over the activity of public servants is exercised by personnel services and sectoral departments of ministries and agencies. In the event of detection of disciplinary offences, the head of a ministry or agency shall apply

disciplinary measures envisaged by the Labour Code and the Law On Civil Service.

Disciplinary penalty shall be applied directly after the detection of the offence, but not later than one month after the date of its detection, not including the period of a worker's illness or vacation.

A penalty shall not be applied later than six months after the date the offence was committed, and not later than two days after the offence detected as a result of an audit or inspection of financial and business activity. The time of the proceedings in a criminal case shall not be included in the said period.

Legal and moral obligations of civil servants are regulated in detail by Article 20 of the Law On Civil Service in accordance with which a civil servant shall:

- support the constitutional order, observe and ensure the observance of the Constitution, laws and regulations, as well as international legal acts recognized by the Republic of Tajikistan;
- fulfil his/her official duties in good faith within the limits of authority granted to him by laws and regulations of the Republic of Tajikistan;
- carry out orders and instructions of superiors issued within the limits and competence, except those that contradict the law;
- ensure the observance and protection of citizens' rights and lawful interests;
- respect citizens, superiors and colleagues and observe high personal communication standards;
- prevent actions and deeds capable of undermining the interests of civil service or damage the civil servant's reputation;
- abide by the government agency's in-house rules, office instructions, procedures of handling official information;
- within the frames of their official powers, timely and objectively consider the appeals of legal entities and individuals, people's deputies requests to government agencies or to officials and find solutions in the manner stipulated by law;
- observe state, official or other secret protected by the law, including after the termination of service in a government agency;

- keep secret the information obtained in the process of discharging service duties concerning private life, honour and dignity of citizens, and refrain from demanding such information except cases stipulated by law;
- maintain a sufficient qualification level for effectively discharging his/her official duties.

Specific rights and duties of civil servants are defined on the basis of standard qualification characteristics and are reflected in official statutes and instructions approved by heads of the relevant government agencies within the frames of the law and their competence.

There are no ethics codes for civil servants. Civil servant oath, which is an equivalent of said codes, may serve as a means for ensuring the morale of employees in terms of its spirit, moral and legal implications along with the aforementioned legal provisions.

The Constitution and laws of the Republic of Tajikistan envisage that the President, judges of the Constitutional Court, Supreme Court and Higher Economic Court, other judges, prosecutors, employees of the militia, police, Customs, doctors, etc., shall make a public oath.

In addition to various social censure measures, violation of this oath shall entail legal measures, including the dismissal from service. If the violation of the oath is connected to a committed crime, this involves an imminent criminal liability. Therefore, there is no need for additional regulation of responsibilities of civil servants with a code of ethics. At the same time, the question of adopting such a code would not be a problem if the Anticorruption Network insists on it.

Under Article 23 of the Law On Civil Service, a civil servant is obliged, on an annual basis, to submit, pursuant to an established procedure, a declaration on income, valuable movable and immovable property, bank deposits, financial liabilities, including those abroad, to relevant tax bodies. This declaration shall contain information on the assets owned by family members. Failure to submit a declaration or including false data in it shall constitute grounds for refusal to admit a person to civil service or for his/her dismissal.

Article 9 of the Law On Fighting Corruption stipulates that persons seeking to execute public functions in capacity of an official holding public offices of state power or public offices of public service as well as officials shall submit information to tax bodies at the place of their residence about:

- their income (including the income of their family members), including all material and other services, and revenues obtained from all sources;
- immovable property and valuable movable property with the value above 2000 minimal amounts of wages established by the legislation, including assets outside the Republic of Tajikistan or temporarily owned by other persons indicating the estimated value of these assets and their address;
- bank deposits, including those outside the Republic of Tajikistan indicating banks, and other funds they can dispose of personally or jointly with other persons;
- securities they can hold on their own or jointly with other persons;
- their direct or indirect participation as a shareholder in or a co-owner of a company or a fund indicating shareholding percentage and exact bank and other details of this organization;
- name of trusts, and states, in which they have been registered indicating banks if this person or members of his/her family are beneficiaries of these trusts;
- debt exceeding 500 times the minimum wage and other financial liabilities, including those abroad.

Persons holding public positions of public power or public positions of civil service, as well as officials of local self-governments shall submit to tax bodies information on valuable gifts received by them as officials both in the Republic and abroad indicating documents which confirm the transfer of these gifts to the state.

The said persons shall submit to their employer the statement from tax bodies that they have submitted data on their property status. Failure to submit information or submission of incomplete or false information items listed in this Article if this does not feature indications of a criminally punishable action shall constitute grounds for the refusal to vest an individual with relevant powers or entail dismissal from office or execution of said functions.

Members of family shall be understood to mean parents, brothers, sisters, espouses, children, as well as parents, brothers, sisters, and children of espouses, including other persons living together with them and managing a joint household.

A civil servant shall not be entitled to have a foreign bank account, except for cases related to the execution of public functions in other countries; accept gifts for services provided by way of discharging the official's service duties. If a public employee receives a valuable gift in his/her official capacity both inside the country and abroad, he/she shall be obliged to transfer this gift to the state subject to the established procedure.

Unfortunately, no mechanisms are currently in place for regular monitoring of foreign accounts of public officers and their ownership of companies in other countries with which Tajikistan has no treaties on mutual legal assistance.

If a need arises to establish such facts in a particular case or with respect to a particular person, requests shall be filed with relevant authorities of foreign countries in the manner envisaged for information exchange between law-enforcement bodies of countries that have no agreements on mutual legal assistance with each other.

Legal requirements of obligatory declaration of incomes are the same for all categories of civil servants in bodies of legal, executive, and judicial authority. The contents of declarations of incomes are not subject to disclosure in accordance with Article 23 of the Law On Civil Service except for cases stipulated by law.

The declarations of incomes are subject to examination at natural persons' taxation departments. In 2002, 4 123 civil servants submitted a declaration of income.

It should be mentioned that forms and procedures of filing declarations of incomes by civil servants have not yet been developed in the Republic, therefore procedures and forms of presenting declarations of incomes from business (entrepreneurial) activity of natural persons are employed. This prevents the specialization of tax authorities' units in work with declarations of incomes submitted by civil servants. This is why there are practically no cases of detection of corruption as a result of examination of declarations on the assets of officials or instances of successful use of these declarations in investigation of their corruptive actions.

Failure to execute or improper execution by a public official of duties imposed on him/her (misdemeanour) may entail disciplinary sanctions envisaged by the effective Labour Code and imposed by the agency or director who has the right to appoint a civil servant to a public position.

In addition, the following disciplinary measures may be applied to this civil servant: admonition about incomplete compliance with service standards or a delay of up to one year in conferring the next service rank.

A civil servant guilty of committing a misdemeanour entailing human losses or significant material or moral damage inflicted on a legal or natural entity may be temporarily banished from the discharge of his/her service duties.

The decision on banishing a civil servant from discharging his/her service duties shall be made by the director of a relevant public body.

A civil servant may be banished from discharging his/ her service duties for the period, which shall not exceed the internal investigation term of two months.

The procedure for conducting an internal investigation shall be stipulated by normative-and-regulatory acts of the Republic of Tajikistan. If an internal investigation confirms the validity of banishing a civil servant from the execution of his/her service duties, materials of this investigation shall be transferred to a relevant competent authority.

If the internal investigation fails to confirm the validity of banishing a civil servant from the execution of his/her duties, this decision shall be cancelled.

The procedure for the application and challenging of disciplinary sanctions shall be stipulated by legislation. A civil servant shall have the right to access all the materials related to holding him/her responsible.

Actions and decisions of a public body (an official) may be challenged by the civil servant being held responsible at the superior public body (or appealed against with a higher rank official) or in the court.

Civil servants and private sector employees shall report on corruption offences committed by civil servants that had become known to them. Criminal liability has been established under Article 347 of the Criminal Code in the form of an imprisonment of up to two years for failure to report on criminal corruption offences, if the latter relate to grave or especially grave crime category.

Criminal responsibility for non-reporting of passive bribery (Article 347 of the Criminal Code) depends on whether a particular case of passive bribery constitutes a grave crime or not.

Bribe-taking by a public employee or official not holding a government position (government positions in the Republic of Tajikistan are recognized as positions introduced by the Constitution and other laws for direct fulfilment of the functions of government bodies) shall not be qualified as a grave crime only in cases when services rendered in favour of a bribe-giver constitute this person's official duties, or are manifest in overall patronage or connivance in the service.

In all other cases, including bribe taking for an illegal act (omission) repeatedly, by a group of parsons on collusion or by an organized group, involving bribe extortion on a particularly large scale, the actions of such persons shall be recognized as grave crimes, and non-reporting of them as criminally punishable under Article 347 of the Criminal Code, even if the bribe takers do not hold government positions in the Republic of Tajikistan and are not heads of local self-governments.

Bribe taking by a person holding a government position in the Republic of Tajikistan of by head of a local self-government shall be recognized as a grave crime in any case, and non-reporting of such fact shall entail criminal responsibility, regardless of the type of acts or omissions (legal or illegal) committed in favour of the bribe giver. Therefore, only non-reporting of passive bribery of a public employee or official in the absence of the above qualifying (aggravating) circumstances is criminally punishable.

It seems expedient to introduce administrative responsibility for non-reporting of passive bribery committed in the absence of qualifying circumstances or direct legal obligation of public employees to report the facts of passive bribery committed under any circumstances.

Tax and customs inspectors, employees of the Agency for Procurement of Goods, Jobs, and Services, employees of the State Committee for State Property Privatization also bear criminal responsibility under Article 347 of the Criminal Code (non-reporting or concealment of crime).

There are no legal acts envisaging direct responsibility of public employees to report to the authorities about their suspicions concerning corrupt offences. In the future, this gap will be covered by amendments to the Law On Civil Service or by adding a new article to the revised Law On Fighting Corruption. Nevertheless, raising citizens' awareness on legal issues connected with protection of their rights, including on problems of fighting corruption, is a task implemented by all government agencies. A number of legal acts have been adopted in this sphere, including the following:

- Presidential Edict On Legal Policy and Legal Education of Citizens in the Republic of Tajikistan No.691 of 9 April 1997;
- Decree of the Government On Some Measures for Improvement of Citizens' Legal Education and Legal Work in the Republic No.383 of 22 August 1997;
- Programme of Legal Education and Legal Attitude Development of Citizens of the Republic of Tajikistan (approved by Government Decree No.383 of 22 August 1997);
- Programme of the Public Education System in the Sphere of Human Rights in the Republic of Tajikistan (approved by Government Decree No.272 of 12 June 2001).

During the period from 2001 to the first half of 2003, the republican public prosecution bodies have conducted the following work in this area.

		2001	**2002**	**2003 (1st half)**
Public prosecutor's information		3 141	3 239	1 657
including	At sessions of representative government authorities and administration sessions	871	688	457
	To the population on the criminal status	1 089	1 169	544
	At meetings of work collectives	1 181	1 285	656
Lectures, discussions, other forms of oral propaganda		7 315	7 049	4 351
Appearances in mass media		1 690	1 843	1 048
including	In the press	490	517	311
	On the radio	635	718	410
	On television	565	608	327

Similar work is conducted by all other bodies of public authority and administration, law-enforcement bodies, and public organizations.

Legal counselling offices are open throughout the country. Basic law is included in the curricula of all secondary schools, secondary special and higher education institutions, regardless of their profile. This is why any citizen is aware since school age to whom and under which circumstances to report a crime, including corruptive conduct of government and public officials.

The Law On Fighting Corruption (Article 7) provides for measures to protect persons "voluntarily informing authorities about corruption crimes." Information about such persons or their location is a state secret divulging which entails criminal liability. Protection of such persons is assigned to anti-corruption agencies.

There are no statistics of the number of persons who used this article and the number of investigations conducted on its basis. The availability of such statistics would give a considerable boost to the quality of analytical work in the anti-corruption sphere.

Along with the Law On Public Procurement of Goods, Jobs, and Services (which is described in detail below), there are also other provisions in the republican law aiming at prevention and penalizing for a conflict of interests between public and private functions. For example, in keeping with Article 10 of the Law On Fighting Corruption:

- persons occupying positions of government authority or civil service positions the appointment and election procedures of which are regulated by the Constitution, constitutional laws and laws of the Republic of Tajikistan, shall be prohibited from occupying any part-time and paid job on labour contract (agreement) except scientific, creative and educational activity;
- persons authorized to fulfil governmental functions and officials of local self-administrations shall be prohibited from occupying two managerial positions, as well as performing other regular part-time job except scientific, creative and educational activity, if this job is not used as a means of bribery or other unjustified enrichment of those persons;
- persons occupying positions of government authority or civil service positions and officials of local self-administrations shall hand over in trust management under guarantees for the time of their stay in office the shares (block of shares) in the charter capital of commercial organizations owned by them;
- a person authorized to fulfil governmental functions or an equivalent person engaged in activities inconsistent with fulfilment of functions stipulated herein is subject to removal from office or other suspension from fulfilling relevant functions in the manner stipulated by law.

In keeping with Article 11 of this Law:

- persons authorized to fulfil governmental functions and equivalent persons shall not occupy positions directly subordinate to or controlled by positions occupied by their close relatives or relatives by marriage (parents, spouses, brothers, children, as well as brothers, sisters, parents and children of spouses) or have such persons in subordination or control;
- persons violating the requirements of this article shall be subject to transfer to positions excluding such subordination, unless they voluntarily eliminate the said violation within a three-month period, and if such transfer is impossible, one of these officials shall be suspended.

Article 12 deals with offences creating conditions for corruption, prohibiting civil servants under fear of punishment to:

- interfere with the activity of other governmental and nongovernmental agencies, if it is not included in their sphere of activity and is not based on law;
- use their status for solving issues concerning their personal interests or the interests of their close relatives or relatives by marriage;
- grant unlawful preference to individuals and legal entities during the preparation and passing of decisions;
- participate as solicitors of individuals and legal entities in cases considered by the agency where they serve, its subordinate or controlled agency.

The responsibility for the implementation and enforcement of the above provisions is placed with the heads of ministries and agencies, government bodies, enterprises, institutions, and organizations.

The heads of these bodies failing to apply measures within their competence envisaged by the said Law with respect to their subordinates guilty of corruption-related offence, or applying such measures in violation of provisions of this Law, or not providing relevant information to the tax authorities, if their actions do not constitute a criminal offence on the presentation of bodies authorized to fight corruption, shall be penalized through administrative court procedures.

First section of the Report provides data on the number of persons brought to criminal responsibility for office abuse and other corruption-related offences.

With respect to sanctions applicable by the court to such cases, as well as the number of cases of conflict of interests detected and prosecuted through administrative procedures, it should be restated that the existing form of statistic reporting of courts and administrative authorities of the Republic makes it impossible to monitor the dynamics of offences and the nature of sanctions applied against them. Overcoming this gap has been recognized as a priority task in the sphere of legal statistics.

The Law On Fighting Corruption prohibits the transfer of governmental control and supervisory authorities to nongovernmental organizations and private persons.

To prevent a conflict of interests, Paragraph 9 of the Statute of Procedures for Auction and Tender Sales of Privatization Objects approved by Decree of the Government No.513 of 1997 stipulates that the auction organizer and members of the auction or tender commission shall have no right to participate in the auction for the sale of public property.

Effective measures for preventing a conflict of interests are also envisioned in the sphere of justice. The law on criminal proceedings bans judges, public prosecutors and investigators from participating in the investigation and consideration of a case if they are related to any of its participant or are directly or indirectly interested in the outcome of the case. Such circumstances provide indisputable grounds for suspending them from the case. Therefore, the conflict of interests between public and private functions, being preventable and punishable, does not constitute a problem for Tajikistan.

Public Procurement and Public Subsidies, Licences, or Other Public Advantages

Considering the need for an efficient, cost effective and proper use of public funding allocated for public procurement purposes, preventing abuse and corruption in this sphere, the law on public procurement regulates the procurement procedure and terms and the powers of government agencies in this sphere in great detail.

Public procurement is regulated by the Law On Public Procurement of Goods, Jobs, and Services of 12 December 1997, No. 512. Bylaws regulating public procurement include:

- Decree On Goods, Jobs, and Services Procurement Agency No.214 of 8 May 2001;

- The Statute of Tender Commission approved by order No.1-R of the Goods, Jobs, and Services Procurement Agency (hereinafter – the Procurement Agency) of 14 January 1999;
- The Procedure for the placement of orders and conducting settlements by procurement organizations at the expense of the republican budget;
- The Procedure for the placement of orders and organization of procurement at the expense of the local budgets;
- The Provision on Imposing Restrictions based on government status, approved by order No.2-R of the Procurement Agency of 14 January 1999;
- The Statute On Alternative Methods of Procurement of Goods and Jobs, approved by order No.3-R of the Procurement Agency of 14 April 1999.

The main public procurement methods are limited and unlimited participation tenders held by an authorized body. In holding unlimited participation, tenders suppliers (contractors) wishing to take part in tenders are entitled to submit their bids without any limitations.

Limited participation tenders shall be held if:

- costs involved in the examination and evaluation of a large number of tender bids are incompatible with the amount of the procured goods (jobs) or services;
- goods (jobs) are available from a limited number of suppliers (contractors) owing to the technical complexity or specialized character of the former.

In conducting limited participation tenders, the purchasing agency attracts tender bids from all suppliers (contractors), which can deliver the procured goods, jobs or services, and selects a sufficient number of suppliers (contractors) to ensure the competitive attraction of their bids.

Alternative procurement methods include:

- double-stage tenders
- request for proposals
- request for quotations
- single tendering

The terms and procedures of applying alternative procurement methods are regulated in detail by the Statute On Alternative Methods of Procurement of Goods and Jobs, approved by order No.3-R of the Procurement Agency of 14 April 1999.

Single tendering is a procedure of public procurement, where a contract on the purchase of goods or jobs is signed after negotiations of the tender commission with one single supplier (contractor).

Single tendering can be used by the authorise body to ensure economic efficiency, if the goods and services, due to their high sophistication, specific or special nature, are available only from a limited number of suppliers.

Requests for proposals are addressed to a number of suppliers (contractors) which is considered practically sufficient.

On the basis of the procurement organization's request, the authorized agency can conduct negotiations with the suppliers (contractors) concerning their proposals and can request or permit the revision of such proposals, if the following conditions are met:

a) all negotiations with the supplier (contractor) are confidential;

b) neither of the negotiating parties discloses to anyone any technical, pricing or other market information connected with these negotiations without the counterpart's consent;

c) negotiating opportunity is granted to all suppliers (contractors) who have submitted proposals which were not dismissed.

Following the completion of negotiations, the authorized agency invites all suppliers (contractors) still participating in the procedures to present the best final offer concerning all aspects of their proposals by a particular date. The authorized agency applies the following evaluation procedures:

a) only the aforementioned criteria indicated in the proposal request shall be taken into account;

b) the efficiency of proposals from the point of view of satisfying the requirements of the procurement organization shall be valuated independently from the price;

c) the authorized agency shall consider the price of the proposal only after completion of the technical evaluation.

The authorized agency issues a decision to tender the procurement contract to the supplier (contractor) whose proposal most fully meets the requirements of the procurement organization determined on the basis of its request. The decision should be based on the proposal evaluation criteria indicated in the request for proposals, as well as the relevant significance and application of such criteria set in the request for proposals.

The choice of the procurement method by the procurement organization (open or closed tender or alternative methods) is made in coordination with the authorized agency (the Procurement Agency).

The main criterion of choosing the winning bidder in the main procurement methods is the value of the bid.

The procedure for signing, amending and terminating procurement contracts, and the content of public procurement contracts shall be stipulated by relevant provisions approved by the authorized agency.

Before the tender commission has made its decision on the selection of bidders, tender participants are entitled to file complaints with this commission.

Any decision made by the tender commission may be appealed against by procurement participants with the procuring organization within ten days following the publication of the announcement on the procurement procedure outcomes. Upon expiry of this term, complaints lodged by suppliers (contractors) shall not be considered by the procurement organization.

Complaint objects cannot include selection of the procurement method, selection of the procurement procedure, limiting procurement procedures on the country of origin basis.

Supplier (contractor) or any public body whose interests have been or may be infringed upon as a result of the complaint shall have the right to take part in the challenging procedures. The supplier (contractor) who has failed to take part in this procedure shall be in future stripped of the right to file a similar complaint.

Prior to signing the procurement contract, the supplier (contractor) shall be entitled to submit a complaint to the procuring organization and state the reasons in writing for lodging it. The procuring organization shall have no right to examine the complaint following effectiveness of the procurement contract.

A complaint may be lodged within ten days since the supplier (contractor) has learned or is supposed to have learned about the circumstances set out in the complaint. The procurement organization shall examine the complaint within seven days since the day it has been submitted.

Based on complaint examination results, the procuring organization shall make a decision in writing stating:

- validated reasons for the adoption of said decision;
- measures aimed at satisfying the set out requirements - in the event of full or partial satisfaction of the complaint.

In case the procuring organization has failed to make its decision within the period established by Part 3 of the present Article or the supplier (contractor) is not satisfied by the adopted decision, the latter shall have the right to complain to the authorized body or to the court. Examination of the dispute ceases to fall within the jurisdiction of the procuring organization since the moment such a complaint has been filed.

Relevant provisions adopted by this body shall determine the procedure for the examination of this complaint by the authorized body.

A timely submission of a complaint in accordance with Articles 16 and 17 of the present Law shall suspend the procurement procedures for ten days provided such a complaint is validated and offers proof of the fact that the supplier (contractor) is likely to incur damage if the procedures are not suspended; there is a likelihood of satisfying such a complaint if the decision on the suspension will not inflict significant damage on the procuring organization and other suppliers (contractors).

If the contract has been concluded, the timely submission of the complaint under Article 19 of the present Law shall suspend the enforcement of said contract by the term of up to ten calendar days provided said complaints agrees with the requirements stipulated by Part 1 of the present Article.

The authorized body shall be entitled to prolong the suspension term envisaged by Parts 1 and 2 of the present Article to enforce the rights of the supplier (contractor), which filed the complaint or brought up a lawsuit, pending the completion of challenging procedures on condition that the total suspension period does nor exceed 30 days.

Disputes between the suppliers (contractors) and the procurement organization arising in connection with procurement procedures as well as the

decisions of the procurement organization and the authorized body adopted in accordance with Articles 16 and 17 of the present Law shall be challenged against in courts subject to the procedure stipulated by the law.

Acting as procurement organizations may be budgetary institutions, public bodies and enterprises, local public and self-government bodies as well as state funds.

Civil servants are prohibited from participating in the procurement activities regulated by the present Law as suppliers (contractors). Procurement contracts shall not be concluded between them and institutions they cooperate with or are representatives of or members of their governing bodies.

A person shall not represent a procurement organization or perform other duties related to procurement procedures or to act as an advisor on procurement procedures if he/she:

- is an espouse or a relative of a supplier (contractor) or the latter's legal representative or an official;
- has been an employee or an official of any supplier (contractor) taking part in procurement procedures during the preceding three years.

The purchasing organization shall not sign a procurement contract with a supplier (contractor) related to the parent company or branch thereof whose consultant is responsible for the preparation of specifications or tender documents for the procurement contract.

Rejection of a bid, proposal, offer or quotation in accordance with the present Article and reasons for it shall be reflected in the procurement procedures protocol and shall be immediately communicated to the interested supplier (contractor).

If there are enough bidders for the supply of goods (jobs, services) in the territory of the Republic of Tajikistan, a purchasing organization shall be entitled to limit the participation in procurement procedures to domestic suppliers (contractors).

If the procured items are jobs or services provided in the territory of the Republic of Tajikistan, the purchasing organization shall have the right to require that all jobs it is procuring should be carried out by domestic enterprises using domestic inputs.

Should there be a limitation on foreign bidders' participation, the purchasing organization shall, prior to the beginning of procurement, make a relevant announcement for participants. This announcement, after it has been made, shall not be changed.

Should there be a limitation on foreign bidders' participation, the Government shall abide by international obligations in specifying:

- categories of supplies (jobs and services) to which a limitation on foreign bidder participation applies;
- criteria, on the basis of which the agency authorized by the Government (hereinafter referred to as the authorized agency) shall approve or cancel the limitation on foreign bidders' participation;
- procedures for enforcing the limitation on foreign bidders' participation, including limitations covered by Parts 1 and 2 of the present Article.

If a decision is made concerning the limitation of foreign bidders' participation account is taken of all liabilities of the Republic of Tajikistan under its international treaties.

Domestic and foreign suppliers and contractors shall be offered equal opportunities to participate in procurement procedures under the provisions of the present Law, if they are not banished from participation in public procurement.

The Agency for the Procurement of Goods, Jobs, and Services at the Ministry of Economy shall be the institutional public procurement authority whose mission consists in the organization of procurement of goods for budget organizations and monitoring procurement legislation enforcement by purchasing organizations.

The Procurement Agency consists of its central office servicing the republican and capital city purchasing organizations and regional branches servicing the local executive authorities. There is a total staff of 24 at the Procurement Agency, including its regional branches, with 16 working in the central office.

In 2002, the Procurement Agency held 7 158 tenders for the purchase of goods, jobs, and services to the overall sum of 62 570 200 somoni, including 332 open tenders to the sum of 25 828 500 somoni and 6 824 closed tenders to the sum of 36 742 000 somoni.

Holding such a huge amount of tenders with only 24 people on its payroll strips the Procurement Agency of the possibility to discharge its statutory supervisory functions.

It should be mentioned that in May 2003, the World Bank reviewed the public procurement system of the Republic of Tajikistan.

The Draft Report on assessment of the public procurement system of the (hereinafter – the Draft Report) presented by the republican Government says that the republican law on public procurement in its present form is not explicit, comprehensive and transparent, lacks important provisions usually included in the laws on procurement for regulating the process of holding open and competitive tenders.

The republican procurement law does not require public announcement of tenders, the bidders are allocated very little time for preparing their offers, the bids are not opened in public presence immediately after being filed, the protocols of opening the bids are usually drawn up several days after the bids were opened, in connection with which the bidders or their representatives never get a chance to sign those protocols, the contract is invariably awarded to the bidder offering the lowest price, who may be allowed to change this price after all bids were opened.

The Procurement Agency has been compelled to hold tenders instead of exercising the functions of an independent controlling and monitoring authority. This situation generates a conflict of interests, creates no incentives for government agencies to develop their potential of making independent procurement.

In this connection, the World Bank preliminary Draft Report recommends to the Government of the Republic of Tajikistan:

- to develop the law on public procurement towards gradual decentralization of the procurement system, granting the right to independent procurement to organizations adequately equipped for this purpose, and with this end in view, setting up procurement departments at these organizations; in the future, to provide such opportunity to organizations with a developed potential in this sphere;
- in order to make contractual purchases to large sums (in excess of USD 500,000) and make procurements for organizations still lacking the potential for procurement, to set up procurement departments at the Central Treasury of the Finance Ministry and its local branches;

- to restructure the Agency for Procurement of Goods, Jobs and Services at the Ministry of Economy and Foreign Trade for the focusing of its activity on control of forming the necessary potential, releasing it of the public procurement functions.

To set up for these purposes at the Procurement Agency, in addition to the administrative department and the accounting department, a supervisory department and a potential development department.

Agreeing with the opinion of the World Bank about the necessity of developing the public procurement law towards ensuring the transparency of the procurement procedures and raising their efficiency, the Government proceeds from the need to consider the following circumstances during the selection of the procurement system reorganization forms:

- the practice of direct purchases and complete independence of the purchasing organizations employed in the republic until 1998 (the year the Procurement Agency was set up) did not ensure efficiency, transparency or cost effectiveness of procurement. The price, quality of the purchased products, nature of connections formed between suppliers (contractors) and purchasing organizations contained indications of an ailing economy and corruption in this sphere, which caused the transfer to a centralized procurement system controlled by the government;
- the proposed decentralization form envisions the creation of procurement departments not only at the Central Treasury and its local branches, but also at all executive local authorities (whose number exceeds 80), district, regional, and republican sector management institutions and all public procurement organizations.

Expenses on creation and maintaining these departments would amount to not less than one third of all budgetary funding allocated for procurement of goods and services. The creation of over a thousand new positions within the public procurement system instead of the current Procurement Agency staff of 24 seems to be onerous for the budget and hardly expedient from the point of view of susceptibility of these positions to corruption. Therefore, agreement was reached to adjust the final version of the recommendations in the following manner:

- The procurement law shall be improved in the near future by inclusion of the missing articles of the model law of the UN Committee for International Business Law and the draft law on public procurement of

goods, jobs, and services developed by international experts for Tajikistan in 1997.

- The Procurement Agency shall retain its direct purchasing functions until the formation of a procurement potential of the purchasing organizations, at the same time reorienting towards the monitoring functions.
- The procurement functions shall be gradually handed over to purchasing organizations in keeping with the results of personnel training and assessment of their potential.
- The World Bank shall not insist on the delegation of the procurement powers to the Central Treasury of the Finance Ministry and its local branches due to their total lack of procurement potential.

The implementation of the aforementioned measures will enable the Government to streamline the procurement law and the system of public procurement with requirements of international organizations and anti-corruption standards in this sector within the coming year.

Financial Control / State Audit

State audit shall be based on Laws On State Financial Control of 2 December 2002, N°66, On the Treasury Department of 12 May 2001, No.19, and On State Finance of 2 December 2002, No.77.

The function of internal audit and budget control, filing regular reports and adjustment proposals are assigned to the Internal Audit Department of the Central Treasury of the Finance Ministry. This department is responsible for monitoring initial expenses, methodological support in accounting and reporting.

The Internal Audit Department has four auditors on its staff headed by the Department Head. Local treasury branches have 27 auditors on their staff reporting to heads of the local financial bodies.

The Department activity is planned for one year ahead, with breakdown by quarter-years and facilities specifying the time of the audits.

In 2001, the Audit Department conducted 38 audits at budget institutions financed from the republican budget and the pace of execution of the expenditure part of local budgets. The audits have revealed financial violations in the form of misappropriation of budgetary means, unjustified transfer of

funds from one expenditure item to another, excess of expenditures and so on to the sum of 426 000 somoni. In 2002, this Department conducted 51 audits and uncovered financial violations to the sum of 879 512 somoni.

The Central Treasury Directorate has issued decisions on all the detected violations, imposing financial sanctions on budget institutions in the form of cuts in financing equal to the sum of the violation or reducing the institutions' budget for the upcoming period by an equivalent sum.

Although current monitoring and operative detection and elimination of violations envisions obligatory audits in the course of every year, in connection with the personnel shortage of the Internal Audit Department of the Central Treasury and a large number of subordinate organizations (over 800 organizations) in practice it holds the audits of their activity only once every two years, when the point at issue is no longer mere adjustment of financing and correction of errors, but the statement of facts and imposing penalties, constituting the functions of bodies of subsequent control (the State Financial Control Committee).

The law is not sufficiently explicit in defining the functions and authorities of internal audit departments, forms and terms of imposing sanctions for detected financial violations, the duty to detect financial machinations and reporting them to law-enforcement bodies. This is why during the past years the Internal Audit Department has detected practically no serious corruption offences, and even materials containing the evidence of suspicions of corruption have not been referred to law-enforcement agencies. It is thus considered necessary:

- to work out legal provisions clearly defining the functions and authorities of the Internal Audit and Control Department of the Central Treasury, separating its functions and authorities from those of the State Financial Control Committee, defining the forms and terms of imposing sanctions for financial violations detected in the process of internal audit, introducing the rules and restrictions ensuring objectivity and independence of auditors;
- to work out professional documentation on internal audit in the public sector by applying international standards and audit methods;
- to provide for computerization of the service and internship of its staff in countries with a well developed audit system;
- to extend the staff of the audit service, raise the level of auditors' salary.

State financial control (external audit) shall be exercised by the Committee for State Financial Control (CSFC) which has branches in all regions. Before 2001 the function of state financial control was carried out by the Control and Audit Department of the Finance Ministry.

By Decree of the President of 25 January 2001, the said Department was transformed into the State Financial Control Department, on the basis of which the State Financial Control Committee was set up by Presidential Decree No.590 of 30 May 2001, which proceeded to its activity in full volume as of June 2001. The objectives of state financial control include:

- organization and holding of audits and inspections of the execution of the revenues and expenditures parts of the Republican and local budgets, state funds, as well as efficiency of spending public funds and using public property;
- monitoring on-time and full financing of state, investment, and social programs;
- audit and inspection of the legality and timeliness of the movement of state budget funds and state funds in banks and other monetary institutions;
- monitoring the use of credit resources and foreign investments attracted by the Government, and also by the National Bank of the Republic of Tajikistan;
- inspection and audit of the activity of agencies discharging the intradepartmental control functions, etc.

CSFC is entitled to hold inspections and audits of efficiency of disbursement of public funds and property in all government agencies, organizations, institutions, and state-owned enterprises.

Supervisory functions are also exercised with respect to local self-administrations, individuals and legal entities, regardless of their form of ownership, if they receive, transfer, or use state budgetary funds, public property, or manage it.

The activity of enterprises involving not less than 25% participation of the state is subject to state audit. This is connected with the fact that the state, as any other co-owner or co-founder of an enterprise has the right to audit the use of its property or investments.

Retaining a controlling a block of shares in state property during the privatisation of state property is not a mandatory rule in Tajikistan.

The republican law on privatisation does not envisage retaining a controlling block of shares in state property. Only the shares not purchased as a result of an auction may remain in state property.

The shares of 419 out of the 538 privatized state enterprises have been fully sold during the privatisation auctions. The state has retained the ownership of up to 25% of the shares of only 19 privatized state enterprises, which accounts for a mere 3.5% of the total.

To eliminate financial violations containing no elements of a crime, compensate for damages, impose disciplinary and material responsibility on guilty persons, CSFC issues instructions to relevant bodies of power and management, heads of enterprises and institutions.

Data on CSFC Performance from 2001 to November 2003

Figures		**2001**	**2002**	**2003**
Number of audits and inspections		780	1 448	1 141
Total detected damage (somoni)		23 976 613.2	27 188 948.8	14 915 905.0
including	unjustified expenses	13 843 894.3	19 147 311.9	9 666 417.3
	shortage and embezzlement of money and valuables	8 041 765.7	6 630 032.5	3 415 103.5
	damage inflicted by illegal sale and rent of public property	2 090 953.1	1 411 604.5	1 827 869.0
Misuse of funds		6 633 391.6	24 051 863.0	6 200 356.2
Total damage compensated	to the budget	631 786.6	631 405.6	676 987.8
	to enterprises	643 460.8	1 269 030.1	1 257 264.7
Number of persons brought to material and disciplinary responsibility		1 348	2 115	1 959
Including persons suspended		209	181	89
Referred to investigation authorities	number of materials	262	316	243
	amount of damage	17 218 966.4	11 677 326.0	6 644 708.7

In the event of detection of serious abuse in disbursement of public funds, abuse, etc., materials of audit and inspection shall be referred to the public prosecutor's offices within a five-day term from their consideration.

In accordance with Article 3 of the Law On State Financial Control, state financial control shall be based on principles of independence and openness. The law envisions no mechanisms for presidential interference in the activity of the State Committee for Financial Control in connection with its statutory functions.

The results of activity of the State Committee for Financial Control receive systematic press coverage. Citizens and mass media have a right to request information on the work of the State Committee for Financial Control in the manner prescribed by law (more details are provided in the section Access to Information).

The structure, staff, and labour remuneration fund of the Committee for State Financial Control of shall be approved by the President. The CSFC staffing table envisages 162 workers (managers and specialists), including 94 persons in the central office and 68 in regional branches. CSFC has no district offices.

Funds to finance the CSFC are earmarked as a separate item in the Republican budget. Salaries of Committee employees shall be set by the President of the Republic of Tajikistan and presently vary from 29 to 56 somoni depending on official position.

The extra pay for these employees shall be set pursuant to the procedure and amount established for personnel of the Executive Staff of the President of the Republic of Tajikistan.

CSFC Chairman shall be appointed by the republican President. State auditors shall be hired by an order of the CSFC Chairman.

CSFC is accountable to the republican parliament, submitting annual detailed reports on the Committee performance. Information on the Committee's activity shall also be presented on results of each reporting quarter to the President of the Republic of Tajikistan.

The CSFC shall inform mass media about the results of its work. Independent mass media of the Republic overtake state-owned mass media in terms of the number of materials on the activity of the financial control body.

Information about the progress in the execution of state budget is generally available. Under Articles 8 and 62 of the Law of the Republic of Tajikistan On State Finance, budgets of all levels and budget execution reports shall be published in the press.

Tax and Customs System and Fiscal Treatment of Bribes

Prior to 2002, Tax and Customs Services in the Republic acted as independent departments (State Committees).

Pursuant to Decree of the President of the Republic of Tajikistan of 24 January 2002, Tax and Customs Committees with the Government of the Republic of Tajikistan were merged into the Ministry for State Revenues and Duties.

These two services have been united into a single ministry for purposes of raising the efficiency of public funds management, forming a single authority responsible for coordination and status of public incomes, reducing the maintenance cost of governmental staff in this sphere through a 20 percent cut of the personnel of tax and customs services.

The Statute of the Ministry for State Revenues and Duties was approved by Resolution of the Government of the Republic of Tajikistan, No.119, of 3 May 2002. The objectives of tax authorities are:

- ensuring compliance and enforcement of tax legislation;
- participation in drafting laws and other normative-and-regulatory acts on taxation issues as well as tax treaties with other states;
- explaining to taxpayers their rights and obligations;
- informing taxpayers about changes in tax legislation in a timely manner.

Tax authorities shall have the right to:

- in the case of legal and natural entities — inspect all financial statements, ledgers, reports, cost estimates, cash funds, securities and other valuable assets on hand, calculations, returns and other documents related to tax assessment and payment, receive information, verbal and written explanations on issues arising in the course of said inspections from enterprise (organization) officials, other employees thereof, and individuals, as well as to exercise foreign exchange control;

- inspect all industrial, storage, trade and other premises of enterprises and individuals used for deriving profit or related to the maintenance of the taxation entity, and also conduct observations by the time-study and other methods;
- provide binding instructions to enterprise directors and other officials, and individuals to redress the revealed violations of tax and entrepreneurship legislation, and to monitor their implementation;
- apply tax sanctions and penalties for the violation of tax legislation, envisaged by the present Code, to enterprises, officials and individuals;
- collect taxes, penalties and interest, as well as administrative fines, which failed to be paid on time, from enterprises, their officials, and individuals, including through bringing up court lawsuits;
- draw up protocols on the violation of tax legislation by enterprise officials or individuals and adopt rulings;
- perform control purchases of goods (products), jobs and services at enterprises and individual entrepreneurs;
- obtain from banks and other enterprises - solely for service purposes — information, statements and documents on the entrepreneurial activity, transactions and accounts of enterprises and individuals being inspected;
- submit, subject to the established procedure, to the Government of Tajikistan, local representative and executive power bodies, proposals about cancelling their decisions and those of subordinated bodies, which contravene the effective tax legislation of the Republic;
- suspend expenditure transactions of legal and natural entities on settlement and other accounts in bank institutions of the Republic of Tajikistan, including currency accounts, pursuant to the court ruling.

The system of tax authorities includes the Tax Directorate of the Ministry for State Revenues and Duties of the Republic of Tajikistan, Tax Departments in Regions and city of Dushanbe, Tax Inspections of towns and districts, as well as the Major Taxpayer Inspection of the Ministry for State Revenues and Duties and divisions thereof in Regions and city of Dushanbe.

The norms and procedures of the tax authorities' logistic support are established by the Government. The property of tax authorities constitutes public property.

Expenditures of tax authorities shall be financed from the Republican budget. Procedures for material-and-technical support of and logistical norms for tax bodies shall be established by the Government. Property of tax bodies shall be owned by the state.

Tax authorities shall perform their duties independently from central and local executive power bodies, law-enforcement, financial and other state bodies, and shall interact with these bodies. The latter are prohibited from intervening with the activity of tax authorities.

The independence of the tax bodies from the executive authorities consists in their organizational independence, functioning in the form of a single centralized system independent from the local authorities.

The functions and powers of tax bodies are stipulated by the Tax Code, adopted by the republican Parliament. The executive authorities cannot charge them with functions not provided for by the law. The tax and customs bodies are financed exclusively from the republican budget in volumes annually determined by the Parliament in the Law On the State Budget for the relevant year.

The inadmissibility of interference in the activity of tax and customs authorities is also guaranteed by measures of state coercion.

Interference in the activity of tax and customs bodies by government officials in the absence of indications of office abuse (mercenary or other interest) shall be considered as excess of duty, the responsibility for which is envisaged by Article 316 of the Criminal Code in the form of a fine or imprisonment for a term up to ten years along with deprivation of the right to occupy this position for a term up to three years.

The acts issued by executive authorities, restricting the powers or entailing interference into the activity of tax or customs bodies may be petitioned against by the tax or customs bodies or appealed by the public prosecutor. Appealed or petitioned acts shall be cancelled by the body that had issued them, a superior authority or the court.

Customs bodies of the Republic of Tajikistan shall perform the following functions:

- participation in the development and enforcement of the Customs policy of the Republic of Tajikistan;

- ensuring compliance with the legislation whose enforcement is imposed on the Customs bodies of the Republic of Tajikistan; adopting measures to protect the rights and interests of citizens, enterprises, institutions, and organizations in conducting Customs operations;
- ensuring, within their mandate, the economic security of the Republic of Tajikistan, which is the economic basis for the sovereignty of the Republic of Tajikistan;
- protection of the economic interests of the Republic of Tajikistan;
- application of Customs means for the regulation of trade and economic relations;
- levy of Customs duties, taxes and other tax charges;
- participation in the development of economic policy measures in respect of goods that are transported across the Customs border of the Republic of Tajikistan, implementation of these measures;
- ensuring the observance of the permission order for the movement of goods and vehicles across the Customs border of the Republic of Tajikistan;
- combating smuggling, violations of Customs rules and tax legislation in respect of goods transported across the Customs border of the Republic of Tajikistan, interdicting illegal trafficking of drugs and psychotropic means, weapons, articles belonging to artistic, historical and archaeological heritage of the peoples of the Republic of Tajikistan, and foreign countries, intellectual property objects, endangered animal and plant species, parts and derivatives thereof, and also facilitating the fight against international terrorism and interdicting illegal interference with the activity of international civil aviation in the airports of the Republic of Tajikistan;
- exercising and improving the Customs control and Customs clearance procedures, creating conditions encouraging the accelerated movement of goods across the Customs border of the Republic of Tajikistan;
- maintaining Customs statistics of foreign trade and special customs statistics of the Republic of Tajikistan;
- recording the goods nomenclature for foreign economic activities;
- encouraging the development of foreign economic ties of the country's regions, as well as enterprises, establishments, and citizens;

- facilitating the implementation of measures to protect public security, public order, population's morale, human life and health, flora and fauna, natural environment, interests of domestic consumers of the imported goods;
- monitoring the exportation of strategic and other commodities vitally important to the interests of the Republic of Tajikistan;
- exercising foreign exchange control within their mandate;
- ensuring the fulfilment of international obligations of the Republic of Tajikistan related to the Customs affairs; participation in the development of international treaties of the Republic of Tajikistan related to Customs affairs; cooperation with Customs and other competent authorities of foreign states, international organizations dealing with Customs affairs;
- conducting research and consulting in the Customs sector; performing the training, re-training, and advanced training of specialists in this sector for public bodies, enterprises, institutions, and organizations;
- providing, subject to the established procedure, information on Customs issues to the Majlisi Oli of the Republic of Tajikistan and the Government of the Republic of Tajikistan, other public bodies, enterprises, institutions, organizations, and citizens;
- implementation of an integral financial and business policy, development of the material-and-technical basis and social base of the Customs bodies, creation of the required labour conditions for the employees of said bodies;

The Customs bodies' system incorporates the Customs Directorate of the Ministry for State Revenues and Duties, Customs Departments in Regions and in the city of Dushanbe, Customs divisions, and Customs stations.

Tax and Customs bodies are functionally independent. This independence is ensured by the funding independence, impermissibility of the interference with their activities on the part of other agencies, prohibition on entrepreneurial and other activities of employees of these services.

Tax inspectors and officials of Customs bodies are obliged to inform competent authorities about offences they have revealed. The binding nature of reporting corruption suspicions stems from the meaning of the law.

The Tax Department presently has 1 407 persons on its staff, including 1 237 professional economists and 24 lawyers. The Tax Police department has on its staff 239 professional finance economists and 173 lawyers.

The staff of the Customs Department numbers 977 persons, including 35 customs experts, 284 finance economists, 194 lawyers, and other specialists.

Monetary compensation (monthly salary, not including bonuses) of workers of the said services varies from 24 to 36 somoni.

Stepping up corruption in Tax and Customs administrations is the responsibility of the law-enforcement agency — Tax Police Department — operating under the Ministry for State Revenues and Duties; one of the leading units of this Department is the Anti-Corruption Division. The Customs Department also has its own law-enforcement unit.

If there are suspicions of an offence involving the violation of tax and customs regulations, officials of the tax and customs authorities shall refer the materials to law-enforcement units (the tax police and the department of inquiry of the Customs Department), which are empowered to investigate them, initiate criminal proceedings and refer them to the public prosecutor's office if the law requires obligatory pre-trial investigation of these cases. If pre-trial investigation of these cases is not obligatory, these authorities shall make the inquiry themselves and refer the case directly to court via the public prosecutor's office.

During the period of 2002-2003, law-enforcement agencies of the Ministry for State Revenues and Duties have initiated 1 163 criminal cases, including 170 cases by the Customs Department and 983 cases by units of the tax police.

The Internal Security Department at the Ministry for State Revenues and Duties is in charge of the issues of fighting crime and corruption among the workers of the ministry. The Department has 24 employees on its staff, whose objectives include operative investigation for detecting and terminating corruptive actions on the part of the system personnel, official investigations of offences committed by officers.

Over the period of 2002-2003, 16 criminal cases have been initiated against the officers of the tax and customs services, including 4 cases of bribe taking, 5 cases of appropriation of taxes and fines, and 7 cases of other official offence.

Official investigations of offence has been conducted with respect to 71 officers of the tax and customs authorities according to results of which 19 officers were discharged and 41 subjected to other measures of disciplinary responsibility.

The Ministry for State Revenues and Duties performs regular attestations of personnel and rotations of work places.

The Instruction On Procedures and Terms of Performing Attestations of Personnel of the Ministry of State Revenues and Duties of the Republic of Tajikistan has been approved by Order No.154 of the Minister for State Revenues and Duties of 4 July 2003.

The attestations are performed systematically once every three years. The purposes of attestation include:

- establishing compliance to the occupied position;
- effective use of an employee's skills and abilities, compliance with the speciality and occupation;
- inclusion as reserve personnel for promotion to a higher position;
- establishing the need for raising an employee's qualifications.

Attestations are also given in the event of a transfer to another job or appointment to another position (if official duties have changed). They are issued by the Attestation Commission of the Ministry of State Revenues and Duties, the composition of which is approved by the Minister's order.

Based on the results of the attestation, the Attestation Commission may present the following recommendations with respect to the employee undergoing the attestation:

- appoint to a higher position;
- present for conferral of the next qualification rank ahead of the scheduled date;
- change (reduce or increase) the bonus to salary for special service conditions;
- include as reserve personnel for service promotion.

In the event of recognition of an employee as inconsistent with the occupied position, he/she shall be referred for advanced training or retraining to the Ministry for State Revenues and Duties Institute of Advanced Training or transferred to another job (including lower-ranking positions) upon his/her consent.

Disputes connected with any attestation, including those concerning dismissal from the occupied position, shall be settled in court.

The Presidential Edict On Formation of the Ministry of State Taxes and Levies of the Republic of Tajikistan No.745 of 24 January 2002 envisages a 20% cut in personnel of the tax and customs bodies. In pursuit of this Edict, a commission of the Ministry for State Revenues and Duties was set up to determine the personnel due for dismissal based on the attestation results.

The Ministry for State Revenues and Duties has experienced difficulties with personnel rotation due to the problems of providing them with housing.

Tajikistan's tax legislation has no provisions that allow tax deductibility of bribes.

Money Laundering

Tajikistan's Criminal law classifies money laundering as a separate crime under Article 262 of the Criminal Code in the following edition: Article 262. Legalization (Laundering) of Illegally Gained Money or Other Property

1) Property transactions of other operations involving monetary funds or other property most likely obtained by illegal methods, as well as the use of such monetary funds or other property for engaging in entrepreneurial or other business activity or their utilization in any other way shall be penalized with a fine in the amount from 500 to 1 000 minimal salaries or freedom deprivation for a term up to four years and a fine in the amount up to 200 minimal salaries.

2) Similar actions committed:
   a) repeatedly;
   b) by a group of persons on collusion;
   c) with the use of a person's official position;

   shall be penalized with freedom deprivation for a term from four to eight years with or without property confiscation and with or without deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years.

3) Actions envisaged by parts one or two of this article, committed:
   a) by an organized group;
   b) on a large scale;

   shall be penalized with freedom deprivation for a term from seven to ten years with or without property confiscation and with or without deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years.

Note:

- A person participating in the legalization of illegal proceeds shall be relieved from criminal responsibility if he/she participating in solving the crime and voluntarily relinquished (surrendered) the illegal proceeds.
- This article recognizes as large illegally gained monetary funds or property value exceeding the minimal salary three times.

The aforementioned deed has been recognized as an independent offence within this context for the first time by the new Criminal Code enforced on 1 September 1998. For money laundering purposes, any crime, including corruption offences and, in particular bribery, is considered to be a predicate crime.

There have been cases of legal prosecution concerning the laundering of crime proceeds. For example, Tajik nationals J. Siyoev and V.V. Tsoi set up a private company, Jamal & Co. From March 2003, they began investing large sums of citizens' money, gained by illegally, in the commercial turnover of their company and paying interest on them by registering citizens' deposits as pledges for raw materials for the purposes of concealing their illegal banking activity.

On 14 August 2003, the Office of the Prosecutor General initiated a criminal case versus J. Siyoev and V.V. Tsoi under Article 262 (part three, items a and b, laundering crime proceeds by an organized group and on a large scale) and article 263 (part two, items a and b) (illegal banking bringing revenue and inflicting damage on a particularly large scale). Upon completion of the pre-trial investigation in early November 2003, the case was referred to the Supreme Court and is currently under consideration.

It should be noted that the laws on banks and banking restrict access of law-enforcement agencies to information on banking transactions. There are no laws ensuring transparency of companies' accounts or obliging the banks to report suspicious transactions to law-enforcement agencies. There is no authority responsible for financial investigation (monitoring).

The Government intends to overcome these gaps within the framework of development of the law on fighting corruption and preventing the financing of international terrorism. Preparatory measures are underway to set up a financial investigation authority. In order to study and select the most effective option, representatives of the government, financial institutions, and law-enforcement bodies take part in the World Bank-sponsored seminars in the republic on issues

of money laundering and preventing the financing of international terrorism, one of the components of which is in fact the creation of a financial monitoring (investigation) authority.

Representatives of the Executive Staff of the President, the Office of the Prosecutor General, and the Tax Department also participated in an international seminar organized by the International Monetary Fund in Vienna (Austria) on 4-8 August 2003 on preparing legal acts on the fight against money laundering and preventing the financing of international terrorism.

It was recognized that it was necessary to establish a working commission for elaborating a legal act determining the functions and powers of the financial investigation authority.

The list of financial transactions recognized as suspicious and the list of persons obliged to report such information constitute the subject of the Law On Financial Monitoring Body, the elaboration of which has been mentioned above. Effective laws do not provide a list of such transactions.

Corporate Accounting and Auditing Standards

The law on accounting and cash transactions serves the purposes of tightening control over the movement of money, products, and material values, and resisting their illegal appropriation. Laws and bylaws regulating the procedures for accounting documents, balance sheets and statements, accounting and audit standards for enterprises, institutions, and organizations include:

- Law On Accounting No.750 of 14 May 1999;
- The Tax Code of the Republic of Tajikistan;
- The Statute of Accounting and Reporting approved by Order of the Finance Ministry No.9 of 8 February 2003;
- Instruction on Accounting in Budgetary Institutions approved by Order of the Finance Ministry No.157 of 26 December 2000;
- Cash Transaction Procedures in the National Economy No.19 of 15 June 1993; and
- other laws and bylaws envisaging comprehensive, continuous documentary accounting of all financial and business transactions.

Accounting standards are identical for all public and private companies whose activity is aimed at gaining profit. Accounting procedures at budgetary

institutions, which have their own specifics connected with the non-profit nature of their activity, are regulated by the Instruction on Accounting in Budgetary Institutions approved by Order of the Finance Ministry No.157 of 26 December 2000.

All enterprises are obligated to compile accounting statements on the basis of the synthetic and analytic accounting data. The composition and scope of accounting documents for all economic sectors and budgetary organizations shall be determined by the Ministry of Finance. Enterprises producing printed products are prohibited from producing accounting forms, making copies of them, and selling them without a permit in writing from the Ministry of Finance.

The reporting year for all enterprises is the calendar year from 1 January to 31 December, inclusive. The first reporting year for newly created enterprises is the period from the date of their state registration to 31 December of the relevant year.

Monthly and quarterly reporting is intermediate reporting and is compiled as a cumulative total since the beginning of the reporting year.

All enterprises (except budgetary ones) shall submit annual accounting statements to their founders, enterprise participants or owners of enterprise assets in accordance with their statutes.

Ministries, committees, concerns, associations, and other Republican institutions shall present consolidated quarterly and annual accounting documents to the Ministry of Finance and to State Statistics Agency with the Government.

Accounting statements shall be submitted to other executive power bodies, banks, and other users in accordance with the legislation of the Republic of Tajikistan. Except for budgetary enterprises, enterprises shall submit quarterly and annual accounting statements within terms set by the Ministry of Finance.

Annual accounting statements of ministries, committees, and other Republican departments shall be examined by balance commissions of these entities and approved by a relevant order, while annual accounting reports of other entities shall be approved pursuant to the procedure stipulated by constituent documents of an enterprise.

Balance commissions are set up every year for considering reporting data (a balance sheet for the reporting period). These commissions are not standing

and have no powers to monitor current activities of an enterprise or an organization, inherent in a body of internal audit.

Budgetary institutions shall submit monthly, quarterly, and annual accounting statements to the superior body within deadlines stipulated by the latter.

Open-end joint stock companies, banks and other credit institutions, insurance enterprises, stock exchanges, Fund for Social Protection of Population with the Government, investment and other funds set up at the expense of private, public or state contributions, shall, not later than 1 June of the year following the reporting year, make public, at their own expense, annual accounting statements in mass media.

Under the law, enterprises shall be obliged to keep primary accounting documents, accounting registers and accounting statements.

The working chart of accounts, other discount policy documents, encoding procedures, data processing software (with the indication of the period of their use) shall be kept by an enterprise for at least five years since the year when they were used for compiling accounting data and accounting reports for the last time.

Enterprise director and chief accountant shall be responsible for organizing the custody of accounting documents of accounting registers and statements.

Directors of enterprises and other persons responsible for the organization and maintenance of accounting shall be liable for the violation of the legislation on accounting under the law.

The Ministry of Finance, tax bodies and financial control bodies shall oversee compliance with accounting and reporting legislation. Documental checks of financial and business transactions may be conducted on a contractual basis by independent auditing companies and individual auditors holding licenses to such activity. The law stipulates rules and restrictions aimed at ensuring objectivity and independence of public and private auditors. Nongovernmental companies obtaining, using or transferring state budget funds, state property, or administering it, may be subjected to audit.

Target inspections of receipt, transfer, and usage of state budget funds by other economic entities, regardless of their form of ownership, fulfilment of the state order and applying state monitoring shall be exercised in cases when such

inspections are caused by a necessity to conduct a counter-audit of a concrete fact.

Article 9 of the Law On State Financial Control stipulates that inspectors (auditors) shall not interfere with the activity of the audited company, disclose their conclusions before the completion of the inspection (audit) and finalization of its results. Data obtained by auditors shall not be used for personal ends.

Bodies of financial control are functionally independent. Hindering the activity of their staff, pressurizing them for purposes of adopting a decision in favour of some or other party, as well as forceful actions, slander, or distribution of false information on their official duties entails responsibility stipulated by law.

Articles 4 and 13 of the Law On Auditing envisages independence of auditors and auditing companies from government agencies and their employers. The following persons shall not act as auditors:

- close relatives or kinsmen of the employer or director of the audited economic entity;
- persons with personal property interest in the audited economic entity;
- employees of the audited economic entity or its affiliate;
- officials of bodies of public authority and administration;
- creditors, investors, other stakeholders or their representative.

An auditor may refuse to conduct an audit if the economic entity fails to provide the documents necessary for the audit or in the event of failure of government agencies to guarantee his/her personal safety and the safety of his/her family when necessary. Control and supervision of abidance by these rules and restrictions with respect to the independence and objectivity of auditors is exercised besides their superior agencies by the public prosecutor's offices.

The Law On Auditing allows the creation of audit associations. However, all 30 auditors in the republic function independently. At present, no associations have been created.

Presidential Decree N°542 of 28 March 2001 introduced the economic entities' audit control register in all enterprises and organizations, regardless of their form of ownership. Mandatory registration of audits, including the indication of the name and official position of the auditors, the grounds and

purposes for conducting the audits, and their results make it possible to establish the lawfulness, objectivity, and independence of the audits. The monitoring of the process of keeping economic entities' audit control registers and their lawfulness has been assigned by the public prosecutor's office.

Violation of the audit procedures, holding unsanctioned audits, forgery, and negligence on the part of auditors shall be penalized with disciplinary, administrative, and criminal measures.

Accountants and other persons responsible for accounting shall be penalized for the violation of business transactions accounting procedures, forgery, distortion of account data, non-presentation of statements and balance sheets, and other violations with disciplinary, administrative, and criminal sanctions.

Part 1, Article 211-4 of the Code on Administrative Offences (CAO) of the Republic of Tajikistan provides for the penalty in amount of ten minimal wages to be imposed on relevant officials. Part 2 of this Article provides for the penalty in amount of five to twelve minimal wages for the provision of distorted data, statements and balance sheets.

Article 164-1 of this Code has introduced a penalty of 30 to 50 times the minimum wage for failure to maintain income accounting or for its maintenance with a violation of the established procedure, failure to present or to present on time returns, statements, balance sheets and other documents, or for including distorted data in these documents.

Under Article 165-1 of the CAO, absence of accounting or accounting with a violation of the established procedure or distortion of accounting statements or failure to present or submission in violation of the existing format of accounting balance sheets, estimates and other documents related to tax assessment and payment, concealment (underestimation) of profit (income) or concealment of other taxable items shall entail a penalty from one to two times the minimum wage.

If a person authorized to maintain accounting persistently omits to document data requested by legislation or if he/she knowingly enters false data on economic and financial activity of the organization in accounting records, or if he/she destroys financial or other accounting documents, this shall entail criminal responsibility under Article 272 of the Criminal Code in the form of a penalty of 500 to 1 000 times the minimum wage or imprisonment for up to two years.

Forgery of documents, that is the entry by an official or by a civil servant who is not an official, of knowingly false data, or introduction by this person of corrections in these documents, which distort the latter's real meaning, or the issue by this person of forged documents — if these actions have been committed out of lucrative or other personal interests — shall be punished under Article 323 of the Criminal Code by imposing a penalty of up to 500 times the minimum wage or corrective labour of up to one to two years, or deprivation of freedom of up to two years followed by the deprivation of the right to hold certain positions or engage in certain activities for up to three years or without such a term limitation.

In many instances, supervision of compliance with accounting rules, rules for maintaining accounting records, and verification of credibility of these documents and investigation of reasons for entering distorted data lead to the detection of bribery and corruption. There are many such examples in the practice of controlling and investigative bodies of the Republic.

The initiation of criminal cases of office abuse, theft (embezzlement, misappropriation and theft of funds issued as credits), as well as most cases indicated in the graph Crimes in the economic sphere, presented in the statistical table in first section of the Report, is a result of financial documentation audits or inspections of financial and business activities of enterprises, institutions, and organizations.

The following examples can be provided from review of the criminal legal practice:

- The Director of DiD trading company (Dushanbe) F.M. Yusupov learned from a newspaper ad that the Republican Centre for Coordination of Projects of Liquidation of the Aftermaths of Natural Disasters (RCCP) needed steel pipes. Having no such pipes at his company's disposal, Yusupov, acting in collusion with the company's chief accountant, B.I. Esatov, planned to embezzle RCCP's money and conclude contracts with the Centre for supply of steel pipes. Yusupov and Esatov appropriated USD 32 705 of RCCP upfront payment. The Chief accountant Esatov spent most of this sum on personal needs.

  The Office of the Prosecutor General of the Republic of Tajikistan imposed criminal responsibility on Yusupov and Esatov under Article 245 (part 3b) of the CC (appropriation and squandering of property on a particularly large scale). Esatov was sentenced to eight years in prison and Yusupov to three years in prison under this article.

- The Head of the State Statistical Agency of Zafarabad district of Sogdiysk Region, S.Shapirov, pursuing to create a semblance of a favourable situation of raw cotton harvesting and stocking, acting in collusion with the chief accountant of a cotton blanking shop Zafarabad, Yu.Yunusov, on 12 December 2002 drew up a fictitious revision act, overstating the volumes of raw cotton stocked to blanking shops by 1 572 tonnes.

  On 3 October 2003, the prosecution bodies initiated a criminal case versus S. Sharipov and Yu Yunusov for the above offence (intentional entering of false information on business activity in accounting documents). Investigation of the case is still underway.

- Another example is the case of the chief accountant of Jamal & Co., V.V. Tsoi, held criminally responsible for giving active support to and fomentation with the company director J.Siyoev to illegal banking, money laundering and other crimes.

Article 62 of the Civil Code envisages civil responsibility for repeated and systematic violation of accounting rules in the form of liquidation of a legal entity on a court decision on demand of authorized government agencies. All these measures are widely used in practice. In particular, the aforementioned private company Jamal & Co. was liquidated for corrupt actions by decision of the Supreme Economic Court on the request of the Prosecutor General's Office.

Access to Information

An important means of ensuring public openness and efficiency of the struggle against corruption is citizens' broad access to information. People's access to information is supported by a relevant legal framework based on the Constitution and the following laws:

- the Law On Citizens' Appeals No.343 of 14 December 1996;
- the Law On the Press and Other Mass Media No.895 of 11 December 1999;
- the Law On Information No.55 of 10 May 2002;
- the Law On Computerization No.40 of 6 August 2001.

Articles 30-31 of the Constitution guarantee each citizen the right to expression, freedom of press, and the right to use mass media. A citizen has the right to apply to public bodies in person or together with other citizens.

Article 5 of the Law On the Press and Other Mass Media stipulates that state, political, and public organizations, movements, and officials shall present information on requests from citizens and mass media.

Article 27 of the Law On the Press and Other Mass Media has stipulated that citizens are entitled to promptly receive credible information about the activity of state bodies, public associations, and officials, via mass media.

Mass media are entitled to receive such information from state bodies, public associations, and officials. State bodies, public associations, and officials shall provide mass media with available information and offer them an opportunity to access documents. State, political, and public organizations, movements, and officials may refuse to provide information only when it is not subject to publication under Article 6 of the present Law.

Refusal to provide the requested information may be challenged by a media representative with the superior body or official, or with the court, pursuant to the procedure envisaged by the Law for appealing against incompetent actions of public administration bodies and officials thereof infringing on citizens' rights. Under Articles 28-31 of the Law On Information of 10 May 2002, No.55, citizens and mass media may also appeal to state bodies with an information request in writing.

A citizen shall have the right to request any official document from state bodies, except for cases where access to documents is limited envisaged by the laws of the Republic of Tajikistan. In this Law, a request for written or verbal information is understood to mean an application with the demand to present written or verbal information about the activity of legislative, executive or judiciary power bodies or officials thereof on individual issues.

Citizens, state bodies, organizations and citizens' associations (hereinafter referred to as requesting entities) shall submit an information request to a relevant legislative, executive or judiciary power body or archival institutions or officials thereof. The request shall bear a full name of the requesting person, name of the document in question, written or oral information he or she is interested in, and the address at which he or she wishes to receive a response.

Legislative, executive and judiciary power bodies of the Republic of Tajikistan, and officials thereof, shall submit the requested information about their activities in writing, orally, by telephone or in the course of presentations made by their officials.

The period for the examination of the request for the feasibility of providing a response shall not exceed 30 calendar days. Within this deadline, a state body shall inform the requesting person in writing that his/her request shall be satisfied or that the requested document cannot be submitted for his/her familiarization.

Refusal to satisfy the request shall be communicated to the requesting person (entity) in writing with the explanation of the procedure for challenging the adopted decision.

Request satisfaction may be deferred if the requested document cannot be made available to the requesting person within a month. Deferment notification is communicated to the requesting person in writing with an explanation of the procedure to challenge the adopted decision.

Refusal to provide a response to the request or request deferment may be appealed.

In case of the refusal to make available the requested document or of the deferment of the response to the request, a requesting person (entity) shall have the right to challenge said refusal (deferment) in superior bodies or in court.

If a negative response is provided to the complaints filed with the superior body, the requesting person (entity) shall be entitled to challenge with response pursuant to a court procedure.

To ensure the fullness and objectivity of case examination, a court shall have the right to request those official documents that were denied to the requesting person (entity) and, after having studied these documents, pass a ruling on the validity (lack of validity) of the actions of an official of a given state institution.

If the refusal or deferment are not recognized as validated, the court shall obligate the state institution to provide the requesting person the opportunity to access the official document and shall pass a particular determination on officials who had refused this access to the requesting person.

Unwarranted refusal to provide a citizen access to official documents or the violation of the established term for document submission without convincing reasons shall entail liability of state body officials pursuant to the procedure established by laws of the Republic of Tajikistan. Refusal to provide a document or deferment of document provision shall be challenged subject to a similar procedure.

Information divisions and centres, press centres or designated public relations officials shall operate with all central and local power and administration bodies.

Law-enforcement agencies, ministries and departments, unions and associations of entrepreneurs, and NGOs of the Republic hold regular meetings, workshops, roundtable discussions, live TV debates, and other events aimed at ensuring private sector compliance with the law, propaganda of laws, including anti-corruption laws.

The Government shall publish a report on results of socio-economic development of the republic upon each semi-annual and annual reporting period. Republican law also imposes restrictions on using the right to freedom of speech and the press. For example, Article 6 of the Law On the Press and Other Mass Media stipulates that:

The publication of information constituting state or other legally protected secret, calls for forceful overthrow or change of the constitutional order, discrediting honour and dignity of the state and the President, propaganda of war, violence and brutality, racial, ethnic, religious exclusiveness or intolerance, pornography, calls for committing other criminal offences in mass media is prohibited. (Law No.895 of the RT of 11 December 1999).

The use of mass media for interference in private life of citizens, intentional publication of misinformation, slander and provocative information encroaching on the honour and dignity of citizens, government agencies, public associations, and other organizations is prohibited (full text).

The Criminal Code envisages the following crimes involving the circulation of data discrediting to the honour and dignity of citizens and public officials:

Article 135. Slander

(1) Slander, or intentional dissemination of false information discrediting the honour and dignity of another person or damaging his/her reputation, shall be penalized with a fine in the amount up to five hundred minimal salaries or up to two years of corrective labour.

(2) Slander spread during public appearances, contained in publicly displayed productions or mass media, shall be penalized with a fine in the

amount from five hundred to one thousand minimal salaries, or arrest for a term from two to six months, or imprisonment for a term up to twp years.

(3) Slander: combined with the accusation of committing a grave or especially grave crime; for mercenary or other vile purposes; shall be penalized with imprisonment for a term from three to five years.

Article 136. Insult

(1) Insult, or abatement of another person's honour and dignity expressed in an indecent form, shall be penalized with a fine in the amount up to two hundred minimal salaries or corrective labour for a term up to one year.

(2) Insult:

(a) inflicted during public appearances, contained in publicly displayed productions or mass media;

(b)inflicted in connection with the discharge of the victim's public duty;

- shall be penalized with a fine in the amount from two hundred to five hundred minimal salaries or corrective labour for a term up to two years.

Article 137. Public Insult or Slander against the President of the Republic of Tajikistan

(1) Public insult or slander against the President of the Republic of Tajikistan shall be penalized with a fine in the amount from one hundred to five hundred minimal salaries or corrective labour for a term up to one year.

(2) The same actions committed with the use of the press of other mass media shall be penalized with corrective labour for a term up to two years or imprisonment for a term from two to five years.

Measures aimed at protecting citizens' honour and dignity are also envisaged by the following articles of the Civil Code of the Republic of Tajikistan.

Article 170. Intangible Benefits

(1) Life and health, personal dignity, personal immunity, honour and good name, business reputation, inviolability of private life, personal and family secret, right to free transportation, choice of a place of residence and stay, the right to a name, the right to authorship, other personal non-property rights, and other intangible benefits belonging to a citizen by right of birth

or law, are inalienable and non-transferable in any other manner. Personal non-property rights and other intangible benefits of a deceased person may be exercised and protected by other persons, including the inheritors of the holder of these rights, in cases and in the manner prescribed by law.

(2) Intangible benefits shall be protected in accordance with this Code and other laws in cases and in the manner prescribed by them, as well as in cases and within the limits in which the application of human rights protection methods (Art.12) stems from the merit of the violated intangible right and the nature of implications of this violation.

Article 171. Compensation for Moral Damage

If moral damage (physical and moral suffering) was inflicted on a citizen by actions violating his/her personal non-property rights or encroaching on the citizen's other intangible benefits, and in other cases envisaged by law, the court can impose on the offender the obligation of paying monetary compensation for the said damage. In determining the amount of compensation for moral damage, the court shall take into account the level of guilt of the offender and other circumstances worthy of attention. The court shall also take into account the level of physical and moral suffering connected with individual characteristics of the affected person.

Article 172. Protection of Personal Non-Property Rights

1. A person whose personal non-property rights have been violated shall be entitled, besides measures stipulated by Art.11 of this Code, to compensation for moral damage as per this Code.

2. Protection of personal non-property rights shall be exercised by the court in the manner prescribed by the law on civil proceedings.

3. Personal non-property rights shall be observed irrespective of the guilt of the person violating the former's rights. A person filing a claim for protection, shall prove the fact of violation of his/her personal non-property rights.

4. A person whose property rights have been violated shall have a right to choose whether to demand that the violator eliminate the consequences of the violation, or to take the necessary measures on his/her own at the expenses of the violator, or to assign them to a third party.

Article 173. Personal Non-Property Rights Connected with Property Rights

1. In the event of simultaneous violation of non-property and property rights, the amount of compensation for material damage shall be increased, taking into account the compensation due to the victim for the violation of his/her personal non-property rights.

Article 174. Protection of Honour, Dignity and Business Reputation

1. A citizens shall be entitled to demand a denial of data discrediting his/her honour, dignity or business reputation through court procedures, if the person disseminating such data fails to prove their truthfulness.

Protection of a citizen's honour and dignity posthumously shall be admitted on demand of interested parties.

2. If the data discrediting a citizen's honour, dignity or business reputation have been disseminated via mass media, they shall be denied free of charge in the same mass media. If the said data are contained in a document outgoing from an organization, this document shall be replaced or recalled. The denial procedures for other cases shall be established by court.

3. A citizen with respect to whom mass media have published information infringing his/her rights or lawful interests, shall have a right to free publication of his/her response in the same mass media.

4. A citizen's or legal entity's demand of publication of a denial or response in a mass medium shall be considered by the court if the mass medium has refused such publication or has not made such publication within a month, and in the even of its liquidation.

5. If a court decision has not been fulfilled, the court shall be empowered to fine the offender in the amount and in the manner stipulated by processional law in favour of the Republic of Tajikistan. The payment of fine shall not relieve the offender from the duty to fulfil the actions envisaged by the court decision.

6. A citizen with respect to whom data discrediting his/her honour, dignity or business reputation have been circulated, shall be entitled, besides the denial of such data, to demand compensation for losses and moral damage inflicted by their circulation.

7. If it is impossible to identify the person who spread the data discrediting the honour, dignity or business reputation of a citizen, the person with respect to whom such data have been circulated shall be entitled to file a court claim for recognizing the circulated data untrue.

8. The rules stipulated by this article on protection of a citizen's business reputation shall also be applicable to protection of business reputation of a legal entity.

Article 175. Right to Protection of Personal Privacy

1. A citizen has a right to protection of personal privacy, including privacy of correspondence, telephone conversations, diaries, notes, memos, intimate life, adoption, birth, medical, lawyer's secret, and secrecy of deposits. Disclosure of a private secret is possible only in cases stipulated by law.

2. The publication of diaries, notes, memos, and other documents is admitted only with consent of their author, and letters with consent of their author and addressee. In the event of death of any of them, the said documents can be published with consent of the surviving spouse and children of the deceased.

Article 176. Right to Personal Visual Impression

1. No one shall have a right to use the visual impression of any person without his/her consent, and in the event of his/her death – without the consent of his/her inheritors.

2. Publication, reproduction and dissemination of a graphic product (painting, photograph, film, etc.) portraying another person's face shall be admitted only with consent of the portrayed person, and after his/her death with consent of the surviving children and spouse. Such consent shall not be required if it is stipulated by law or if the portrayed person was posing for a reward.

Republican mass media publish so-called "sensitive" materials and information on activities of the government and other public institutions practically every day. Nevertheless, no criminal cases have been initiated against journalists for the publication of such articles. According to mass media, in 2003 they requested information from government agencies 37 times. In eight cases the requests were waived, but these refusals were not contested in court. All this provides evidence that in the absence of flaws in the law ensuring reporters' and mass media's rights to information, enforcement practice in this sphere remains undeveloped.

Private Sector Initiatives and Civil Society Involvement

Political parties, public associations, and other NGOs play an active part in social, political, and economic life of the Tajik society. The Government maintains close links with political parties and NGOs. The Civil Accord Forum is held annually with the participation of top officials of the Government and representatives of all registered NGOs. Forum sessions discuss important problems of society, status of legislation, combating crime and corruption, government staff policy, and areas for future cooperation of parties.

The legal position of political parties and public associations is regulated by the Law On Public Associations of 23 May 1998, No.644.

NGOs are being set up based on the decision of their founders (not less than three citizens) and may be both national and local. Registration documents shall be submitted within three months from the date of the constituent congress (conference, meeting). State registration of NGOs shall be carried out by the Justice Ministry or regional justice departments at their location within 30 days (this may be done in one day if no flaws are detected in statutory documents). The fee in the amount determined by the Government shall be levied for state registration of NGOs.

In accordance with Article 15 of the Law On Public Associations, state registration of public associations may be refused for the following reasons:

- if their articles of association contradict the Constitution of the Republic of Tajikistan, articles 6, 7, 12, and 13 of this Law, and the laws on certain forms of public associations;
- if a public association with the same name has earlier been registered on the territory where this association exercised its activity;
- if the name of the public association is insulting to citizens' morality, national and religious feelings.

In case of refusal, the applicants shall be informed thereof in writing with the indication of legal provisions the violation of which entailed the refusal from registration of this association.

Refusal from state registration, as well as evasion of such registration may be contested at the Supreme Court of the Republic of Tajikistan, the court of Gorno-Badakhshan Autonomous Region, or the district court.

An application for the registration of a public association shall be left without consideration for the following reasons:

- if a full list of statutory documents is not filed, or if they are not duly executed;
- if the authority registering the public association detects unreliable information presented in the statutory documents submitted for registration.

Under Article 8 of the Law On Public Associations, the State shall ensure the observance of the rights and legitimate interests of public associations and shall, under the Constitution, guarantee conditions for the fulfilment of these associations' statutory objectives.

Interference of government agencies and officials with the activity of public associations as well as the interference of public associations with the activity of government agencies and officials is prohibited, except cases stipulated by law.

The law interprets interference as unlawful prevention of activity, inducement towards passing decisions in favour of some or other party, work disorganization or other illegal actions.

Exercising public organizations' control over the activity of government agencies in the forms and manner prescribed by law, including their participation in decision-making, is not qualified as interference.

In accordance with Article 20 of the Law On Public Associations, public associations may participate in the decision-making process of bodies of public authority and administration, come out with initiatives concerning various aspects of public life, submit proposals to government bodies, and participate in the formation of government bodies by proposing their candidates to those bodies.

Local self-government, being the prime link of the public administration system, is a symbiosis of the state and public form of governance.

Trade union bodies exercise control over the activity of the administration on matters of observance of the labour legislation. The Labour Code of the Republic of Tajikistan allows the dismissal of employees and changing their work conditions only on consent of trade union organizations.

Public organizations, mass media, and the population are invited to participate in the fight against corruption. For example, public organizations are granted a legal right to exercise control over the activity of public administration and participate in its decision-making process. The state shall offer material and financial support to youth, children's, charity, and invalids' organizations. It shall pursue preferential tax policy in respect of these organizations, grant children's organization the right to use the premises of schools, kindergartens, palaces and houses of culture, sport and other facilities free of charge or on preferential terms. State support to public associations may assume the form of the targeted financing of separate socially useful programs or have other forms not prohibited by the legislation. Other activities of public associations shall be carried out at the expense of the latter.

According to the information of the Justice Ministry, 1 255 domestic nongovernmental organizations and 50 international humanitarian nongovernmental organizations were registered and functioning in the republic on 1 November 2003.

These organizations are mainly humanitarian and educational by nature. There are 14 nongovernmental human rights organizations. So far there are no NGOs whose activity is aimed mainly on fighting corruption.

Issues bearing on the interests of public associations in cases covered by the legislation shall be addressed by state bodies and economic organizations with participation or in agreement with relevant public associations.

Political Party Financing

The political framework of the Republic of Tajikistan is based on a multiparty system. There are six functional political parties, including:

- the People's Democratic Party (registered on 15.12.1994)
- the Democratic Party of Tajikistan (registered on 21.06.1991);
- the Communist Party of Tajikistan (registered on 7.05.1991);
- the Socialist Party of Tajikistan (registered on 6.08.1996);
- the Islamic Party of Revival (registered on 4.12.1991);
- the Social-Democratic Party of Tajikistan (registered on 25.02.2003).

The activity of political parties was initially regulated by the Law On Political Parties No.24 of 12 December 1990, with amendments and additions introduced in it on 14 March 1992. Considering the specific nature of political

parties, the Majlisi Oli has adopted new, specific laws: On Public Associations No.644, and On Political Parties No.643, currently valid without amendment.

Political parties shall be only republican and registered with the Justice Ministry. Registration fee in the determined by the Government shall be levied for state registration of parties.

The Law On Political Parties prohibits state financing of the activity of political parties and public associations pursuing political goals. The law separates sources and patterns of financing current activities of political parties from financing their election campaigns. Under Articles 12–16 of the Law On Political Parties, financial resources of political parties shall be derived from:

- admission and membership fees if these are envisaged by a party's statute;
- voluntary donations;
- revenue from delivering lectures, holding exhibitions and other events in accordance with a party statute;
- earnings from publishing and other activities conforming to party statute goals and objectives;
- other revenue not prohibited by the legislation.

Political parties may accept material assistance in the form of property and money funds from individuals, enterprises and organizations, public associations, funds and other legal private persons. Material assistance shall not be accepted from:

- charity and religious organizations;
- state-owned enterprises and organizations, and enterprises and organizations with the state's participation;
- foreign states, citizens, enterprises, as well as enterprises with a foreign capital;
- anonymous persons;
- political parties, which do not form an association with a party rendered assistance to.

To create the financial and material conditions for the implementation of its statutory goals and rights stipulated by Article 10 of the present Law, a political party shall have the right to create enterprises and organizations in

accordance with the procedure stipulated by the Republic of Tajikistan legislation.

Despite the legal rights of political parties to set up commercial entities, they have not created such companies. The parties sufficed with setting up publishing houses operating at a loss due to the high cost of raw materials for printed documents.

The governing body of a political party shall publish a financial statement on sources, amounts, and expenditures of funds, which have accrued to the party cash desk during the year under reporting, as well as on the party's property and paid taxes. The financial statement of a political party shall be verified by relevant bodies of the tax service of the Republic of Tajikistan.

The amount of private donations to finance on-going activities of political parties is not limited. Private persons and organizations entitled to finance current activities of political parties shall not be obligated to publish information about the amount of their political donations.

Our national law does not use the notion of "legal and physical persons subject to ban or restriction."

In matters concerning the status of persons, the law of Tajikistan adheres to the principle of non-admission of restricting their rights until a relevant decision of a legally authorized body enters into legal force. Legal persons shall be restricted in their rights only during their liquidation on decision of the founders or the court, and physical persons in the event of their recognition as incapable or partially capable by a court decision.

Liquidated legal persons and physical persons recognized incapable or partially capable shall not carry out civil legal transactions, including donations or establishment of any organizations.

Physical persons deprived of the right to engage in a certain activity by a court sentence shall not exercise such activity during the period determined by the court.

Special procedures have been established for funding political party expenditures on holding election campaigns.

The Constitutional laws of 10 December 1999, No.857 On the Elections to Majlisi Oli (Article 9), and No.858 On the Elections of Deputies to Local Majlisi of People's Deputies (Article 49) have established that costs shall be

incurred by electoral committees using a single fund created at the expense of state budget funds. Financing pre-election campaigns of political parties, blocks, and individual candidates at the expense of other sources shall be forbidden.

Political parties, public associations, enterprises, and citizens may voluntarily transfer their own funds for holding elections to electoral commissions, which shall use these funds as a general expenditures item.

The estimate of expenses allocated from the state budget for financing elections shall be approved by the Central Commission for Elections and Referendums.

The allocated funds shall be distributed in equal proportion according to criteria set for political parties and independent candidates. No complaints have been filed to the Central Commission for Elections about the violation of the procedures for elections financing.

The estimate of expenses during the last elections to Majlisi Oli and the local Majlisi of people's deputies, approved by decision of the Central Commission for Elections No.153 of 28 December 1999, envisioned the allocation of up to 200 000 Tajik roubles (the then national currency) to each political party and up to 40 000 Tajik roubles to each independent candidate from the Single Election Fund.

The national parliament intends to consider the issue of allowing political parties and independent candidates to use their own funds to finance their election campaigns by introducing relevant amendments to the legislation.

Similar procedures precluding the financial participation of political parties, domestic and foreign business, financial, and other entities in the course of elections have also been stipulated by the Constitutional Law On Elections of the President of the Republic of Tajikistan.

Political parties shall not be obliged to submit statements on election campaign financing to election commissions as they are not entitled to independent funding of these campaigns.

The observance of the law on elections, including provisions on election funding, is monitored by the standing Central Commission for Elections and Referendums, election commissions, and the public prosecutor's agencies.

The Central Commission for Elections and Referendums is a standing legal entity coordinating the system of election commissions in the Republic of

Tajikistan. The term of office of the Central Commission for Elections and Referendums is five years, and they shall be terminated at the moment of election of the new Central Commission for Elections and Referendums.

The Central Commission for Elections and Referendums consists of its Chairman, Deputy Chairman and 13 members. Chairman, Deputy Chairman, and members of the Central Commission for Elections and Referendums shall be elected on presentation of the President of the Republic of Tajikistan by Majlisi Namoyandagon within three days after the setting of elections.

The Central Commission for Elections and Referendums shall publish the information on its composition, address and telephone numbers in official printed media of the Republic of Tajikistan. The Central Commission for Elections and Referendums has its working staff. The maintenance of the Central Commission for Elections and Referendums and its staff is financed from the republican budget.

The claims and appeals against illegal financing of political parties or individual candidates election campaigns may be filed by political parties, candidates to deputies, their authorized representatives, observers and electors. The public prosecutor's offices may also present such information to election commissions.

The right of the Central Commission for Elections to investigate possible violations of the law on its own initiative is not openly stipulated by law, but not excluded. Should a violation be revealed, the Central Commission for Elections and Referenda or local election commissions shall admonish the candidate and they may repeal their decision on the registration of a given candidate in case of a recurring violation.

If the violation of legislation on political party or election campaign funding has occurred through the illegal remittal of state funds or provision of state property to political parties or individual candidates by a public official of the Republic of Tajikistan or by the head of local self-government body, who had acted in pursuance of selfish goals or other personal interests, this offence may be classified as abuse of official position and entail criminal punishment under Part 2, Article 314 of the Criminal Code in the form of a penalty of up to one thousand of minimal wages or imprisonment for up to seven years involving a ban on subsequent holding of certain positions or engaging in certain activities for the term of up to three years.

In the absence of indications of selfish or other personal interests, these offences may be classified as an abuse of official authority, the liability for

which is envisaged by Article 316, Part 2 of the Criminal Code in the form of a penalty of one thousand times the minimum wage or deprivation of the right to occupy certain positions or to engage in certain activities during the term of five years or arrest for the term of four to six months or imprisonment for up to four years.

At all times, liability for these offences involves the recovery of the illegally obtained funds or assets on the basis of the criminal-and-legal procedure for damage reparation or bringing the sides to the initial condition of negligible transactions subject to civil-and-legal procedure.

Criminalisation of Corruption

Active and Passive Bribery

Definition and Elements of the Offences

A public official or employee of an enterprise who is not an official of a government agency and who accepts illegal remuneration or another form of material benefit for action (inaction) included in his official responsibilities or for overall patronage for a service is recognized by the republican law as the main form of corruption.

Depending on the legal (official) position of the person receiving unlawful remuneration for the aforementioned services, criminal law distinguishes between the notions of bribe taking, accepting illegal remuneration, and bribe giving and bribing an official. To clarify the difference between these offences, the full texts of the Criminal Code articles envisaging responsibility for these offences are presented below.

Article 319. Bribe Taking

1) Taking a bribe by an official, personally or through a representative, in the form of money, securities, other property or property-related benefits for action (inactions) in favour of the briber or persons represented by him, if such actions (inactions) constitute the official's official duty or this official can promote such actions (inactions) due to his official position, as well as overall patronage or condonation,

shall be penalized with freedom deprivation for a term up to five years with the deprivation of the right to occupy certain positions or

engage in certain activities for a term up to three years with or without property confiscation.

2) Taking bribe by an official for illegal action (inaction),

shall be penalized with freedom deprivation for a term from three to seven years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years with or without property confiscation.

3) Actions stipulated by parts one or two of this article committed by a person occupying a governmental position in the Republic of Tajikistan or by head of the local self-administration shall be penalized with freedom deprivation for a term from five to ten years with the deprivation of the right to occupy certain positions or engage in certain activities for a term from three to five years with or without property confiscation.

4) Actions stipulated by parts one, two or three of this article, if committed:
   (a) repeatedly;
   (b) by a group of persons on collusion or by an organized group;
   (c) with bribe extortion;
   (d) on a large scale,

   shall be penalized with freedom deprivation for a term from seven to twelve years with property confiscation and with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years.

Note:
(1) Articles 319, 324, and 325 of this Code recognize as large scale a sum of money, cost of securities, other property or property-related benefits exceeding 1 000 times the minimum salary.

(2) Articles 319, 320, 324, and 325 of this Code recognize as repeated the commitment of a crime if it had been preceded by commitment of one or more crimes envisaged by these articles.

Article 320. Bribe Giving

1) Giving bribe to an official personally or through an intermediary shall be penalized with freedom deprivation for a term from five to ten years with property confiscation.

2) Giving bribe to an official in return for committing knowingly illegal actions (inactions), or repeatedly,
shall be penalized with freedom deprivation for a term from ten to fifteen years with property confiscation.

Note: The briber shall be released from criminal responsibility if the official extorted the bribe or if the briber has voluntarily reported the crime to an agency authorized to initiate a criminal case.

Article 324. Receiving Remuneration through Extortion

1. Receiving remuneration through extortion, *i.e.* demanding material compensation or property-related benefit by an enterprise employee who is not a public official, regardless of the form of ownership, for fulfilling a certain job or rendering services constituting his/her official duty, as well as intentional placement of a citizen in conditions where he/she is forced to provide this compensation for preventing offence and legally protected interests,
shall be penalized with a fine in the amount from 500 to 1 000 times the minimum salary or freedom deprivation for a term up to two years with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years.

2. The same action committed:
(a) repeatedly;
(b) on a large scale,
shall be penalized with freedom deprivation for a term from two to five years with or without property confiscation and with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years.

Article 325. Bribing an Official

1. Bribing an official, *i.e.* knowingly providing illegal material compensation or property-related benefit to an enterprise employee who is not a public official, regardless of the form of ownership, in return for committing an illegal deed in the interests of the briber,
shall be penalized with a fine in the amount from 500 to 800 times the minimum salary or corrective labour for a term up to two years.

2. Similar actions committed:
a) repeatedly;
b) by a group of persons on collusion;
c) on a large scale;
d) in the interests of an organized group,
shall be penalized with freedom deprivation for a term up to three years.

Therefore, according to the Criminal Code, the acceptance of illegal compensation by an official is evaluated as bribe taking and accepting the same compensation by an employee who is not a public official as accepting illegal remuneration.

Similarly, providing illegal remuneration to a public official is evaluated as bribe giving and similar actions with respect to an employee who is not a public official as subornation.

This classification is connected with the need to impose stricter punishment on public officials for an indisputably greater public hazard of their corruptive deeds in comparison with rank-and-file employees.

The notion of "trade in influence" applied in the legal practice of European countries is not used in the Tajik law, literature and legal practice.

Unlawful influence connected with the receipt or intention to receive property-related benefit is considered as "patronage" and constitutes a form of services rendered by the bribe taker, and is qualified under Article 319 of the Criminal Code as bribe taking. Under certain circumstances, for example, when exerting unlawful influence is connected with obtaining a non-maternal benefit or another mercenary interest and at the same time has inflicted considerable damage on the interests of the state, organizations or citizens, such actions shall be qualified as office abuse (article 314 of the Criminal Code).

While qualifying offences as active or passive bribery and subornation, the republican investigative and legal authorities proceed from the following:

- in keeping with the law, the very fact of receiving illegal compensation or benefit forms a full-fledged crime of passive bribery or subornation, even if the bribe taker has not fulfilled the promised action in favour of the briber;
- if the person is aware that by providing an official with illegal compensation or property-related benefit he/she compels the official, or imposed a moral obligation upon the latter, to fulfil the desired action

(inaction) in the briber's favour, there are elements of the crime of passive bribery or subornation, although the official was unaware of the bribe or has accepted the bribe but not fulfilled the desired action.

If an official has refused from taking bribe, the briber's actions shall be qualified as criminally punishable attempted bribery. Bribes may include tangible and intangible advantages (money, leisure, loans, entertainment, expedited decision-making on a case, improvement of career growth prospects, etc.). These advantages differ from legitimate advantages in that bribery is the motive for their provision.

The ultimate goal of crime should be clear, even though the achievement of this goal is not mandatory in recognizing the crime as having taken place.

A bribe giver and an intermediary are subject to criminal liability. A third person, in whose interests bribery has been committed, shall be held responsible if he/she had known about the event of bribery or had intentionally used the desired action (inaction) of an official.

Sanctions

Criminal law of the RT envisages measures, varying by the type and severity for crimes involving the taking and giving of bribe, receiving illegal remuneration and bribing an official (see sanctions envisaged by articles 319, 320, 324, and 325 of the Criminal Code).

Depending on the nature and social hazard, the criminal law classifies crimes as minor offences, medium-gravity crimes, grave crimes, and particularly grave crimes.

Minor offences are intentional and imprudent misdemeanours, the maximum punishment for which, under this Code, does not exceed two years of deprivation of freedom.

Medium-gravity crimes are intentional and imprudent offences, the maximum punishment for which, under this Code, does not exceed five years of deprivation of freedom.

Grave crimes are recognized to be intentional offences, the maximum punishment for which, under this Code, does not exceed 12 years of deprivation of freedom, and imprudent crimes, the punishment for which, under this Code is over five years of deprivation of freedom.

Particularly grave crimes are intentional offences, the maximum punishment for which, under this Code, is over 12 years of deprivation of freedom or a stricter punishment.

Proceeding from this classification, bribe taking under aggravating circumstances (Article 319, Part 4, CC of the RT) is referred to the grave crime category, while bribe giving under aggravating circumstance is classified as an especially grave crime (Article 320, Part 2 of the CC of the RT).

Under the RT legislation, mitigating circumstance includes:

- committing a crime for the first time;
- minority of the culprit;
- pregnancy;
- support of under-age children by a culprit;
- committing a crime owing to the coincidence of hard life circumstances or due to a compassion motive;
- committing a crime under strong emotional stress caused by violence or great insult or other improper actions of the victim;
- committing a crime with an excess of the necessary defence limit, during arrest of a person who committed a crime, owing to an extreme need, validated risk or during the process of the execution of an order or instructions;
- committing a crime under the influence of a threat or coercion or material, service or other dependence;
- giving oneself up, genuine repentance, active collaboration in uncovering the crime, exposing other crime participants and search for property obtained as a result of the crime;
- offering medical and other assistance to the victim immediately after having committed the crime, voluntary reimbursement or compensation of material or moral damage, undertaking other actions aimed at making for the damage inflicted on the victim.

In meting out punishment, other circumstance may be regarded as mitigating ones. Circumstances recognized as those that aggravate the punishment include:

- crime recurrence, committing a crime in the form of a trade;

- grave consequences caused by a crime;
- gang or conspiratorial crime, crime committed by an organized group or criminal community (criminal organization);
- especially active part played in committing a crime;
- knowingly involving persons, which suffer from mental disorders or are in the state of inebriation, and also teenagers, in the commitment of the crime;
- committing a crime motivated by local ethnic or religious enmity, religious zeal, vengeance for legitimate actions of other persons, and also committing a crime to facilitate or conceal another crime;
- committing a crime in respect of a woman being fully aware that she is pregnant and also in respect of a junior, teenager or another defenceless or helpless person, which is dependent on the culprit;
- committing a crime in respect of a person in connection with his/her fulfilment of his/her service or social duty or in respect of his/her close relatives;
- commission of crime by a person who had thereby violated the sworn oath or professional oath;
- commission of crime with an especial atrocity, humiliation or torture of a victim;
- commission of crime using weapons, combat ammunition, military hardware, explosives, explosive devices or explosion simulation devices, special technical means, poisonous and radioactive substances, medicinal and other chemical and pharmaceutical preparations or in a socially dangerous way;
- commission of a crime using conditions of an emergency state, natural calamity or other forms of social calamity, and also during mass disorders;
- commission of a crime in the state of alcoholic or drug intoxication or under the influence of psychotropic or other dopey agents;
- commission of a deliberate crime in respect of parents;
- commission of a crime out of acquisitive or other base motives.

Depending on the nature of a crime, a court may not recognize the circumstances listed some of the above paragraphs as aggravating ones.

In meting out punishment, the court shall not recognize circumstances not indicated in the present Code as the aggravating ones.

Qualifying (aggravating) circumstances for corruption offences are: bribe taking for deliberate commission of illegal actions, importance of the occupied public position, recurrence, preliminary conspiracy, extortion, bribe amount, gravity of consequences, etc.

The said qualifying circumstances are directly envisioned and taken into account during the determination of the punishment by relevant articles of the Special Part of the Criminal Code. This is why the court cannot take then into account repeatedly as aggravating circumstances.

Statute of Limitations

Legislation stipulates single statutes of limitation for all crime types. Under Article 75 of the Criminal Code, a person shall be exempted from criminal liability if the following periods have elapsed since the crime commission day:

- 2 years following the commission of a minor crime;
- 6 years following the commission of a medium-gravity crime;
- 10 years following the commission of a grave crime;
- 15 years after the commission of an especially grave crime.

The statute of limitation is calculated since the crime commission day to the moment of the entry of the sentence into legal force. It shall be suspended if a person evades investigation or court proceedings. In this case, the statute of limitation shall be resumed beginning the moment of a person's arrest or his/her surrender. In so doing, a person shall not be held criminally responsible if 20 years have elapsed since the commission of the crime and the statute of limitation was not interrupted by the commission of a new crime.

If a person commits a new deliberate medium-gravity crime or a grave crime or an especially grave crime before the expiry of statutes indicated in the present Article, statute of limitation will begin to be calculated anew since the day of the commission of said crimes with statutes of limitation calculated separately for each crime.

The issue of the application of statute of limitation to a person, who had committed a crime entailing capital punishment, shall be addressed by the court. If the court does not deem it feasible to exempt a person from criminal responsibility in connection with the expiration of the statute of limitation, capital punishment shall not be applied.

Statutes of limitation are not applicable to persons who committed crimes against peace and humanity.

Other Corruption and Corruption-Related Offences

In addition to bribe giving, bribe taking and bribing an official, the generally recognized definition of corruption includes abuse of office (Article 314 of the CC), forgery of official documents.

The main criterion of distinguishing bribe taking and illegal remuneration from office abuse is that in case of abuse there is no particular person providing remuneration and, hence, illegal services rendered in return.

In case of abuse, a person usually uses the opportunities provides by his/her organization for purposes of gaining material or non-material benefit (for example, receiving an unlawful bonus, providing for his/her next of kin). Therefore, no practical difficulties usually arise in distinguishing office abuse from bribe taking.

Apart from these crimes, corruption offences may include crimes against property and crimes in the economic activity sphere committed by public officials using their official position, such as:

- appropriation and squandering of property (Article 245 of the Criminal Code);
- embezzlement of loan proceeds (Article 246 of the Criminal Code);
- fraud (Article 247 of the Criminal Code) ;
- embezzlement of foreign assistance funds (Article 257 of the Criminal Code);
- monopolistic behaviour and constraining competition (Article 273 of the Criminal Code);
- malicious violation of the procedure for holding public tenders or auctions (Article 274 of the Criminal Code);
- commercial bribery (Article 279 of the Criminal Code);
- abuse of authority by employees of commercial and other organizations (Article 295 of the Criminal Code);
- abuse of authority by auditors, arbitrators, notaries or lawyers (Article 296 of the Criminal Code).

The law and, consequently, legal practice should work out criteria of qualifying crimes as corruption and define a list of crimes recognized as corruption-related.

Concept and Definition of a Public Official

The Criminal Code provides a definition of "official" not specifically in conjunction with the criminalization of corruption but for the purpose of identifying subjects of crime against state power and civil service interests (Chapter 30 of the Criminal Code).

Note:

1. Under notes to Article 314 of the CC of the RT recognized as officials in Articles of Chapter 30 of the Criminal Code on Crimes against the Interests of Public Power and Civil Service Interests shall be persons continuously, temporarily discharging the functions of power representative or specially authorized to discharge said functions or those who carry out organization-management, administrative-economic functions in state power bodies, state institutions, local self-government bodies, and also in the Armed Forces of the Republic of Tajikistan, other troops, and military formations.

2. Under Articles of the present Chapter and other Articles of the Criminal Code, persons holding state positions in the Republic of Tajikistan shall be understood to mean individuals, which occupy positions established by the Constitution and by other laws of the Republic of Tajikistan with the purpose of immediate execution of the mandate of public bodies.

3. Civil servants and employees of local self-government bodies not referred to the “officials” category shall bear criminal responsibility under Articles of the present Chapter in cases specifically provided for by relevant Articles.

In order to fight corruption offences, the Law On Fighting Corruption (Article 3) has stipulated that: the subjects of corruption-related offences are the persons authorized to fulfil governmental functions or their equivalent persons. Persons authorized to fulfil governmental functions include:

- persons occupying positions of government authority or civil service positions;
- officials of state-owned economic entities.
- For purposes of enforcement of this Law, the following persons shall be equivalent to persons authorized to fulfil governmental functions:

- officials of local self-government bodies;
- officials of private economic entities and other nongovernmental structures;
- citizens registered in the duly established manner as candidates to elected government positions and members of elected bodies of public authority.

The subjects of corruptive offence may also include physical and legal persons illegally providing material and other benefits and services to persons authorized to fulfil governmental functions or their equivalent persons.

Therefore, there is no difference between the definitions of the notion of public official offered by Article 3 of the Law On Fighting Corruption and articles of the CC envisaging responsibility for bribery. However, the subject of the crime of subornation is quite specific — it is an enterprise employee who is not a public official.

The confusion encountered by the Expert Group in this sphere was caused by the fact that all forms of accepting illegal remuneration, including bribery, were interpreted as subornation, whereas the Tajik law makes a distinction between crimes of bribery and subordination.

The definition of public official by the note to article 314 of the CC does not contain the words equivalent persons. This wording is presented only in Article 3 of the Law On Fighting Corruption, which specifies the list of persons qualified in accordance with it.

All officials of the local authorities are classified as public officials in the definition provided in the notes to article 314 of the Criminal Code. The clause in item 3 of the said notes saying that public officials and employees of local self-administrations who are not officials shall be responsible under articles of this Chapter in cases specified by relevant articles, is connected with the fact that all principal articles of this chapter (Chapter 30 of the Criminal Code) are devoted to public officials, whereas only some articles are devoted to employees of the local authorities who are not officials, for purposes of differentiation of sanctions.

The Criminal Code has not missed a single offence committed by rank-and-file employees of the local authorities.

The receipt of illegal remuneration by them is qualified under Article 324 of the Criminal Code, and providing them with such remuneration under

Article 325 of the Criminal Code. These persons are not subject to criminally punishment due to abuse of their official position (article 314 of the Criminal Code) as they do not have such powers. In the event of conferring on them the powers of an official and committing actions in this connection, entailing a considerable violation of the rights of the state, citizens or organizations, their actions shall be qualified under Article 317 of the Criminal Code, envisaging responsibility for abuse of power.

It should be mentioned that the notes to article 314 of the Criminal Code, specifying the list of public officials who may be subjects of bribe taking and bribe giving, does not include officials of foreign states and officials of international organizations in Tajikistan. In this connection, it is problematic to impose criminal responsibility not only on Tajik citizens bribing an official of a foreign country, but also on officials of foreign countries and international organizations guilty of bribe taking in Tajikistan. This is why it is expedient to add to the Criminal Code additional articles envisaging responsibility for bribery and other corruptive offences involving officials of foreign countries and international organizations.

Defences and Exceptions

Criminal legislation incorporates provisions excluding liability or exempting offenders from the responsibility for individual corruption offences, in particular, for bribing an official. Thus, notes to Article 320 of the Criminal Code establish that the bribe giver shall be exempted from criminal liability if this bribe was extorted by an official and if the bribe giver has voluntarily informed about that the body, which has the right to institute criminal proceedings.

The fact of extortion by an official and the credibility of a conclusion concerning the "voluntary information of authorities" require that relevant evidence should be presented. The burden of proving guilt shall, at all times, be imposed on investigative authorities.

These exceptions are widely used in practice. In 2001, investigative authorities completed 45 criminal cases against officials for bribe taking, and 31 in 2001. In many of these cases, the bribe givers were not found guilty of a crime and these were solved owing to their voluntary reporting of the facts of extortion.

If a bribe giver is exempt from criminal responsibility in case of extortion of a bribe, the object of the bride shall be confiscated through court procedure in favour of the state as illegal income of the bribe taker.

If the benefit gained by a bribe taker is legal (*e.g.* a legally obtained license), it shall not be confiscated.

Immunities

The right to immunity to prosecution, including shall be granted by the President of the Republic of Tajikistan, members of Majili Milli (Upper Chamber of Parliament), Deputies of Majlisi Namoyandagon (Lower Chamber of Parliament), Deputies of local Majlisi of People's Deputies, as well as judges of all levels. Thus, the President of the Republic of Tajikistan shall have the right to immunity under Article 72 of the Constitution.

The Presidential immunity shall be lifted on the basis of the ruling of the Constitutional court by two thirds of votes of the total number of Majlisi Milli and Majlisi Namoyandagon members if he/she commits an act of high treason.

Under Article 51 of the Constitution of the RT, a Member of Majlisi Milli and Majlisi Namoyandagon has the right to immunity; he/she shall not be arrested, detained, forcibly brought to court, and searched, except for arrest on the scene of crime. A Member of Majlisi Milli and Majlisi Namoyandagon shall not be subjected to a personal search, except for cases envisaged by the law to ensure the security of other persons.

The issue of lifting the immunity of a Member of Majlisi Milli and Majlisi Namoyandagon shall be resolved by a relevant Majlisi based on the petition of Prosecutor General.

A judge shall enjoy immunity under Article 9 of the Constitutional law on the Status of Judges. The immunity of a judge also extends to his/her dwelling and service premises, vehicles and communications used, his/her correspondence, personal belongings and documents.

Criminal proceedings with respect to judges of the Constitutional Court, Supreme Court, Supreme Economic Court, Economic court of the Gorno-Badakhshan Autonomous Region, Region Economic Court, the Economic Court of City of Dushanbe, town and district Courts shall be instituted only by Prosecutor General or by a person acting as Prosecutor General.

A judge of judges of the Constitutional Court, Supreme Court, and Supreme Economic Court shall not be held criminally responsible, taken into custody without the consent of Majlisi Milli Majlisi Oli .

A judge of the Economic Court of the Gorno-Badakhshan Autonomous Region, Regional Economic Court, the Economic Court of City of Dushanbe, Military Court, Court of the Gorno-Badakhshan Autonomous Region, Regional Court, Court of city of Dushanbe, town and district Court shall not be held criminally responsible or taken into custody without the consent of the President of the Republic of Tajikistan.

A judge shall be taken into custody only with the sanction of the Prosecutor General of the Republic of Tajikistan or the Acting Prosecutor General of the Republic of Tajikistan or pursuant to a judicial ruling.

A judge detained or taken into custody of internal affairs body or other state body subject to administrative offence proceedings shall be immediately set free upon identification of his/ her personality.

Entry into a judge's dwelling or service premises, his or her transport vehicle, search or seizure therein, tapping his or her telephone conversations, personal judge search or search and seizure of his or her correspondence or of his or her property and documents shall be sanctioned by the Prosecutor General of the Republic of Tajikistan or by the Acting Prosecutor General or pursuant to a court ruling and only in connection with the institution of criminal proceedings in respect of said judge.

A judge shall be personally immune to criminal prosecution from financial damage caused as a result of unintentional actions or acts of omission occurring during the exercise of his or her duties.

The immunity of a Deputy of the Majlisi of People's Deputies has been stipulated by Article 21 of the Constitutional Law On the Status of People's Deputies.

A deputy of a region, district, town or district Majlisi of People's Deputies shall enjoy the right to immunity in a relevant territory. He/she shall not be detained, except for cases of detention on scene of crime, arrested, forcibly brought to the court, subjected to administrative penalties imposed pursuant to a judicial procedure, or brought criminal proceedings against without the consent of the relevant Majlisi of People's Deputies, of which he/she is a Deputy. Criminal proceedings against a deputy may be initiated by the prosecutor of a relevant territory or by a higher-level prosecutor.

To secure the consent of a region, town, a district Majlisi of People's Deputies for instituting criminal proceedings against a deputy, arresting a deputy or applying administrative sanctions to a deputy imposed pursuant to a

court procedure, a relevant prosecutor shall, before bringing an accusation against a deputy, sanctioning his/her detention, arrest or bringing the case on the administrative offence to a court, submit an application to a relevant Majlisi of People's Deputies.

A prosecutor's application shall be examined within a month since its receipt. If required, additional materials may be required from the prosecutor. A deputy concerned may take part in examining the issues set out in the application. A relevant prosecutor shall be advised about the adopted decision within three days.

In the event of disagreement with the decision of the Majlisi of People's Deputies, the superior prosecutor may apply to the superior Majlisi of People's deputies with the petition on the revocation of the decision and repeated examination of this issue.

The Courts of the Republic of Tajikistan are not engaged in pre-trial investigations and do not have their own investigators.

Prosecutors and investigators of the public prosecution bodies enjoy the right of immunity.

In accordance with Article 52 of the Constitutional Law On Public Prosecution Bodies, a criminal case or administrative proceedings versus a public prosecutor or investigator shall be initiated by the Prosecutor General. Investigation of a criminal case and verification of a report on the fact of an offence against a public prosecutor or investigator lie within the competence of the public prosecution bodies.

There are no statistical data on the number of applications for lifting the immunity off public officials and results of their consideration due to the lack of special statistic reporting on this issue.

Approximately ten such applications are filed every year with the relevant authorities. Cases of refusal to lift immunity were scarce.

Over the past two years, 21 high-ranking public officials and five judges were convicted for committing corruptive offences. For example, Chairman of Nausk district court A. Abiev, Chairman of Ganchinsk district court L. Aliev, several heads of district and regional administrations were convicted after their immunity was lifted during the performance of their official functions for committing corruptive offences.

In accordance with Article 3 of the Constitutional Law On the Status of Judges, a citizen who has reached the established age, with higher legal education, who has passed a qualification exam, and has not committed any deeds contrary to the law. Judges of the Constitutional Court are elected from lawyers not younger than 30 years and no older than 60 years old, and who have professional experience not less than ten years.

Judges of the Supreme Court and Supreme Economic Court are elected from lawyers not younger than 30 and not older than 60 years old, and who have professional experience as judges not less than five years.

Judges of the Military Court, the court of Gorno-Badakhshan Autonomous Region, regional courts, and the Dushanbe city court are appointed from lawyers not younger than 30 and not older than 60 years old, and who have professional experience as judges not less than five years.

Judges of the city and district courts are appointed from persons not younger than 25 and not older than 60 years old, who have professional experience not less than three years.

Judges of the economic court of Gorno-Badakhshan Autonomous Region, the regional economic court, the economic court of the city of Dushanbe are appointed from persons not younger than 30 and not older than 60 years old, who have professional experience not less than five years.

Additional requirements to candidates to judges of the military court are established by the Constitutional Law of the Republic of Tajikistan On Military Courts.

In accordance with Article 4 of the aforementioned Law, the following requirements have been set:

- A judge must strictly abide by the Constitution of the Republic of Tajikistan and other laws, use their knowledge and experience to fulfil the tasks placed on a judge, and be worthy of his high status.
- During the implementation of his duties and in out-of-office relations, a judge should avoid everything that could belittle the authority of the judicial authority, the dignity of a judge, and cause doubt in his objectivity, justice, and impartiality.
- A judge shall not occupy any other position, be a deputy of representative authorities, a member of political parties and associations or support them materially, participate in political actions,

engage in entrepreneurial activity, except scientific, creative, and educational activities. A judge shall be removed from duties in the form of suspension or termination of his powers.

- According to Article 15 of the above Law, the powers of a judge shall be suspended if the body electing him or the person appointing him has issued consent to impose criminal responsibility on this judge or put him in custody.

On grounds envisaged by part one of this article, the powers of a judge shall be suspended by Majilisi milli Majlisi Oli of the Republic of Tajikistan with respect to Chairman, deputy chairmen, and judges of the Constitutional Court, the Supreme Court, the Supreme Economic Court on presentation of the President of the Republic of Tajikistan, and with respect to judges of military courts, the court of Gorno-Badakhshan Autonomous Region, the city of Dushanbe, city and district courts, judges of economic courts of Gorno-Badakhshan Autonomous Region, regions, and the city of Dushanbe – by the President of the Republic of Tajikistan on presentation of the Justice Council of the Republic of Tajikistan (in edition of RT Constitutional Law No.6 of 6 June2000).

In keeping with Article 16 of this Law, the powers of a judge shall be terminated in the following cases:

- satisfying a judge's written resignation;
- his written application for dismissal from the post of a judge:

  a) at his own will;

  b) in connection with the transfer to another job;

  c) in connection with the change of the place of residence or family circumstances;

  d) in connection with departure from the republic;

- when a judge is engaged in activities incompatible with his position;
- an accusatory court sentence versus the judge, entered into legal force;
- recognition of the judge incapable or partially capable by a court decision entered into legal force;

- the judge's inability for health reasons or for any other valid reasons to fulfil the duties of a judge during a lengthy period of not less than four months in succession;
- loss of the citizenship of the Republic of Tajikistan by the judge;
- proclaiming the judge missing or deceased in the established manner by a court decision entered into legal force;
- reorganization of the court (courts) or cuts in the number of judges;
- death of the judge;
- violation of the law or committing an act disgracing the judge's honour and dignity;
- expiration of the judge's term in office;
- detection of a judge's inconsistency with the occupied position.

On grounds envisaged by part one of this article, the powers of a judge shall be terminated by Majilisi milli Majlisi Oli of the Republic of Tajikistan with respect to Chairman, deputy chairmen, and judges of the Constitutional Court, the Supreme Court, the Supreme Economic Court on presentation of the President of the Republic of Tajikistan, and with respect to judges of military courts, the court of Gorno-Badakhshan Autonomous Region, the city of Dushanbe, city and district courts, judges of economic courts of Gorno-Badakhshan Autonomous Region, regions, and the city of Dushanbe – by the President of the Republic of Tajikistan on presentation of the Justice Council of the Republic of Tajikistan (in edition of RT Constitutional Law No.6 of 6 June 2000).

According to the national law, the immunity of a judge shall not be restricted to actions committed on duty.

Instructions on procedures of considering issues of lifting the immunity status have not been issued either for Parliament chambers of for local representative authorities. The issue of lifting the immunity status presently depends fully on discretion of the Parliament and local representative authorities.

It is considered expedient to issue such instructions with the indication of concrete grounds for refusal to lift the immunity status, as there have been precedents of unjustified and unmotivated refusals of the local representative authorities to lift the immunity.

Jurisdiction

Concerning the issue of establishing jurisdiction over criminal offences, the legislation of the RT leans on the territorial approach in combination with the active nationality principle.

Under Articles 14-16 of the Criminal Code, a person that has committed a crime on the territory of the Republic of Tajikistan, shall be subject to liability under the present Code if not otherwise provided for by international agreements.

Recognized as a crime committed in the territory of the Republic of Tajikistan shall be an action which:

- began or continued or was completed in the territory of the Republic of Tajikistan;
- was committed outside the territory of the Republic of Tajikistan, while a criminal result therefrom had occurred in its territory;
- was committed in the territory of the Republic of Tajikistan, while a criminal result therefrom had occurred outside its territory;
- was committed jointly with persons who had committed criminal activity in the territory of another state.

Criminal legislation acts irrelevant to laws, place of crime in respect of socially dangerous offences committed on aircraft or water-craft, which legitimately follows its course under the flag or identification sign of the Republic of Tajikistan.

The issue of criminal liability of diplomatic representative of foreign states or other citizens enjoying immunity, who have committed crimes in the territory of the Republic of Tajikistan shall be addressed on the basis of international law standards.

For crimes committed in the territory of another state, citizens of the Republic of Tajikistan, as well as persons without a citizenship, who reside permanently on its territory, shall be liable under the present Code in case they had not been convicted in another state for this crime.

Foreign citizens and persons without a citizenship, who do not reside permanently in Tajikistan, shall be liable under the present Code for crimes committed outside its territory in the following cases:

- if they committed a crime envisaged by international law norms recognized by the Republic of Tajikistan or interstate treaties and agreements;
- if they committed an especially grave or a grave crime against citizens or interests of the Republic of Tajikistan.

These rules shall be used if foreign citizens or persons without a citizenship were not convicted in another state.

If not otherwise stipulated interstate treaties or agreements, a citizen of the Republic of Tajikistan, who had committed a crime in the territory of another state, shall not be extradited to this state.

Foreign citizens and persons without a citizenship who had committed a crime outside the territory of the Republic of Tajikistan and who are in its territory may be extradited to a foreign state to face criminal responsibility or to serve the punishment term in accordance with an international agreement.

Corruption in the Private Sector

Active and passive bribery in the private sector has also been criminalized by the legislation.

Such actions as abuse of power by the employees of commercial organizations (article 295 of the Criminal Code) and commercial bribery (article 279 of the Criminal Code) entail criminal responsibility as formulated below:

Article 295. Abuse of Office by Employees of Commercial and Other Organizations

1. Using by employees of a commercial or other organization of their executive or other managerial authority in defiance of the interests of this organization and for purposes of gaining profit and benefits for themselves and other persons or inflicting damage on other persons, if this deed has entailed substantial damage to the rights and legal interests of citizens, organizations or the state,
shall be penalized with a fine in the amount from 500 to 1 000 times the minimum wage or corrective labour for a term up to two years or freedom deprivation for the same term.

Similar actions entailing grave consequences,
shall be penalized with a fine in the amount from 1 000 to 2 000 times the minimum wage or arrest for a period from four to six months or freedom deprivation for a term up to three years.

Note:

For purposes of this article, the employees of commercial or other organizations shall be recognized as persons carrying out executive or other managerial functions in commercial organizations, regardless of their form of ownership, and in non-profit organizations, which are not government agencies, permanently, temporarily, or on special authority.
If a deed stipulated by this article has inflicted damage exclusively on a commercial organization which is not a state-owned enterprise, criminal proceedings shall be conducted on an application of this organization or with its consent. If damage is inflicted on the interests of other organizations, as well as the interests of individuals, society or the state, criminal proceedings shall be conducted on general terms.

Article 279. Commercial Bribery

1. Illegal transfer to a person carrying out managerial functions in a commercial or other organization of money, securities, other property, as well as illegal rendering of property-related services to such person for committing actions (inaction) in the interests of the donator in connection with this person's official position,
shall be penalized with a fine in the amount from 300 to 500 minimal wages or deprivation of the right to occupy certain positions or engage in certain activities for a term up to two years or restriction of freedom for a term up to two years or freedom deprivation for the same term.

2. Similar actions committed:
(a) repeatedly;
(b) by a group of persons on collusion;
(c) by an organized group;
shall be penalized with a fine in the amount from 500 to 800 minimal wages or restriction of freedom for a term up to three years or arrest for a term up to four months, or freedom deprivation for a term up to four years.

3. Illegal acceptance by a person carrying out managerial functions in a commercial or other organizations of money, securities, other property, as well as illegal usage of property-related services by such person for

committing actions (inaction) in the interests of the donator in connection with this person's official position,
shall be penalized with a fine in the amount from 800 to 1,500 minimal wages or deprivation of the right to occupy certain positions or engage in certain activities for a term up to two years or restriction of freedom for a term up to three years or deprivation of freedom for the same term.

4. Actions stipulated by part three of this article if:
(a) committed repeatedly;
(b) committed by a group of persons on collusion or by an organized group;
(c) they involve extortion;
shall be penalized with a fine in the amount from 1 500 to 2 000 minimal wages with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years or the deprivation of freedom for a term up to five years with confiscation of property.

Note: A person committing actions stipulated by parts one or two of this article shall be exempt from criminal responsibility, if he was a victim of extortion or if this person has voluntarily reported the fact of bribery to an authority empowered to initiate criminal proceedings.

For corruption fighting purposes, the Law On Fighting Corruption views private sector officials as in the same way as public officials. This is connected with the introduction of deeds qualified as corruptive in all spheres (however, corruption offences committed by private organizations with respect to each other are qualified under Articles 279 and 295 of the Criminal Code).

Under article 13 of the Law On Fighting Corruption, corruption-related offences are the following actions of persons authorized to fulfil governmental functions or equivalent persons:

- acceptance for their activity of any additional remuneration in the form of money, services or in any other form, from government agencies, enterprises, institutions, and organizations where they do not fulfil relevant functions, as well as from nongovernmental organizations, public associations, individuals, unless stipulated otherwise by law;
- acceptance of gifts and other services in connection with fulfilment of governmental or equivalent functions from subordinates except token signs of attention and souvenirs presented during protocol and other official events. The total value of gifts and services received during one year shall not exceed 50 times the minimum salary;

- acceptance of invitations for domestic and foreign tours, health-building, medical treatment and other trips at the expense of individuals and legal entities of the Republic of Tajikistan and foreign individuals and legal entities, except trips:
  - at the invitation of close relatives at their expense;
  - taken in accordance with international treaties of the Republic of Tajikistan or on mutual basis on agreement between government agencies of the Republic of Tajikistan and foreign countries at the expense of the relevant government agencies and international organizations; on consent of superior officials or collegial administrative bodes – for participation in international and foreign scientific, sports, creative, professional, humanitarian events at the expense of the relevant public associations and funds, as well as trips taken within the frames of charter activity of public associations at the invitation of their foreign partners;
- use for personal, group or other unofficial purposes of the premises, vehicles and communication equipment, computer appliances, money and other public property at their disposal for purposes of exercising governmental functions, if this is not stipulated by law and damages government interests;
- use of illicit advantages in obtaining credits, loans, purchasing securities, real estate and other property.

Family members of a person authorized to fulfil governmental functions or an equivalent person shall not have a right to accept gifts and services, invitations for tours, health-building, medical treatment and other trips at the expense of individuals and legal entities of the Republic of Tajikistan and foreign individuals and legal entities with which the said person has official connections.

The commitment by a person authorized to fulfil governmental functions or an equivalent person of any corruption offence, unless it is punishable under criminal law, entails disciplinary penalty in the form of removal from office or another form of suspension from fulfilling governmental functions in the manner established by law.

Article 13 of the Law On fighting Corruption defines nongovernmental officials as officials or nongovernmental economic entities, including managers, members of Boards of Directors, and other leaders of private business entities.

The absence of a clause on inapplicability of a certain part of offences stipulated in article 13 of the said Law to non-governmental officials (many of whom cannot be qualified as private individuals) constitutes a serious drawback of the Law, which has been taken into consideration during the elaboration of its draft new edition.

As mentioned above, the present form of investigative and judicial statistical reporting does not offer the possibility to determine the number or types of criminal proceedings, as well as the number of persons convicted for private corruption, which necessitates the development of statistic reporting in this sphere.

Confiscation of Proceeds from Corruption

Under Article 16 of the Law On Fighting Corruption, in all cases of unwarranted enrichment as a result of corruption-related offences, the illegally obtained property shall be exacted, and the value of illegally provided services shall be reimbursed to the state pursuant to the procedure established by the law.

When convicting a person for bribe taking (Article 319 of the Criminal Code), the confiscation of property shall be decided upon by the court, except for conviction for repeated bribe taking, bribe taking under a preliminary conspiracy or that involving extortion or that involving large bribe amounts when the application of the confiscation of property is obligatory. In convicting a person for bribe giving (article 320 of the Criminal Code), confiscation of property shall be obligatory at all times. Property of the convicted person may be confiscated if it had been acquired by third persons or close relatives to avoid confiscation.

Under the ruling of investigative bodies, seizure of property, bank accounts and other proceeds from corruption activities may be used as a measure to ensure the confiscation of property during the investigation of criminal cases.

Pre-trial investigation agencies and the courts are empowered to arrest illegal proceeds in cases of corruptive offences under their consideration, located in any place, including third parties.

Confiscation is possible on the basis of cost evaluation (confiscation of a sum equivalent to illegal profit if the confiscation of the initial profit is impossible).

Property confiscation imposed by the court as the main or additional punishment, according to Tajikistan law, does not mean merely the confiscation

of profits gained as a result of illegal activity, but also all other property owned by the guilty (convicted) person, with the exception of property that cannot be confiscated (for considerations of humanity, the law contains a minimal list of property necessary for the convicted person and his family, which cannot be charged).

There is no statistical information on the sums of proceeds confiscated in connection with conviction for corruption due to the lack of relevant reporting.

Liability of Legal Persons

Criminal corporate liability is not provided for by the legislation of the Republic of Tajikistan. Although the Code of Administrative Offences envisages the possibility of corporate administrative liability, it does not specify concrete corruption-related administrative offences.

Legal entities shall bear civil-and-legal and administrative responsibility for the commission of corruption offences.

The Civil Code (Article 62) qualifies repeated or gross violations of the law as grounds for liquidating a legal entity by a court decision on demand of duly authorized government agencies.

This rule shall also be applied to corporations accused of committing corruptive offences. For example, the company Jamal & Co. mentioned above, accused of systematic laundering of illegal proceeds, was liquidated in September 2003 by decision of the Supreme Economic Court on the claim filed by the Office of the Tajikistan Prosecutor General.

Specialised Services

Detection and exposure of corruption offences is imposed on bodies of Prosecutor General, internal affairs, security service, tax police, Customs, military administration and state border, Agency for drug control within their relevant statutory jurisdictions. Each law-enforcement agency has units specializing, to various degrees, in fighting corruption.

In particular, the Ministry for State Revenues and Duties has a law-enforcement agency – the Tax Police Department. The Anti-Corruption Division of Tax Police Department is one of its leading units with 18 people on its staff.

The Ministry for State Revenues and Duties has Internal Security Department, which deals with issues of fighting corruption among Ministry employees. The Department staff consists of 24 persons.

Most corruption cases are detected and investigated by the public prosecutor's offices, accounting for over 80% of all investigated cases of corruption. At the same time, offices of the public prosecutor have no units specializing in corruption.

The detection of corruptive offences in the Office of Prosecutor General is assigned to the General Supervision Department, and in regional public prosecutor's offices to general supervision units. The General Supervision Department and units monitor the observance of law in all spheres of the economy, social life and government administration and therefore have no particular anticorruption specialization.

Investigative agencies and the public prosecutor's offices don't have specialized anticorruption units either. Criminal cases of corruption are generally investigated on the basis of obsolete methodologies, the prosecutor's offices having no specialized analytical or statistical units for analysing the status of anticorruption work.

Due to restricted opportunities of the national budget, the logistics support of anticorruption agencies is not up to the necessary standards.

The aforementioned agencies are in need of computer hardware, transport vehicles, professional training and internship of personnel. The Government and the public are concerned over the low level of salaries of officers serving in those agencies.

The adoption and enforcement of the Anti-Corruption Action Plan proposed by the Anti-Corruption Network necessitates the development of logistics support of anticorruption agencies, creation of specialized anticorruption units within the system of the public prosecutor's offices.

Investigation and Enforcement

Distribution of Powers and Responsibilities

Criminal-procedural legislation governs the issues of instituting criminal proceedings, preliminary and court investigation of criminal cases in Tajikistan. It should be noted, as far as the public prosecutors appointment procedure is concerned, that public prosecution in Tajikistan courts is supported by bodies of

the Public Prosecutor's Office. Prosecutors, their deputies and other authorised workers of the prosecutor's offices act as public prosecutors in courts.

The Public Prosecutor's Office is a single centralized system not incorporated in the system of the Ministry of Justice or the courts. The Prosecutor General is appointed and dismissed by President on consent of the Majlisi Oli. The Prosecutor General is appointed for a term of five years.

The Prosecutor General has a first deputy and deputies appointed to their post and dismissed by President of the Republic of Tajikistan on consent of Majlisi Oli of the Republic of Tajikistan. The Prosecutor General reports to Majlisi Oli and President of the Republic of Tajikistan.

The Prosecutor General of the Republic of Tajikistan appoints his/her subordinate prosecutors and dismisses them from their position. The term of office of public prosecutors is five years. Reports on appointment of public prosecutors and their dismissal from position shall be published in the press.

The Office of the Prosecutor General has directorates and departments, chiefs and deputy chiefs, who are simultaneously senior assistants and assistants to the Prosecutor General. Departments and directorates have on their staff senior prosecutors and prosecutors, assistants, criminal law experts, and senior investigators of cases of special importance. Directorate and department chiefs and their deputies, senior assistants of the Prosecutor General, senior prosecutors and prosecutors of directorates and departments, criminal law experts, and senior investigators of cases of special importance are appointed and dismissed from position by the Prosecutor General.

The system of the Prosecutor General's Office incorporates such structural unit as the Chief Military Prosecutor's Office headed by deputy Prosecutor General of the Republic of Tajikistan – Chief Military Prosecutor.

Citizens of the Republic of Tajikistan with higher legal education who have the required business and moral qualities and whose health condition enables them to fulfil their official duties may be appointed prosecutors and investigators.

Persons who do not have sufficient practical experience in the given speciality shall undergo one-year internship in bodies of the Public Prosecutor's Office.

In exceptional cases, the Prosecutor General has a right to take a decision to reduce the period of internship or relieve from internship duty. Persons for

the first time appointed to positions of prosecutors and investigators of the prosecutor's offices shall take the Oath of a Public Prosecution Worker with the following content:

Devoting myself to service of the Law, I solemnly swear:

- *to piously observe the Constitution of the Republic of Tajikistan, laws and international obligations of the Republic of Tajikistan, not allowing a single small departure from them;*
- *to wage an irreconcilable struggle against any violations of the law, no matter who may perpetrate them, work to achieve high efficiency of prosecutor's supervision and pre-trial investigation;*
- *to actively protect the interests of citizens, society and the state;*
- *to keenly and attentively treat citizens' proposals, appeals, and complaints, ensure objective and fair decisions of people's destiny;*
- *to strictly observe state and other secret protected by law;*
- *to constantly improve my skills, cherish my professional honour, be a model of incorruptibility, moral purity, modesty, to sacredly protect and multiply the best traditions of public prosecution bodies.*

I acknowledge that the violation of the oath is incompatible with further service at bodies of public prosecution.

Persons appointed to the posts of Prosecutor of the Gorno-Badakhshan Autonomous Region, the Tajik Transport Prosecutor, regional prosecutors, and the Prosecutor of the city of Dushanbe shall be not younger than 30 years old and have not less than ten years experience of work at public prosecution bodies or not less than five experience of work in the capacity of district or city prosecutor. Persons appointed to the posts of district and city prosecutors shall be not younger than 27 years old and have professional experience not less than five years.

Persons with a criminal record, except those who have been exculpated, cannot be appointed o the post of public prosecutor, assistant prosecutor and investigator of the public prosecution bodies.

The procedure of appointment and dismissal of judges is described in detail in this Report (section on Immunities).

Ministry of Interior bodies, security bodies, Ministry for State Revenue and Duties, Agency for Drug Control with the President of the RT, Office of Public Prosecutor and courts shall have the right to institute criminal proceedings.

To prevent a conflict of interests in the justice sphere, the Code of Criminal Proceedings of the Republic of Tajikistan stipulates that a public prosecutor shall not participate in investigation, supervision, and act as public prosecutor in court, and the judge shall not participate in consideration of a case, if they are related to any of participants in the trial, or are in any other way interested in the outcome of the case.

The violation of this rule shall serve as unconditional grounds for cancelling the decision passed on the case and imposing disciplinary or criminal responsibility on the prosecutor or the judge.

In the event of kinship with any of the trial participants or any other interest in the outcome of a case, the prosecutors and judges shall motion their own disqualification.

They can also be challenged for this cause by the trial participants (defendants, defence attorneys, plaintiffs, respondents, etc.).

Criminal cases on corruption crimes shall be under the jurisdiction of mainly the Office of Public Prosecutor.

The Office of Public Prosecutor shall also be an agency for inquiry and preliminary investigation supervision.

Sanctions for search and arrest of persons under suspicion and for other important investigative actions shall be provided by the supervising prosecutors.

Upon completion of the preliminary investigation, a criminal case shall be transferred to the prosecutor for the approval of the court sentence. In studying the criminal case, a prosecutor shall be obliged to return the case for additional investigation, change the indictment and (or) send the case to the court upon the approval of the accusation.

Tajikistan law on criminal proceedings, recognizing the necessity of investigation and court consideration of all criminal cases leaves the solution of the issue whether conducting an investigation meets public interests to discretion of the investigator, public prosecutor, and the court, only in two cases.

In accordance with Article 5-2 of the Code of Criminal Proceedings of the Republic of Tajikistan, the court, the public prosecutor, and the investigator or the inquiry body, on consent of the prosecutor, may refuse to initiate a criminal

case or terminate criminal proceedings versus a person who has committed a lesser offence for the first time and has truly repented.

In accordance with Article 5-3 of the Code of Criminal Proceedings of the Republic of Tajikistan, the aforementioned authorities may refuse to initiate a criminal case or terminate criminal proceedings versus a person who has committed a lesser offence for the first time, has made amends with the victim and compensated for the latter's damage.

The reasons for refusal to initiate a criminal case or termination of criminal proceedings shall be necessarily presented and explained in a relevant decision of the body of inquiry, the investigator or the prosecutor, or a court determination.

The victim shall be notified of the refusal to initiate a criminal case or termination of criminal proceedings, and the victim shall have a right to appeal against the determination of the court or decision of the prosecutor, investigator, body of inquiry, accordingly, to a higher instance court or superior public prosecutor.

The assessment of lawfulness and validity of the refusal to initiate a criminal case or termination of criminal proceedings is a prerogative of the higher instance court or superior public prosecutor. No other government bodies or public organizations have a right to act as experts on evaluation of these decisions.

No instructions have been issued concerning decision-making in these cases, as the law itself clearly and unequivocally stipulates the circumstances under which it is allowed to refuse from initiating a criminal case or terminate criminal proceedings.

The above cases and decisions on them shall be registered in statistic records and included in state statistic reporting.

The refused materials and terminated criminal cases are subject to obligatory presentation to the superior public prosecutor for purposes of verifying the lawfulness of the adopted decisions during the presentation of statistic reports.

Courts shall not intervene with the preliminary investigation, except for cases of verification of arrest legitimacy on applications of persons under custody.

The criminal processional law of the Republic of Tajikistan stipulates that all processional decisions shall be executed only in the form of written motivated acts.

The grounds for a defendant's acquittal shall be substantiated and motivated in an acquittal, which is an official act of a judicial authority issued on behalf of the state.

The acquittal may be appealed by the acquitted person on any grounds, including disagreement of the motive for acquittal. For example, if a defendant has been acquitted by the court due to failure to prove the accusation, he may demand a reconsideration of the sentence and try to get an acquittal for motives of absence of a criminal act or absence of a crime in the act, which means unqualified rehabilitation and absolute innocence of the person.

Although acquittal on the motive of failure to prove the accusation, according to the principle "unproven guilt is equal to proven innocence" applied in the republican law is also unqualified and entails no legal implications, nevertheless, it may leave a shadow of a doubt in the person's innocence in public opinion. The current system of division of powers between different authorities is generally efficient.

At the same time, there is a need for simplifying the procedures for pre-trial investigation and court consideration of cases, minor adjustments of investigative jurisdiction of cases and authorities of criminal persecution agencies.

These circumstances have been taken into consideration during the development of the draft new Code of Criminal Proceedings of the Republic of Tajikistan, currently under parliamentary discussion.

Mandatory versus Discretionary Prosecution

In the Republic of Tajikistan, the system of criminal prosecution is based on the mandatory prosecution principle.

Any application, message, signals and suspicions about corruption crimes shall be verified. No consent is required from any agency for instituting criminal proceedings (except for immunity cases).

The only exception in respect of corruption crimes is the reservation in Article 295 of the Criminal Code that if the abuse of powers by employees of commercial organizations inflicted damage solely on the commercial

organization, which is not a state-owned enterprise, prosecution shall be carried out based on the application of this organization or with the latter's consent. In case damage was inflicted on the interests of other organizations as well as on the interests of citizens, society or state, prosecution is carried out subject to a general procedure.

Prosecution is a prerogative of law-enforcement agencies. Therefore, a victim or another interested organization shall have no right to continue the investigation of a criminal case terminated by police or Office of Prosecutor on any grounds. They may only challenge the adopted decision with a relevant law-enforcement agency.

Investigative Capacities

The Law on Operative and Investigative Activity of 23 May 1998, No.651, stipulated special methods for investigating corruption and other crimes. Under this Law, the following operative and investigative measures may be used in carrying out investigative activities:

- interviews;
- inquiries;
- collection of samples for comparative studies;
- controlling purchase;
- study of articles and documents;
- surveillance;
- identification of personality; inspection of premises, buildings, constructions, terrain areas and transport vehicles;
- monitoring postal messages, telegraph and other communications, censorship of convicts' correspondence;
- tapping telephone and other conversations; information pick-up from technical communication channels;
- operative implanting; controlled delivery; operative experiment, incorporation of a legal entity.

These methods and means may be used also for detection and investigation of all crimes involving bribery and corruption, if they are applicable and useful proceeding from the circumstances of a concrete case.

In the course of operative and investigative activities, use is made of information systems, video- and audio recording, film and photo shooting, as well as other technical and other means, which do not inflict any harm on human health and environment.

Operative and investigative measures, which are related to monitoring postal messages, telegraph and other communications, tapping telephone lines and connecting to own equipment of enterprises, institutions and organizations of all forms of ownership, natural and legal entities, providing communication services and facilities with the pickup of information from technical communications channels, shall be conducted using operative and investigative means and facilities of security services and internal affairs units subject to procedure stipulated by interagency normative acts or agreements between agencies performing operative and search activities.

Control purchase or a controlled delivery of articles, substances or products whose sales are forbidden or whose circulation is limited, as well as an operative experiment or an operative implanting of agents of those bodies, which perform operative-and-investigative activities or persons facilitating these bodies, shall be carried out on the basis of the regulations approved by the director of the body exercising operative-and-investigative activities.

Operative-and-investigative activity results may serve as the reason and grounds for instituting criminal proceedings, they may be presented to the agency, performing an inquiry, investigator or to the court examining the criminal case, and also used as proof during the case proceedings in accordance with the provisions of criminal and procedural legislation of the Republic of Tajikistan, which regulates collection, verification, and evaluation of evidence.

Making public the information on persons implanted in organized criminal groups, on full-time secret employees of bodies performing operative-and-investigative activities as well as on persons, who offer or offered them assistance on a confidential basis, shall occur in exclusive cases with the consent of these persons in writing and when provided for by the laws.

In addressing operative-and-investigative activity issues, agencies authorized to carry out these activities shall, pursuant to procedures established by the Republic of Tajikistan legislation, facilitate the protection of security of its employees, persons assisting operative-and-investigative bodies, participants in criminal proceedings, as well as members of families and relatives of said persons and their property from criminal infringements.

Persons assisting operative-and-investigative bodies shall be under the protection of the state.

The state shall guarantee those persons, who had agreed to assist operative-and-investigative bodies under a contract (or in accordance with other cooperation forms), the fulfilment of its obligations envisaged by the contract, including guarantees of legal protection related to the fulfilment by said persons of their social duties or the assumed obligations.

Should there arise a real threat of an illegal encroachment on the life, health or property of individuals in connection with their assistance to operative-and-investigative bodies as well as on the life, health or property of the members of their families and relatives, these bodies shall be obliged to take all the required measures to prevent illegal acts, identify those guilty, and hold them responsible under the legislation of the Republic of Tajikistan.

A person from among the members of a criminal group who committed an illegal act, which did not involve grave consequences, and was hired by the operative-and-investigative body, who made an active contribution to exposing the crime, reimbursed the inflicted damage or otherwise made for the inflicted damage shall be exempted from criminal responsibility under the legislation of the Republic of Tajikistan.

Persons who are cooperating with operative-and-investigative bodies or who had rendered them assistance in exposing crimes or identifying those who committed them, may obtain remuneration or other payments.

Special measures may be conducted pursuant to the procedure stipulated by the law to ensure the security of persons cooperating with operative-and-investigative bodies and members of their families.

Criminal and procedural legislation of the RT provides that a witness testimony given at the preliminary investigation stage may be used as a proof in the court even though this witness may not be able to be present at the court session.

With the prosecutor's sanction, investigative bodies may withdraw any document relevant to the case including documents in bank institutions. Bank institutions shall be obliged to present to the Office of Prosecutor and judicial bodies any data on criminal cases they are conducting proceedings on. Investigation of criminal cases shall be conducted on a confidential basis.

Under Article 361 of the Criminal Code, divulging inquiry or preliminary investigation data shall be penalized by a fine of up to 500 times the minimum wage or corrective labour for the period of up to two years or deprivation of freedom for the period of up to two years.

If there is a need to conduct a financial or accounting expertise, bodies of criminal prosecution or the court assign this task to the legal accounting expertise department of the Scientific Research Laboratory for Legal Expertise under the republican Justice Ministry, or appoint an expert from another institution.

Technical and methodological equipment of the police, prosecution and judicial authorities of the republic in the sphere of fighting corruption does not meet modern requirements.

Organised Crime and Corruption

Specialized units of the Ministry of Interior, Ministry of Security, and Agency for Drug Control with the President of the RT fight organized crime in close cooperation with agencies responsible for combating corruption.

Traditional spheres of organized crime in the Republic of Tajikistan include terrorist activities, illegal drug trafficking, smuggling, and crimes against personality.

There are cases of office abuse for purposes of promoting illegal drug trafficking and sales. For example, Deputy Chief of the Intelligence Department of the State Border Protection Committee, Colonel N.K. Sadriddinov, abused his official powers to inspect the state border, and having entered in a criminal conspiracy with a citizen of the Islamic Republic of Afghanistan, Sadulloi Abduholik, in April 2002 purchased from an unidentified source 24.7 kg of heroine and attempted to smuggle it from the borderline zone to the capital city of the republic, Dushanbe, disguising it as legally confiscated drugs.

On 19 April 2002, N. Sadriddinov and his accomplices were caught by officers of the Interior Ministry Department for Fighting Organized Crime. After a pre-trial investigation, the case was referred by the prosecutor's office to court. By decision of the Supreme Court of 15 November 2003, N.K. Sadriddinov was sentenced under article 200 (part 3, items b and g) of the Criminal Code (illegal drug trafficking on collusion and on a particularly large scale) to 15 years and six months of freedom deprivation with confiscation of property and deprivation of military rank. His accomplices, D. Azimov and citizen of the Islamic Republic of Afghanistan Sadulloi Abduholik, were

sentenced, respectively, to 15 and 16 years of deprivation of freedom with property confiscation.

An example of corruptive offence involving smuggling is the case of customs officers – senior operative in charge of fighting contraband and violations of the customs regulations of the Sogdiysk Regional Customs Committee D. Normatov and senior operative of the Patar customs post of the Kanibadam city customs office S. Gafurov, who took a bribe from smugglers in the amount of USD 1 600 in May 2001 for letting through the customs border 44 tons of illegal shipment of grain alcohol to the total value of USD 70 000.

The Court found D. Normatov, S. Gafurov, and other customs officers involved in the crime guilty of office abuse (article 314, part 3 of the Criminal Code), contraband by an organized group (article 289, part 4 of the Criminal Code), taking a bribe in a large amount and sentenced them to long prison terms.

International Aspects

The Republic of Tajikistan is signatory to the following international, interstate and intergovernmental agreements on Mutual legal assistance.

- Convention on Legal Assistance and Legal Relations on Civil, Family and Criminal Cases signed by Heads of Member-States of the Commonwealth of Independent States on 22 January 1993 in Minsk (Minsk Convention);
- Intergovernmental Agreement of the CIS Member-States on Cooperation in Fighting Crimes in the Sphere of Economics of 12 April 1996, signed in Moscow;
- Agreement between the Republic of Tajikistan and the People's Republic of China On Legal Assistance in Civil and Criminal Cases of 16 September 1996, signed in Beijing.
- Agreement between the Republic of Tajikistan and the Republic of India On Legal Assistance in Criminal Cases of 10 May 2001, signed in New Delhi.
- Agreement between the Republic of Tajikistan and the Republic of India On Extradition of 14 November 2003, signed in Dushanbe.

Office of Prosecutor General of the Republic of Tajikistan signed Mutual Assistance Agreements with Offices of Prosecutor General of Georgia (25 August 1995), Kazakhstan (30 September 1993), Turkmenistan (28 June

1995), Russian Federation (7 December 1995), Azerbaijan (16 October 1995), Kyrgyzstan (15 October 1993) and Supreme Office of Prosecutor General of the People's Republic of China (4 July 2000). Mutual Legal Assistance Agreements are ready to be signed with Turkey, Pakistan, and Iran.

Said agreements stipulate the procedure for requesting the mutual legal assistance, terms and conditions for extradition of criminals and other cooperation areas in fighting corruption.

The norms of the above-mentioned treaties and covenants complement the legislation of the Republic of Tajikistan. They do not have norms contradicting the legislation of the Republic. Provisions of said agreements, including those concerning the extradition, are applicable to corruption crimes.

The criminal and procedural legislation envisages that issues related to the determination of the mutual assistance scope shall be within the discretion of Contracting States. Thus, under Article 6 of Minsk Convention, mutual legal assistance may consist, for example, in the compilation and sending of documents, conducting searches, seizure, evaluation, interrogation of suspects, witnesses, experts, institution of criminal proceedings, search for and extradition of persons who committed crimes.

Under Article 2 of the Agreement On Cooperation in Fighting Crimes in the Sphere of Economics of 12 April 1996, to prevent, detect, interdict, and expose economic crimes, all signatories to this Agreement shall seek to improve their legislation to provide for the possibility of confiscation and transfer to another contracting party of assets (securities, jewels, antiques and other valuables) and banking, credit and other financial documents. Neither the legislation nor interstate agreements, to which Tajikistan is a signatory, envisage any limitations on the provision of mutual legal assistance in corruption matters.

In terms of the instituted criminal proceedings, bank secrecy shall not be invoked as grounds for refusing to meet requests within the mutual legal assistance framework. Data may be provided constituting no state or bank secrets for purposes of performing non-criminal procedural actions in respect of legal entities.

Issues of extradition of persons who had committed crimes in Tajikistan shall be dealt with by Article 16 of the Criminal Code, which envisages that the Republic of Tajikistan citizen who committed a crime in the territory of another state shall not be extradited to said state unless otherwise stipulated by interstate treaties or agreements.

Foreign citizens and persons without a citizenship who committed a crime outside the territory of the Republic of Tajikistan and who are in the territory of Tajikistan may be extradited to a foreign state for subjecting said persons to criminal liability or punishment in accordance with an interstate treaty.

Article 56 of Minsk Convention On Legal Assistance and Legal Relations on Civil, Family, and Criminal Cases stipulated that:

- extradition for holding a person criminally responsible shall be effected for acts, which entail punishment under laws of both the requesting and the requested Contracting state in the form of deprivation of freedom for at least 1 year, or a more serious punishment;
- extradition for the execution of sentence shall be effected for such acts which entail punishment under laws of both the requesting and the requested Contracting state in the form of deprivation of freedom for at least 6 months or a more serious punishment.

The extradition shall not be performed if:

- the person whose extradition is requested is a citizen of a requested Contracting state:
- by the moment of the receipt of the request, prosecution under the legislation of the requested Contracting state cannot be initiated or the sentence cannot be executed owing to the expiration of the statute of limitation or on other legitimate grounds;
- a sentence was executed or a valid ruling adopted on the termination of proceedings on the case in the territory of the requested Contracting state involving the person whose extradition is requested;
- the crime in question is prosecuted by way of private accusation (based on the application of a victim) under the legislation of the requesting or the requested Contracting state.

Extradition may be declined if the crime in connection with which it is demanded has been committed in the territory of the requested Contracting state.

Information exchange on concrete cases is conducted in the manner prescribed by Agreements on Mutual Legal Assistance.

No appeals have been filed by Tajikistan or to Tajikistan for rendering legal assistance in cases of corruption.

State bodies of countries participating in the Common wealth of Independent States (CIS) exchange information by means of discussion of certain issues as sessions of bodies coordinating the activity of the Commonwealth law-enforcement bodies.

One of these bodies is the Coordinating Council of Prosecutors General of CIS Member States, which systematically considers information on problems accumulated in the sphere of fighting crime in genera and corruption in particular. For example, the republican Office of the Prosecutor General has summed up the information on numerous facts of extortion, requisition, bribery, and other corruptive offences of public officials in CIS countries with respect to Tajik Labour migrants. This information was provided by the Prosecutor General of CIS countries and discussed on proposal of the Prosecutor General of the Republic of Tajikistan at a session of the Coordinating Council of Prosecutors General of CIS Member States of 4-6 September 2003.

The Coordinating Council passed a decision aimed at strengthening public prosecutor's supervision of observance of the rights of working migrants in the Commonwealth member states.

The Joint Board of the Interior Ministries of the Russian Federation and Tajikistan have held several sessions to discuss the problems, for example, in the fight against organized crime, illegal drug trafficking, protection of the rights of labour migrants.

Annex 1

LAW OF THE REPUBLIC OF TAJIKISTAN ON THE STRUGGLE AGAINST CORRUPTION

CHAPTER I. GENERAL

Article 1. Objects of the Law

This Law defines the legal and organizational basis for preventing corruption and aims at protecting the rights and freedoms of citizens, public interests, ensuring national security and normal functioning of bodies of government authority and administration.

Article 2. Definition of Corruption

This Law defines corruption as actions (inaction) of persons authorized to fulfil governmental functions, or equivalent persons, aimed at using their position and related opportunities for gaining material and other advantages and benefits not envisaged by law, as well as illegal provision of these advantages and benefits by individuals and legal entities.

Governmental functions mean the subject of jurisdiction constituting the authority of the state, its agencies and persons occupying government positions, according to the Constitution of the Republic of Tajikistan, constitutional laws and laws of the Republic of Tajikistan.

Article 3. Subjects of Corruption-Related Offences

The subjects of corruption-related offences are persons authorized to fulfil governmental functions or equivalent persons.

Persons authorized to fulfil governmental functions include:

- persons occupying governmental state power positions or governmental civil service positions;
- government officials of state-owned economic entities.

The following persons shall be equivalent to persons authorized to fulfil governmental functions for purposes of applying this Law:

- officials of local self-administrations;
- officials of nongovernmental economic entities and other nongovernmental entities;
- citizens registered in the legally established manner as candidates for elected government positions and membership positions in elected government authorities.

The subjects of corruption-related offences also include individuals and legal entities illegally providing material and other benefits and services to persons authorized to fulfil governmental functions or equivalent persons.

Article 4. Sphere of Validity of the Law

This Law is valid on the entire territory of the Republic of Tajikistan and is applicable to all individuals and legal entities of the Republic of Tajikistan. Outside the borders of the Republic of Tajikistan the Law shall be applicable to citizens of the Republic of Tajikistan and legal entities registered in the Republic of Tajikistan, unless stipulated otherwise by international legal acts recognized by the Republic of Tajikistan.

Article 5. Framework for Struggle Against Corruption

The struggle against corruption, creation of conditions for incorruptibility of persons indicated in part one, article 3 of this Law shall be conducted on the basis of:

a) ensuring strict legal regulation of their activity, lawfulness and openness of their activity, governmental and public control over it;

b) improving the structure of governmental staff and the procedure for solving issues concerning the rights and legal interests of individuals and legal entities;

c) recognizing the admissibility of restricting the rights and freedoms of persons authorized to fulfil governmental functions and equivalent persons in keeping with article 14 of the Constitution of the Republic of Tajikistan;

d) introducing responsibility for violating the law on struggle against corruption in accordance with the principles of equality of all citizens in the face of the law and the court;

e) restoring the rights and lawful interests of individuals and legal entities, liquidation and prevention of harmful consequences of corruption-related offences;

f) governmental protection of rights and lawful interests of persons authorized to fulfil governmental functions or equivalent persons, instituting cash allowance (salary) and benefits ensuring decent living standards to them and their families;

g) inadmissibility of delegating government regulatory powers and functions of control over entrepreneurial activity to legal entities and individuals engaged in such activity;

h) conducting operative investigation for purposes of prevention, detection, solving, termination of corruption-related offences, as well as special financial control measures;

i) ensuring personal safety of citizens assisting in the struggle against corruption-related offences.

Article 6. Agencies Engaged in Struggle Against Corruption

All bodies of government authority and administration, local executive authorities (khukumats), all persons authorized to fulfil governmental functions shall engage in the struggle against corruption within the limits of their competence. Broad sections of the population, public associations and mass media shall be recruited to join in the struggle against corruption.

The detection and solution of corruptive offences is assigned to bodies of prosecution, the interior, security, tax police, customs authorities, military control and state border protection agencies, the Agency for Narcotics Control, within the limits of their competence determined by law. The President of the Republic of Tajikistan is empowered to form a coordinating government agency for the struggle against corruption, define its status and powers.

Article 7. Personal Immunity Guarantees to Persons Rendering Assistance in the Struggle Against Corruption

A person reporting a fact of corruptive offence or rendering another form of assistance in the struggle against corruption shall be protected by the state.

Information about a person rendering assistance in the struggle against corruption constitutes state secret and shall be granted only on request of the agencies indicated in part two, article 6 of this Law, or the court in the manner

stipulated by law and only upon their consent. The disclosure of such information entails responsibility stipulated by law.

In case of necessity, agencies engaged in the struggle against corruption shall ensure personal safety of persons rendering assistance in the struggle against corruption.

The rules envisaged by this article do not spread on persons reporting intentionally false information, who are subject to responsibility for it in keeping with law.

CHAPTER II. PREVENTING CORRUPTION

Article 8. Special requirements to Persons Claiming the Fulfilment of Governmental Functions

Persons claiming the fulfilment of governmental functions shall voluntarily accept restrictions instituted by this Law and other legal acts for purposes of non-admission of actions that could lead to the use of the relevant status and its authority in personal, group, and other unofficial interests. In this process, they shall be informed of the legal implications of the prohibited actions.

The acceptance of restrictions shall be reflected in a written commitment. Non-acceptance of restrictions (full or partial) entails the refusal from recommending the said person for fulfilment of relevant governmental functions.

Article 9. Financial Control

Persons claiming the fulfilment of governmental functions in the status of officers occupying positions of government authority of civil service positions, as well as officials shall submit to tax authorities at their place of residence the following data:

- incomes (both their personal and of their family members), including all material and other values, receipts and revenues from all sources, evaluated in cash;
- immovable and valuable movable property, the cost of which exceeds 2,000 minimal wages established by law, including property situated outside the borders of the Republic of Tajikistan or placed in temporary ownership of other persons, specifying the estimated value and address;

- bank deposits, including outside the borders of the Republic of Tajikistan, indicating the banks; finances which they are entitled to manage personally or jointly with other persons;
- securities at their disposal personally or jointly with other persons;
- their direct or indirect participation as a shareholder or co-owner of a company, funds with the indication of the property interest and precise banking and other details of this organization;
- names of trusts and countries where they are registered, indicating the banks, if the person or his family members are beneficiaries of these trusts;
- debt exceeding 500 minimal salaries and other financial liabilities, including abroad.

Persons occupying positions of government authority or civil service positions and officials of local self-administrations must submit to tax bodies information on valuable gifts received in official capacity both inside and outside the borders of the Republic, indicating the documents confirming their transfer to the state.

The said persons shall present at their job a reference certificate from the tax agencies confirming the presentation of data on their status.

Non-presentation or presentation of incomplete or unreliable data stipulated by this article, if such action does not contain elements of a criminal offence, shall serve as grounds for refusal to authorize the person with relevant powers or entail removal from office or other suspension from fulfilling the aforementioned functions.

Family members of persons indicated herein mean their parents, brothers, sisters, spouses, children, as well as the parents, brothers, sisters and children of their spouses, including other persons, residing together with them and keeping joint households.

Article 10. Activity Inconsistent with Fulfilment of Governmental Functions

Persons occupying positions of government authority or civil service positions the appointment and election procedures of which are regulated by the Constitution of the Republic of Tajikistan, constitutional laws and laws of the Republic of Tajikistan, shall be prohibited from occupying any part-time and paid job on labour contract (agreement) except scientific, creative and educational activity.

Persons authorized to fulfil governmental functions and officials of local self-administrations shall be prohibited from occupying two managerial positions, as well as performing other regular part-time job except scientific, creative and educational activity, if this job is not used as a means of bribery or other unjustified enrichment of those persons.

In accordance with law, persons occupying positions of government authority or civil service positions and officials of local self-administrations shall hand over in trust management under guarantees for the time of their stay in office the shares (block of shares) in the charter capital of commercial organizations owned by them.

A person authorized to fulfil governmental functions or an equivalent person engaged in activities inconsistent with fulfilment of functions stipulated herein is subject to removal from office or other suspension from fulfilling relevant functions in the manner stipulated by law; a person authorized to fulfil governmental functions or an equivalent person, suspended from fulfilling those functions for engaging in activities inconsistent with fulfilment of those functions until he stops engaging in such activity.

Article 11. Non-Admittance of Joint Service of Relatives or Relatives by Marriage

Persons authorized to fulfil governmental functions and equivalent persons shall not occupy positions directly subordinate to or controlled by positions occupied by their close relatives or relatives by marriage (parents, spouses, brothers, children, as well as brothers, sisters, parents and children of spouses) or have such persons in subordination or control.

Persons violating the requirements of this article shall be subject to transfer to positions excluding such subordination, unless they voluntarily eliminate the said violation within a three-months' period, and if such transfer is impossible, one of these officials shall be suspended.

Article 12. Offences Creating Conditions for Corruption and Relevant Responsibility

Offences creating conditions for corruption include the following deeds of persons authorized to fulfil governmental functions or equivalent persons:

a) interference with the activity of other governmental and nongovernmental agencies, if it is not included in their sphere of activity and is not based on law;

b) using their status for solving issues concerning their personal interests or the interests of their close relatives or relatives by marriage;

c) granting unlawful preference to individuals and legal entities during the preparation and passing of decisions;

d) participation as solicitors of individuals and legal entities in cases considered by the agency where they serve, its subordinate or controlled agency;

e) use in personal or group interests of information obtained in the process of fulfilment of governmental functions, unless it is subject to official dissemination;

f) use for solving personal matters the results of reviews conducted at nongovernmental expense, including special nongovernmental funds created for supporting government agencies;

g) refusal from granting information to individuals and legal entities the granting of which is envisaged by legal acts, its withholding or presenting unreliable or incomplete information;

h) demanding information from individuals and legal entities, the granting of which to these persons is not stipulated by legal acts;

i) transfer of state financial and material resources to election funds of individual candidates and public associations;

j) violation of the legally established procedure for considering appeals by individuals and legal entities and solving other issues within their competence;

k) making gifts and rendering unofficial services to superior officials, except token souvenirs and signs of attention during protocol and other official events;

l) participation in gambling games of the cash or other property nature with superior or subordinate officials, or officials having other business connections with them;

m) transfer to nongovernmental enterprises, institutions, organizations and public associations of financial and material resources belonging to government funds, state economic entities, as well as economic entities where the aggregate share of government or communal property is not less than a half;

n) creating artificial barriers to individuals and legal entities in discharging their rights and legal interests.

Committing by persons authorized to fulfil governmental functions or equivalent persons of one of the offences stipulated by part one herein, if it does

not constitute criminal offence, entails the imposition in the legally established manner of one of the following disciplinary penalties: reprimand, demotion or removal from office.

CHAPTER III. CORRUPTION OFFENSES AND RESPONSIBILITY

Article 13. Corruption Offences Involving Illegal Receipt of Benefits and Advantages

Corruption-related offences are the following actions of persons authorized to fulfil governmental functions or equivalent persons:

a) acceptance for their activity of any additional remuneration in the form of money, services or in any other form, from government agencies, enterprises, institutions, and organizations where they do not fulfil relevant functions, as well as from nongovernmental organizations, public associations, individuals, unless stipulated otherwise by law;

b) acceptance of gifts and other services in connection with fulfilment of governmental or equivalent functions from subordinates except token signs of attention and souvenirs presented during protocol and other official events. The total value of gifts and services received during one year shall not exceed 50 minimal salaries;

c) acceptance of invitations for domestic and foreign tours, health-building, medical treatment and other trips at the expense of individuals and legal entities of the Republic of Tajikistan and foreign individuals and legal entities, except trips:

   - at the invitation of close relatives at their expense;
   - taken in accordance with international treaties of the Republic of Tajikistan or on mutual basis on agreement between government agencies of the Republic of Tajikistan and foreign countries at the expense of the relevant government agencies and international organizations;
   - on consent of superior officials or collegial administrative bodes – for participation in international and foreign scientific, sports, creative, professional, humanitarian events at the expense of the relevant public associations and funds, as well as trips taken within the frames of charter activity of public associations at the invitation of their foreign partners;

d) use for personal, group or other unofficial purposes of the premises, vehicles and communication equipment, computer appliances, money and other public property at their disposal for purposes of exercising

governmental functions, if this is not stipulated by law and damages government interests;

e) use of illicit advantages in obtaining credits, loans, purchasing securities, real estate and other property.

Family members of a person authorized to fulfil governmental functions or an equivalent person shall not have a right to accept gifts and services, invitations for tours, health-building, medical treatment and other trips at the expense of individuals and legal entities of the Republic of Tajikistan and foreign individuals and legal entities with which the said person has official connections.

The commitment by a person authorized to fulfil governmental functions or an equivalent person of any corruption offence, unless it is punishable under criminal law, entails disciplinary penalty in the form of removal from office or another form of suspension from fulfilling governmental functions in the manner established by law.

Article 14. Responsibility of Individuals for Granting Material Benefit to Persons Authorized to Fulfil Governmental Functions and Equivalent Persons

The provision by individuals of illegal material benefits, gifts, services to persons authorized to fulfil governmental functions or equivalent persons, if it does not contain the elements of criminal offence on proposal of the agencies indicated in article 6 hereof, entails administrative punishment imposed by the court.

Note: Individuals providing material benefits, gifts, services to persons authorized to fulfil governmental functions or equivalent persons shall be relieved from responsibility if they have become victims of extortion on the part of persons authorized to fulfil governmental functions or equivalent persons, and have voluntarily reported these facts to the authorities stipulated in article 6 hereof.

Article 15. Responsibility of Heads of Government Agencies, Local Self-Administrations, Enterprises, Institutions and Organizations for Illegal Entrepreneurial Activity

Heads of government agencies, local self-administrations, enterprises, institutions and organizations financed from the budget, target funds set up by government agencies engaged in entrepreneurial activity or accepting material

or any other benefits and services, except official sources of financing, on proposal of agencies indicated in article 6 hereof, are subject to administrative punishment imposed by court.

CHAPTER IV. ELIMINATING THE CONSEQUENCES OF CORRUPTION OFFENSES

Article 16. Recovery of Illegally Obtained Property or the Cost of Illegally Rendered Services

In all cases of unjustified enrichment as a result of corruption-related offences, illegally obtained property shall be returned, and the cost of illegally rendered services –recovered in favour of the state in the manner established by law.

Article 17. Cancelling Corruption-Related Acts

Acts adopted as a result of corruption-related offences shall be cancelled by an authority or official empowered to adopt or cancel relevant acts, or by a judge on the claim of interested individuals and legal entities or the prosecutor.

Article 18. Responsibility of Heads of Ministries and Agencies, Government Authorities, Enterprises, Institutions and Organizations for Non-Adoption of Anti-Corruption Measures

The heads of ministries and agencies, government authorities, enterprises, institutions, and organizations, not applying measures within their competence, envisaged by this Law, with respect to their subordinates guilty of corruption-related offences or taking the aforementioned measures with violation of provisions of this Law, or not presenting relevant information to tax authorities at their place of residence, unless they contain the elements of criminal offence on proposal of agencies indicated in article 6 hereof, are subject to administrative punishment imposed by the judge.

President of the Republic of Tajikistan
E.RAKHMONOV
Dushanbe, 11 December 1999, No.875
AMORT No.12, 1999

Annex 2

DECREE OF THE PRESIDENT OF THE REPUBLIC OF TAJIKISTAN

On Additional Measures Against Economic Crime and Corruption

Pursuing efforts to raise the level of efficiency of law-enforcement bodies and other public entities in fighting economic crime and corruption, increase their responsibility to ensure national economic safety, considering this a priority of government policy, in keeping with Articles 64 and 70 of the Constitution of the Republic of Tajikistan, I decree**:**

1. The Government of the Republic of Tajikistan shall enforce a system of immediate and targeted measures for stepping up the activity of government agencies in fighting economic crime and corruption, for which purpose:

(a) jointly with the interested institutions, to submit in the established manner within a three-month term for consideration of Majlisi Oli of the Republic of Tajikistan:

a. Government programme of struggle against economic crime and corruption, containing a system of measures for detecting, preventing, terminating and solving this type of crimes, and eradicating the reasons and conditions generating them;

   draft laws on the introduction of amendments and additions to the laws of the Republic of Tajikistan aimed at intensifying the struggle against economic crime and corruption, focusing on the finance and credit sphere and elimination of hidden opportunities for committing economic crimes and acts of corruption;

b. for purposes of streamlining the single state register of enterprises, to take a decision within a monthly term to determine in the established manner the deadlines for overall re-registration of enterprises, regardless of their form of ownership;

c. to take urgent measures to ensure adequate enforcement of the laws of the Republic of Tajikistan on state antimonopoly regulation, certification of the origin and quality of goods, jobs and services,

observance of government standards, and creation and functioning of consumer rights protection institutions;

d. to instruct relevant ministries and agencies to verify the facts of carrying out commodity exchange (barter) transactions in violation of laws and regulations;

e. jointly with the National Bank of Tajikistan to adopt a regulatory legal act restricting access to credit resources and privatized objects of legal entities and individuals with respect to which bankruptcy proceedings have been launched or criminal cases under consideration of judicial or law-enforcement agencies;

f. for purposes of ensuring rational and efficient disbursement of the national budget and credits granted by international finance organizations, and on guarantees of the Government of the Republic of Tajikistan, to put into effect the system of government procurement of goods, jobs and services with the use of the aforementioned financial resources;

g. to take measures for strengthening the personnel and logistic base of law-enforcement agencies and other government entities involved in the fight against economic crime and corruption, for the purpose of which to elaborate and enforce a qualitatively new concept of personnel training and specialization, based on the principles of multi-step, intensive and permanent advanced training.

2. The Public Prosecutor's Office of the Republic of Tajikistan, the Ministry of Internal Affairs of the Republic of Tajikistan, the Ministry of Security of the Republic of Tajikistan, the Customs Committee at the Government of the Republic of Tajikistan, the Tax Committee at the Government of the Republic of Tajikistan within a two-month term shall:

a. create at the Ministry of Internal Affairs of the Republic of Tajikistan a centralized databank of all preparing, detected, committed, and solved corruption-related crimes encroaching on the national economic safety and persons involved in them, using the modern means of protection, technical processing, analysis and presenting of operative information;

b. eradicate the practice of duplication of authority in the process of fighting economic crime and corruption, while strictly abiding by regulatory and legal acts;

c. step up work towards ensuring the efficiency of operative services connected with obtaining, analysis, verification and utilization of information on economic crime and corruption, as well as control over the

quality of inquiry and preliminary investigation on criminal cases of the said category, tighten the responsibility of executive officers of all ranks at the subordinate units for organizing the aforementioned work. Controlling agencies of the Republic and relevant law-enforcement units shall orient their activity primarily on detection, prevention, exposure, and termination of offences and compensation for the damage inflicted on the state by: misuse of budgetary and other similar funds; violation of the rules of currency and financial control, issue and return of credits at the expense of interstate borrowings, distribution and use of humanitarian relief funds; illegal creation and functioning of joint ventures, one of the founders of which is a government agency; illegal export of capital abroad; encroachment on public property; abuse in the foreign economic sphere; embezzlement and illegal export of strategic materials; concealment of profits for purposes of tax evasion; lobbying the interests of economic entities at government agencies;

d. work out and approve the Statute of Centralized Formation and Functioning of Joint Law-Enforcement Units for terminating and investigating the activity of interregional criminal groups and their corruptive connections, including abroad, striving to hinder stability and change the political situation in the country;

e. improve coordination and interaction in the process of joint operative investigative activities, exchange and utilization of information, using the available forces, means and methods, including with similar agencies of foreign countries.

3. The Ministry of Internal Affairs of the Republic of Tajikistan shall within a monthly term solve the issue of uniting forces engaged in the struggle against economic crime and corruption in a single department in order to avoid parallelism.

4. The Ministry of Justice of the Republic of Tajikistan and the Supreme Court of the Republic of Tajikistan shall ensure, within the frames of their competence, timely and objective consideration of criminal cases of economic crime and corruption, abiding by the principle of imminence and adequacy of punishment.

5. The Customs Committee at the Government of the Republic of Tajikistan shall within a two-months' term develop and approve a single Instruction on the mechanism of interaction with the tax service and the banking system in exercising currency control, timely and complete return of hard currency revenue, and charging budgetary arrears.

6. The Ministry of Culture of the Republic of Tajikistan, the Committee for Television and Radio Broadcasting at the Government of the Republic of Tajikistan, in coordination with the management of law-enforcement agencies, shall organize regular coverage of the state of affair in fighting economic crime and corruption, as well as programmes aiming at raising the population's law culture.

7. The Prosecutor General of the Republic of Tajikistan shall, within the frames of his competence, ensure oversight of the implementation of this Decree and present quarterly information on the pace of its enforcement.

8. This Decree shall enter into force as of the moment of its signing.

President of the Republic of Tajikistan

E.Sh.RAKHMONOV
Dushanbe
21 July 1999, No.1252

Annex 3.

CRIMINAL CODE OF THE REPUBLIC OF TAJIKISTAN

(Edition of the Law of the Republic of Tajikistan No.684 of 13.11.1998, No.498 of 12.03.1999, No.498 of 12.03.2001, No.6 of 12.05.2001)

Article 245. Appropriation or Embezzlement

(1) Appropriation or embezzlement, or the theft of alien property entrusted to the felon or placed within his competence, shall be penalized with a fine in the amount from 500 to 1 000 minimal wages or restriction of freedom for a term up to two years or deprivation of freedom for the same term with the deprivation of the right to occupy certain positions or engage in certain activities for a term of two years.

(2) The same actions committed:

a) repeatedly;
b) by a group of persons on collusion;
c) inflicting considerable damage on an individual;
d) with the use of official powers;

— shall be penalized with deprivation of freedom for a term from two to five years with or without confiscation of property and deprivation of the right to occupy certain positions or engage in certain activities for a term of three years.

(3) Actions stipulated by parts one and two of this article committed:

a) on a large scale;
b) by an organized group;

— shall be penalized with deprivation of freedom for a term from five to ten years with or without confiscation of property and deprivation of the right to occupy certain positions or engage in certain activities for a term of four years.

(4) An action stipulated by parts one, two or three of this article, committed:

a) as a dangerous or particularly dangerous repetition;
b) on a particularly large scale;
— shall be penalized with deprivation of freedom for a term from ten to fifteen years with confiscation of property and deprivation of the right to occupy certain positions or engage in certain activities for a term of five years.

Article 246. Embezzlement of Funds Granted as Credits

(1) The embezzlement of funds granted as credits shall be penalized with a fine in the amount from 1 000 to 2 000 minimal wages or restriction of freedom for a term up to two years or deprivation of freedom for the same term.

(2) Similar actions committed:

a) repeatedly;
b) by a group of persons on collusion;
c) on a large scale;
— shall be penalized with deprivation of freedom for a term from three to eight years with or without confiscation of property and deprivation of the right to occupy certain positions or engage in certain activities for a term of three years.

(3) Actions stipulated by parts one and to of this article committed:

a) as a dangerous or particularly dangerous repetition;
b) on a particularly large scale:
c) by an organized group;
— shall be penalized with deprivation of freedom for a term from eight to fifteen years with confiscation of property and deprivation of the right to occupy certain positions or engage in certain activities for a term of five years.

Article 247. Fraud

(1) Fraud, or appropriation of alien property or acquisition of title to alien property through deception or abuse of trust, shall be penalized with a fine in the amount from 500 to 800 minimal wages or restriction of freedom for a term up to three years, or deprivation of freedom for a term up to two years.

(2) Fraud committed:

a) repeatedly;
b) by a group of persons on collusion;
c) inflicting considerable damage on an individual;
d) by a person using his official powers;

— shall be penalized with deprivation of freedom for a term from three to five years with or without confiscation of property and with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years.

(3) Fraud committed:

a) on a large scale;
b) by an organized group;
c) as a dangerous repetition;

— shall be penalized with deprivation of freedom for a term from five to twelve years with or without confiscation of property and with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term of five years.

(4) Fraud committed:

a) as a particularly dangerous repetition;
b) on a particularly large scale;

— shall be penalized with deprivation of freedom for a term from ten to fifteen years with confiscation of property and with or without the deprivation of the right to occupy certain positions and engage in certain activities for a term up to five years.

Article 257. Embezzlement of Foreign Relief Funds

(1) The embezzlement of foreign relief funds shall be penalized with a fine in the amount from 500 to 1 000 minimal wages or deprivation of freedom for a term up to two years.

(2) Similar actions committed:

a) repeatedly;
b) by a group of persons on collusion;
c) on a large scale;
d) with resort to violence not hazardous to the life and health, or by threatening to resort to such violence;

— shall be penalized with deprivation of freedom for a term from two to seven years.

(3) Actions stipulated by parts one and two of this article committed:

a) by an organized group;
b) by a person with a criminal record for theft;
c) through robbery or extortion;
d) on a particularly large scale;
— shall be penalized with deprivation of freedom for a term from seven to twelve years with or without confiscation of property.

Note: If there is no set price of the foreign relief funds, their cost shall be estimated on the basis of the market price on the date of the crime.

Article 273. Monopolistic Activities and Restriction of Competition

(1) Monopolistic activities, manifest in setting monopolistically high or monopolistically low prices, as well as restricting competition by dividing the market, restricting market access, removing other economic entities from the market, setting or maintaining uniform prices, shall be penalized with a fine in the amount from 1 000 to 1 500 minimal wages or arrest for a term from five to six months or deprivation of freedom for a term up to two years.

(2) Similar action committed:

a) repeatedly;
b) by a group of persons on collusion;
— shall be penalized with a fine in the amount from 1 500 to 2 000 minimal wages or deprivation of freedom for a term from two to five years.

(3) Actions stipulated by parts one and two of this article committed:

a) with the use of violence or a threat to use violence;
b) with destruction or damage of alien property or a threat to destroy or damage alien property in the absence of indications of extortion;
c) with the use of official position;
d) by an organized group;
— shall be penalized with deprivation of freedom for a term from five to ten years with or without confiscation of property and deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years.

Article 274. Malicious Violation of Public Sale or Auction Procedures

Malicious violation of public sale or auction procedures inflicting serious damage on a proprietor, the organizer of public sale or auction, buyer, or another economic entity, shall be penalized with a fine in the amount of 700 to 1 000 minimal wages or restriction of freedom for a term up to two years or deprivation of freedom for the same term.

Article 275. Illegal Use of a Trademark

(1) Illegal use of an alien trademark, service mark, brand name, name of the place of origin of products, competitor's logo or similar marks for identical products and services, if committed repeatedly after the imposition of an administrative charge or if it has inflicted substantial damage, shall be penalized with a fine in the amount from 1 000 to 2 000 minimal wages or corrective labour for a term up to one year or arrest for a term up to six months.

(2) Illegal use of warning tags with respect to a trademark, brand name, or place of origin of a product not registered in the Republic of Tajikistan, if committed repeatedly after the imposition of an administrative charge or if it has inflicted substantial damage, shall be penalized with a fine in the amount from 1 000 to 2 000 minimal wages or corrective labour for a term up to two year or arrest for a term up to six months.

Article 279. Commercial Bribery

(1) Illegal transfer to a person carrying out managerial functions in a commercial or other organization of money, securities, other property, as well as illegal rendering of property-related services to such person for committing actions (inaction) in the interests of the donator in connection with this person's official position shall be penalized with a fine in the amount from 300 to 500 minimal wages or deprivation of the right to occupy certain positions or engage in certain activities for a term up to two years or restriction of freedom for a term up to two years or freedom deprivation for the same term.

(2) Similar actions committed:

a) repeatedly;
b) by a group of persons on collusion;
c) by an organized group;

— shall be penalized with a fine in the amount from 500 to 800 minimal wages or restriction of freedom for a term up to three years or arrest for a term up to four months, or freedom deprivation for a term up to four years.

(3) Illegal acceptance by a person carrying out managerial functions in a commercial or other organizations of money, securities, other property, as well as illegal usage of property-related services by such person for committing actions (inaction) in the interests of the donator in connection with this person's official position shall be penalized with a fine in the amount from 800 to 1 500 minimal wages or deprivation of the right to occupy certain positions or engage in certain activities for a term up to two years or restriction of freedom for a term up to three years or deprivation of freedom for the same term.

(4) Actions stipulated by part three of this article if:

a) committed repeatedly;
b) committed by a group of persons on collusion or by an organized group;
c) they involve extortion;

— shall be penalized with a fine in the amount from 1 500 to 2 000 minimal wages with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years or the deprivation of freedom for a term up to five years with confiscation of property.

Note: A person committing actions stipulated by parts one or two of this article shall be exempt from criminal responsibility, if he was a victim of extortion or if this person has voluntarily reported the fact of bribery to an authority empowered to initiate criminal proceedings.

Article 295. Abuse of Office by Employees of Commercial and Other Organizations

(1) Using by employees of a commercial or other organization of their executive or other managerial authority in defiance of the interests of this organization and for purposes of gaining profit and benefits for themselves and other persons or inflicting damage on other persons, if this deed has entailed substantial damage to the rights and legal interests of citizens, organizations or the state, shall be penalized with a fine in the amount from 500 to 1 000 minimal wages or corrective labour for a term up to two years or freedom deprivation for the same term.

(2) Similar actions entailing grave consequences shall be penalized with a fine in the amount from 1 000 to 2 000 minimal wages or arrest for a period from four to six months or freedom deprivation for a term up to three years.

Note:

(1) For purposes of this article, the employees of commercial or other organizations shall be recognized as persons carrying out executive or other managerial functions in commercial organizations, regardless of their form

of ownership, and in non-commercial organizations, which are not government agencies, permanently, temporarily, or on special authority.

(2) If a deed stipulated by this article has inflicted damage exclusively on a commercial organization which is not a state-owned enterprise, criminal proceedings shall be conducted on an application of this organization or with its consent. If damage is inflicted on the interests of other organizations, as well as the interests of individuals, society or the state, criminal proceedings shall be conducted on general terms.

Article 314. Abuse of Office

(1) Abuse of office by an official in defiance of the interests of the service, if this deed (action or inaction) has been committed for mercenary or other personal motives and entailed substantial violation of the rights and legal interests of individuals or organizations, or legally protected interests of society or the state, shall be penalized with a fine in the amount from 200 to 500 minimal wages or deprivation of the right to occupy certain positions and engage in certain activities for a term up to five years or arrest for a term from four to six months or freedom deprivation for a term up to four years.

(2) Similar action committed by a person occupying a government position in the Republic of Tajikistan or by head of a local self-administration shall be penalized with a fine in the amount from 500 to 1,000 minimal wages or deprivation of freedom for a term up to seven years with the deprivation of the right to occupy certain positions and engage in certain activities for a term up to three years.

(3) Actions stipulated by parts one and two of this article entailing grave consequences shall be penalized with deprivation of freedom for a term up to ten years with the deprivation of the right to occupy certain positions and engage in certain activities for a term up to three years.

Note:

1) *For purposes of this chapter, officials shall be recognized as persons permanently, temporarily of by special powers fulfilling the functions of representatives of the authorities, or exercising organizational, managerial or administrative functions in bodies of government authority, government agencies, local self-administrations, as well as the Armed Forces of the Republic of Tajikistan, other troops and military formations.*
2) *For purposes of this chapter and other articles of this Code, persons occupying government positions in the Republic of Tajikistan shall be*

recognized as persons occupying positions determined by the Constitution of the Republic of Tajikistan and other laws of the Republic of Tajikistan for immediate discharge of the authority of government agencies.

3) *Government officials and employees of local self-administrations who are not officials, shall bear criminal responsibility under the articles of this chapter in cases stipulated by relevant articles.*

Article 323. Documental Forgery

Documental forgery, or deliberate introduction by an official, as well as a government officer or employee of a local self-administration who is not an official, of false data, as well as amendment of the said documents, distorting their original content, or the issue of false documents, if such deeds have been committed for malicious or other personal motives, shall be penalized with a fine in the amount up to 500 minimal wages or corrective labour for a term from one to two years or arrest for a term from three to six months or deprivation of freedom for a term up to two years with or without the deprivation of the right to occupy certain positions and engage in certain activities for a term up to three years.

Article 324. Benefiting from Extortion

(1) Benefiting from extortion, *i.e.* demanding material compensation or other material benefit by an enterprise employee who is not an official of a government agency, regardless of the form of the enterprise ownership, in exchange for fulfilment of certain work or rendering of services included in the sphere of official duties of this employee, as well as intentional placement of a citizen in conditions where he is compelled to deliver this compensation in order to prevent an offence and ensure the observance of legal interests, shall be penalized with a fine in the amount from 500 to 1 000 minimal wages or deprivation of freedom for a term up to two years with or without the deprivation of the right to occupy certain positions and engage in certain activities for a term up to five years.

(2) Similar action committed:

a) repeatedly;
b) on a large scale;

- shall be penalized with deprivation of freedom for a term from two to five years with or without confiscation of property and the deprivation of the right to occupy certain positions and engage in certain activities for a term up to five years.

LAW OF THE REPUBLIC OF TAJIKISTAN

On Adoption of the Criminal Code of the Republic of Tajikistan

Majlisi Oli of the Republic of Tajikistan hereby decrees:

1) To adopt the Criminal Code of the Republic of Tajikistan.
2) To recognize as null and void as of the date of enforcement of this Code, the Criminal Code of the Republic of Tajikistan approved by the Law of the Republic of Tajikistan of 17 August 1961 "On Approval of the Criminal Code of the Republic of Tajikistan," as well as all laws introducing amendments and additions to the Criminal Code of the Republic of Tajikistan during the period from 17 August 1961 to 21 May 1998.

PRESIDENT OF THE REPUBLIC OF TAJIKISTAN
E.RAKHMONOV
Dushanbe, 21 May 1998, No.574

Annex 4

ABSTRACT LAW OF THE REPUBLIC OF TAJIKISTAN ON OPERATIVE INVESTIGATION ACTIVITY AS OF 16 NOVEMBER 1999

CHAPTER I. GENERAL

Article 1. Operative Investigation Activity

Operative investigation is a form of activity carried out overtly and covertly by operative units of government agencies duly authorized by this Law (hereinafter – agencies conducting operative investigation) within the limits of their authority by conducting operative investigations for purposes of: protecting the life, health, rights and freedoms of an individual, property, ensuring the safety of the public and the state against criminal encroachments.

CHAPTER II. CONDUCTING OPERATIVE INVESTIGATION ACTIVITIES

Article 6. Operative Investigation

The following operative investigation activities are conducted in the process of operative investigation:

1. interview of the population;
2. inquiries;
3. gathering samples for comparative analysis;
4. control purchases;
5. examining objects and documents;
6. surveillance;
7. personal identification;
8. inspecting premises, buildings, structures, localities, and vehicles ;
9. control of postal, telegraph and other correspondence, censorship of the correspondence of convicts;
10. wire-tapping;
11. picking information from technical communication channels;
12. operative penetration;

13. controlled supplies;
14. operative experiment;
15. foundation of a legal entity.

The above list of operative investigation activities shall be amended or augmented only by force of law.

Operative investigation activities are conducted with the use of: information systems, video and audio recordings, filming, photography, as well as other technical and other means, not damaging the life and health of people and not harmful to the environment.

Operative investigation activities connected with control of postal, telegraph and other communications, wire-tapping by switching to exchange equipment of enterprises, institutions and organizations, regardless of their form of ownership, individuals and legal entities providing services and communication facilities, picking information from technical communication channels shall be conducted with the use of operative technical means and forces of security and interior agencies in the manner determined by interdepartmental regulations or agreements between the agencies conducting operative investigations.

Officers of agencies conducting operative investigations shall solve all matters by personal participation in organizing and conducting operative investigation activities using the assistance of officers and experts who possess scientific, technological and other special skills, as well as individuals, on their consent on an overt and covert basis.

Conducting operative investigation activities and using special and other technical means intended (designed, adjusted, programmed) for secretly obtaining information by individuals and legal entities not duly authorized by this Law is prohibited.

The development, production, sale, purchase for resale, import in the Republic of Tajikistan and export from its territory of special technical means designed for secretly obtaining information by individuals and legal entities not duly authorized for the purpose, are subject to licensing in the manner determined by law of the Republic of Tajikistan.

The list of special technical means designed for secretly obtaining information in the process of operative investigation shall be determined by regulatory acts issued by agencies engaged in operative investigation.

Article 7. Grounds for Conducting Operative Investigation

The grounds for conducting operative investigations include:

1) an initiated criminal case;
2) facts that have become known to agencies engaged in operative investigations: indications of preparing, committing or committed offence envisaged by the criminal law, as well as on persons preparing, committing it or who have committed it, if there is no sufficient evidence for initiating criminal proceedings;
3) events or actions creating a threat to national, military, economic or ecological safety of the Republic of Tajikistan;
4) persons hiding from agencies of inquiry, investigation or the court, or evading criminal punishment;
5) missing persons and discovering unidentified bodies;
6) instruction of the investigator, agency of inquiry, the public prosecutor's order or determination of the criminal court on cases under its consideration;
7) requests of other agencies conducting operative investigation on grounds stipulated herein;
8) a warrant on applying security measures with respect to protected persons, enforced by duly authorized government agencies in the manner stipulated by law of the Republic of Tajikistan;
9) requests of law-enforcement agencies of foreign countries and international law-enforcement organizations in keeping with international treaties of the Republic of Tajikistan.

Agencies conducting operative investigation are also empowered, within the frames of their authority, to gather information necessary for passing decisions:

1) on providing access to data constituting state secret;
2) on providing access to jobs connected with the operation of facilities particularly hazardous to people's life and health and the environment;
3) on providing access to participation in operative investigation activity or to materials obtained as a result of this activity;
4) on establishing or maintaining cooperation with a person during the preparation for or conducting operative investigative actions;

5) on ensuring the safety of agencies conducting operative investigation;

6) on issuing permits to engage in private detective and security guard activity.

Article 8. Terms and Conditions of Conducting Operative Investigation Activities

Citizenship, nationality, sex, place of residence, property, official and social origin, membership in public associations, creed and political convictions of individuals shall not constitute an immunity for conducting operative investigation activities with respect to them on the territory of the Republic of Tajikistan, unless stipulated otherwise by law.

Conducting operative investigation activities involving citizens' constitutional rights to privacy of correspondence, telephone conversations, postal, telegraph and other messages transmitted over telecommunication networks, as well as the right to inviolability of the homes, shall be admitted on the basis of a prosecutor's warrant on condition of availability of information:

1) on indications of preparing, committing, or committed offence, which requires obligatory preliminary investigation;

2) on persons preparing, committing, or who have committed offences, which require obligatory preliminary investigation;

3) on events or activities creating a hazard to public, military, economic or ecological safety of the Republic of Tajikistan.

In cases of emergency that may lead to the committing of a grave or particularly grave crime, as well as in cases of availability of evidence of events and activities creating a hazard to public, military, economic or ecological safety of the Republic of Tajikistan, on the basis of motivated resolution of an agency conducting operative investigation, operative investigation activities, stipulated by part two herein, shall be admitted with obligatory notification of the relevant public prosecutor within 24 hours. The agency conducting operative investigation must within 48 hours from the moment of launching this investigation obtain a prosecutor's warrant for conducting the investigation or terminate investigative activities.

If there is a hazard to the life, health or property of individuals, wire-tapping of telephones of those individuals shall be allowed upon their application or written consent on the basis of a warrant approved by the head of the operative investigation agency with mandatory notification of the relevant prosecutor within 24 hours.

Trial purchase or controlled supply of goods, substances and produce, free sale of which is prohibited, as well as operative experiment or operative infiltration of officials of operative investigation agencies, as well as persons supporting them, shall be carried out on the basis of a resolution approved by the head of the operative investigation agency.

Operative experiment shall be allowed only for purposes of detecting, preventing, terminating and solving a grave or particularly grave crime, as well as for purposes of detecting and identifying persons preparing, committing them, or who have committed those crimes.

In the process of conducting operative investigation activities on grounds stipulated by paragraphs 1-4 and 6, part 2, article 7 of this Law, actions stipulated by paragraphs 8-11, part 1, article 6 shall be prohibited.

Operative investigation activities ensuring the safety of agencies conducting operative investigation shall be carried out in accordance with this Law and exclusively within the limits of authority of the said agencies, determined by law. It shall be permitted to carry out actions stipulated by paragraphs 8-11, part 1, article 6 of this Law on grounds stipulated by paragraph 5, part 2, article 7 of this Law without a prosecutor's warrant on condition of a citizen's written consent.

Article 9. Grounds for and Order of Considering Materials on Restriction of Citizens' Constitutional Rights in the Process of Conducting Operative Investigation

Materials on restriction of citizens' constitutional rights to privacy of correspondence, telephone conversations, postal, telegraph and other messages transmitted over telecommunication networks, as well as the right to inviolability of the homes during operative investigation activities, shall be considered by a public prosecutor, generally at the place of conducting these activities or at the place of location of the agency soliciting for conducting them. The prosecutor shall not be entitled to refuse to consider these materials once they have been presented.

The grounds for issuing a prosecutor's decision to conduct operative investigation activities restricting citizens' constitutional rights stipulated in part one of this article shall consist in a motivated decision of one of the superiors of the operative investigation agency. The list of categories of these superiors shall be determined by departmental regulations.

The prosecutors may also be provided, on his demand, with other materials concerning the grounds for conducting operative investigations, except data on persons infiltrated in organized criminal groups, regular undercover agents of operative investigation agencies, and on persons supporting them on a confidential basis, on the organization and tactics of conducting operative investigation.

Proceeding from the results of consideration of the said materials, the prosecutor shall sanction the conducting of relevant operative investigation activity, restricting the constitutional rights of citizens stipulated by part one of this article, or prohibit such activity, issuing a motivated decision to this effect. A decision, certified with a seal, shall be issued and handed over to the initiator of conducting the operative investigation activity together with the materials of the case returned to him.

The term of validity of the prosecutor's decision shall be calculated in days from the date of issuance and shall not exceed six months unless stipulated otherwise by the decision. The term of validity shall not be interrupted. If there is a need to extend the validity of the decision, the prosecutor shall issue a new decision based on newly presented materials.

If the prosecutor has refused the conducting of an operative investigation activity restricting the constitutional rights of citizens, stipulated by part one of this article, the agency engaged in operative investigation shall be entitled to refer the issue to higher-ranking prosecutors.

The superiors of the public prosecutor's offices shall create conditions ensuring protection of data contained in official operative documents submitted by the prosecutor.

Article 10. Information Support and Documenting Operative Investigation Activity

For achieving the mission assigned to operative investigation agencies by this Law, for purposes of concentration and systematization, these agencies may create and use information systems, as well as keep operative records.

Operative records shall be started in circumstances stipulated by paragraphs 1-6, part one, article 7 of this Law, for purposes of gathering and systemizing evidence, checking and evaluating the results of operative investigation activities, as well as issuing relevant decisions on their basis by operative investigation agencies.

The fact of starting an operative record shall not be used as grounds for restricting constitutional rights and freedoms or legitimate human and individual rights.

The operative record shall be closed if concrete objectives of operative investigation, stipulated by article 2 of this Law, have been achieved, or if there is indisputable evidence of objective impossibility of achieving these objectives.

The list of operative records and the procedure for keeping them are determined by regulations of the agencies engaged in operative investigation.

Article 11. Using the Results of Operative Investigation

The results of operative investigation may be used for preparing and conducting investigative activities and operative investigation measures aimed at detecting, preventing, terminating and solving crimes, detecting and identifying the persons preparing and committing them, or who have committed those crimes, as well as for the search for persons hiding from agencies of inquiry, investigation or the court or evading punishment, or missing persons.

The results of operative investigation may be used as a pretext and grounds for initiating a criminal case, be presented to bodies of inquiry, the investigator or the court conducting proceedings on the criminal case, and be used as evidence in criminal cases in accordance with the law of the Republic of Tajikistan on criminal proceedings regulating the gathering, verification and evaluation of evidence.

The results of operative investigation shall be presented to bodies of inquiry, the investigator or the court on the basis of a decision of the head of the operative investigation agency in the manner envisaged by departmental regulations.

The results of operative investigation with respect to persons listed in paragraphs 1-6 and 6, part two, article 7 of this Law shall be taken into consideration during the decision of the issue of their access to the said forms of activity.

Article 12. Protection of Data on Agencies Engaged in Operative Investigation

Information on forces, means, sources, methods, plans and results of operative investigation used or being used in the process of private operative investigation, on persons infiltrated in organized criminal groups, on regular

undercover agents of agencies engaged in operative investigation and on persons rendering them confidential support, as well as on the organization and tactics of conducting operative investigation activities, shall constitute state secret and is subject to declassification only on the basis of the head of the agency conducting operative investigation.

Making public the information on persons infiltrated in organized criminal groups, on regular undercover agents of agencies engaged in operative investigation and on persons rendering them confidential support shall be admitted only in exceptional cases, only on their written consent and in cases stipulated by law.

A prosecutor's warrant or a court decision on the right to conduct operative investigation and materials providing the grounds for adopting such a decision shall be stored only at the agencies conducting operative investigation.

The documents of operative investigation reflecting the results of operative investigation activities may be presented to the agency of inquiry, the investigator, the judge, other agencies conducting operative investigation in the manner and in cases envisaged by this Law.

Chapter III. Agencies Conducting Operative Investigation

Article 13. Agencies Conducting Operative Investigation

The right to conduct operative investigation on the territory of the Republic of Tajikistan shall be granted to operative units:

- of the interior agencies of the Republic of Tajikistan;
- of state security agencies of the Republic of Tajikistan;
- of the State border protection of the Republic of Tajikistan;
- of the Republic of Tajikistan Defence Ministry;
- of the customs agencies of the Republic of Tajikistan;
- of the Presidential Guard of the Republic of Tajikistan;
- of the tax police of the Tax Committee at the Government of the Republic of Tajikistan;
- of the Agency for Narcotics Control at the President of the Republic of Tajikistan (Law of the Republic of Tajikistan No.848 of 16 November 1999).

The list of agencies conducting operative investigation shall be amended or augmented only by force of law. The heads of the said agencies shall determine the list of operative units authorized to conduct operative investigation, their powers, structure, and organization of work.

Agencies conducting operative investigation shall achieve the tasks stipulated by this Law exclusively within the limits of their powers granted by relevant legal acts of the Republic of Tajikistan.

Article 14. Duties of Agencies Conducting Operative Investigation

In the process of solving the tasks of operative investigation activity determined by this Law the agencies authorized to conduct it must:

1) take all the necessary measures within the frames of their powers to protect the constitutional rights and freedoms of an individual and his property, and to ensure the security of society and the state;
2) carry out, within the frames of its powers, instructions issued in writing by the agency of inquiry or the investigator, prosecutor's warrants and decisions of the court to conduct operative investigation of criminal cases in their proceeding;
3) grant requests of relevant international law-enforcement organizations, law-enforcement agencies and special services of foreign countries on the basis and in the manner stipulated by international treaties of the Republic of Tajikistan;
4) inform other agencies conducting operative investigation activities on the territory of the Republic of Tajikistan of the facts of offence within the competence of those agencies and render the necessary assistance to those agencies;
5) abide by the rules of conspiracy in the process of operative investigation;
6) promote in the manner stipulated by the law of the Republic of Tajikistan the safety and integrity of property of their employees, persons supporting agencies conducting operative investigation, participants in criminal proceedings, as well as family members and next of kin of the said persons against criminal encroachments.

Article 15. Rights of Agencies Conducting Operative Investigation

In the process of solving the tasks of operative investigation activity the agencies authorized to conduct it have a right:

1) to carry out overt and covert operative investigation activities stipulated in article 6 herein, confiscate in the course of these activities objects, materials and information, interrupt the rendering of services in the event of emergence of immediate threat to a person's life and health, as well as the hazard to public, military, economic or ecological safety of the Republic of Tajikistan;
2) to establish cooperation on a free or compensation basis with persons expressing their consent to render confidential support to agencies conducting operative investigation;
3) to use in the process of operative investigation, on written or verbal agreement, official premises, property of enterprises, institutions, organizations, military units, as well as residential and non-residential buildings, vehicles and other property of private individuals;
4) to use for conspiracy purposes documents codifying the identity of officials, departmental jurisdiction of enterprises, institutions, organizations, departments, premises and vehicles belonging to agencies conducting operative investigation, as well as the identity of persons rendering their confidential support. Legitimate demands of officers of the agencies conducting operative investigation shall be binding on individuals and legal entities to which such demands are made.

Non-fulfilment of legitimate demands of officials of agencies conducting operative investigation or preventing their legal fulfilment entails responsibility stipulated by law.

Article 16. Social and Legal Protection of Officers of Agencies Conducting Operative Investigation

The officers of agencies conducting operative investigation shall enjoy the same guarantees of social and legal protection, which are granted to other employees of the aforementioned agencies.

No one shall have a right to interfere with legitimate actions of officers and agencies conducting operative investigation, except persons directly authorized to do so by law.

An officer authorized to conduct operative investigation shall report in the course of conducting operative investigation activities only to his direct and immediate superior. In the event of receiving an order or instruction contravening the law, the said official shall be guided by law.

During the protection of the life and health of citizens, their constitutional rights and legal interests, as well as for purposes of ensuring the safety of society and the state against criminal encroachments, an officer of the agency conducting operative investigation, or a person assisting it shall be allowed to forcedly inflict damage on legally protected interests in the process of legitimate discharge of the said person's official or public duty.

The time of fulfilment of special assignments in organized criminal groups by officers of agencies conducting operative investigation, as well as the time of their service as regular undercover agents of the said agencies, shall be added to the length of service for purposes of pension accrual in accordance with law.

E.Rakhmonov
President of the Republic of Tajikistan

Dushanbe, 23 May 1998, No.651

Annex 5

ANTI-CORRUPTION ACTION PLAN FOR ARMENIA, AZERBAIJAN, GEORGIA, THE RUSSIAN FEDERATION, TAJIKISTAN AND UKRAINE[1]

PREAMBLE[2]

We, the Heads of Governmental Delegations from Armenia, Azerbaijan, Georgia, the Russian Federation, Tajikistan and Ukraine at the 5th Annual meeting of the Anti-Corruption Network for Transition Economies on the 10th of September, 2003, in Istanbul, Turkey:

BUILDING on the guidance of the Anti-Corruption Network for Transition Economies expressed at its 4th Annual meeting in Istanbul in March 2002 to develop a special sub-regional Anti-Corruption Action Plan for those transition economies not yet engaged in targeted sub-regional initiatives;

CONVINCED that corruption is a widespread phenomenon and is inimical to the practice of democracy, erodes the rule of law, hampers economic growth, discourages domestic and foreign investment, and damages the trust of citizens in their governments;

ACKNOWLEDGING that corruption raises serious moral and political concerns and that fighting corruption requires strong action by governments as well as the effective involvement of all elements of society including business and the general public;

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1 The Action Plan is open for endorsement by other transition economies not engaged in targeted sub-regional initiatives; Kazakhstan and the Kyrgyz Republic joined the Action Plan at a later stage.

2 The Action Plan, together with its implementation plan, is a legally non-binding document which contains a number of principles towards policy reform which participating countries politically commit to implement on a voluntary basis and which can provide a basis for donor assistance.

RECOGNISING the value of co-operation and action-oriented knowledge sharing both among the countries participating in this Action Plan and with other countries active within the framework of the Anti-Corruption Network and other regional and international anti-corruption initiatives;

RECALLING that national anti-corruption measures can benefit from existing regional and international instruments and good practices such as those developed by the countries in the region, the Council of Europe (CoE), the European Union (EU), the Financial Action Task Force on Money Laundering (FATF), the Organisation for Economic Co-operation and Development (OECD), the Organisation for Security and Co-operation in Europe (OSCE), and the United Nations (UN);

WELCOMING the pledge made by donor countries and international organisations to support the countries of the region in their fight against corruption through technical cooperation programmes;

ENDORSE this Anti-Corruption Action Plan as a framework for developing effective and transparent systems for public service, promoting integrity in business operations and supporting active public involvement in reform; and commit to take all necessary means to ensure its implementation.

PILLARS OF ACTION

PILLAR 1.
Developing Effective and Transparent Systems for Public Service

Integrity in the Public Service

- Establish open, transparent, efficient and fair employment systems for public officials that ensure the highest levels of competence and integrity, foster the impartiality of civil service, safeguard equitable and adequate compensation and encourage hiring and promotion practices that avoid patronage, nepotism and favouritism;
- Adopt public management measures and regulations that affirmatively promote and uphold the highest levels of professionalism and integrity through the promotion of codes of conduct and the provision of corresponding education, training and supervision of officials in order for them to understand and apply these codes; and
- Establish systems which provide for appropriate oversight of discretionary decision-making; systems which govern conflicts of interest and provide for disclosure and/or monitoring of personal

assets and liabilities; and systems which ensure that contacts between government officials and business services users are free from undue and improper influence, and that enable officials to report such misconduct without endangering their safety and professional status.

Accountability and Transparency

- Safeguard accountability of public service through, *inter alia*, appropriate auditing procedures applicable to public administration and the public sector, and measures and systems to provide timely public reporting on decision making and performance;

- Ensure transparent procedures for public procurement, privatisation, state projects, state licences, state commissions, national bank loans and other government guaranteed loans, budget allocations and tax breaks. These procedures should promote fair competition and deter corrupt activity, and establish adequate simplified regulatory environments by abolishing overlapping, ambiguous or excessive regulations that burden business;

- Promote systems for access to information that include such issues as political party finance, and electoral campaign funding and expenditure.

PILLAR 2.
Strengthening Anti-Bribery Actions and Promoting Integrity in Business Operations

Effective Prevention, Investigation and Prosecution

Take concrete and meaningful steps to actively combat bribery by:

- Ensuring the existence of legislation with dissuasive sanctions which effectively and actively combat bribery of public officials, including anti-money laundering legislation that provides for substantial criminal penalties for the laundering of the proceeds of corruption;

- Ensuring the existence and enforcement of universally applicable rules to ensure that bribery offences are thoroughly investigated and prosecuted by competent authorities. This includes the strengthening of investigative and prosecutorial capacities by fostering inter-agency co-operation, by ensuring that investigation and prosecution are free from improper influence and have effective means for gathering

evidence, by protecting those persons who bring violations to the attention of authorities and by conducting thorough examinations of all revelations of corruption; and

- Strengthening bi- and multilateral co-operation in investigations and other legal proceedings by providing (i) effective exchange of information and evidence, (ii) extradition where expedient, and (iii) co-operation in searching for and identifying forfeitable assets as well as prompt international seizure and repatriation of such assets.

Corporate Responsibility and Accountability

- Promoting corporate responsibility and accountability so that laws, rules and practices with respect to accounting requirements, external audit and internal company controls are fully applied to help prevent and detect bribery of public officials in business. This includes the existence and thorough implementation of legislation requiring transparent company accounts and providing for effective, proportionate and dissuasive penalties for omissions and falsifications for the purpose of bribing a public official, or hiding such bribery in the books, records, accounts and financial statements of companies;
- Ensuring the existence and the effective enforcement of legislation to eliminate tax deductibility of bribes and to assist tax inspectors to detect bribe payments; and
- Denying public licenses, government procurement contracts or access to public sector contracts for enterprises that engage in bribery or fail to comply with open tender procedures.

PILLAR 3.
Supporting Active Public Involvement in Reform

Public Discussion and Participation

Encourage public discussion of the issue of corruption and participation of citizens in preventing corruption by:

- Initiating public awareness campaigns and education campaigns at different levels about the negative effects of corruption and joint efforts to prevent it with civil society groups such as NGOs, labour unions, the media, and other organisations; and the private sector represented by chambers of commerce, professional associations, private companies, financial institutions, etc.;

- Involving NGOs in monitoring of public sector programmes and activities, and taking measures to ensure that such organisations are equipped with the necessary methods and skills to help prevent corruption;
- Broadening co-operation in anti-corruption work among government structures, NGOs, the private sector, professional bodies, scientific-analytical centres and, in particular, independent centres;
- Passing legislation and regulations that guarantee NGOs the necessary rights to ensure their effective participation in anti-corruption work.

Access to Information

Ensure public access to information, in particular information on corruption matters through the development and implementation of:

- Requirements to give the public information that includes statements on government efforts to ensure lawfulness, honesty, public scrutiny and corruption prevention in its activities, as well as the results of concrete cases, materials and other reports concerning corruption
- Measures which ensure that the general public and the media have freedom to request and receive relevant information in relation to prevention and enforcement measures.
- Information systems and data bases concerning corruption, the factors and circumstances that enable it to occur, and measures provided for in governmental and other state programmes/plans for the prevention of corruption, so that such information is available to the public, non-governmental organisations and other civil society institutions.

IMPLEMENTATION

In order to implement these pillars of action, participating governments of the region concur with the attached Implementation Plan and will endeavour to comply with its terms. Participating governments of the region will take measures to publicise the Action Plan throughout government agencies, NGOs engaged in the fight against corruption, and the media; and in the framework of the Advisory Group Meetings, to meet regularly and to assess progress in the implementation of the measures provided for in the Action Plan.

IMPLEMENTATION PLAN

Introduction

The Action Plan contains legally non-binding principles and standards towards policy reform which participating governments of Armenia, Azerbaijan, Georgia, the Russian Federation, Tajikistan, and Ukraine voluntarily agree to implement in order to combat corruption and bribery in a co-ordinated and comprehensive manner and thus contribute to development, economic growth and social stability. Although the Action Plan describes policy objectives that are currently relevant to the fight against corruption in participating governments, it should remain flexible so that new ideas and priorities can be taken into account as necessary. This section describes the implementation of the Action Plan. Taking into account national conditions, implementation will draw upon existing instruments and good practices developed by participating countries, regional institutions and international organisations.

Identifying Country Mechanisms

While the Action Plan recalls the need to fight corruption and lays out overall policy objectives, it acknowledges that the situation in each country of the region may be specific. To address these differences, each participating country will identify priority reform areas which would fall under the three pillars, and aim to implement necessary measures in a workable timeframe.

Mechanisms

Advisory Group: To facilitate the implementation of the Action Plan, each participating government will designate a national coordinator who will be their representative on a Advisory Group. The Advisory Group will also comprise experts on methodical and technical issues to be discussed during a particular Steering Group meeting as well as representatives of participating international organisations and civil society. The Advisory Group will meet on an annual basis and serve three main purposes: (i) to review progress achieved in implementing each country's priorities; (ii) to serve as a forum for the exchange of experience and for addressing issues that arise in connection with the implementation of the policy objectives laid out in the Action Plan; and (iii) to promote a dialogue with representatives of the international community, civil society and the business sector in order to mobilise donor support.

Funding: Funding for implementing the Action Plan will be solicited from international organisations, governments and other parties from inside and outside the region actively supporting the Action Plan.

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Fighting Corruption in Transition Economies

Tajikistan

What progress have transition economies made in fighting corruption? This book presents the outcomes of a review of legal and institutional frameworks for fighting corruption in Tajikistan, which was carried out in the framework of the Anti-Corruption Network for Transition Economies based at the OECD. The review examined national anti-corruption policy and institutions currently in place in Tajikistan, national anti-corruption legislation, and preventive measures to ensure the integrity of civil service and effective financial control.

The review process was based on the OECD practice of mutual analysis and policy formulation. A self-assessment report was prepared by the government of Tajikistan. An international group of peers carried out expert assessment and elaborated draft recommendations. A review meeting of national governments, international organisations, civil society and business associations discussed the report and its expert assessment, and endorsed the recommendations.

This publication contains the recommendations as well as the full text of the self-assessment report provided by the government of Tajikistan. It will provide an important guide for the country in developing its national anti-corruption actions and will become a useful reference material for other countries reforming their anti-corruption policy, legislation and institutions.

For more information, please refer to the Web site of the Anti-Corruption Network for Transition Economies ***www.anticorruptionnet.org*** as well as the Web site of the OECD Anti-Corruption Division ***www.oecd.org/corruption***.

Other editions in this series cover assessments of anti-corruption efforts in Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, the Russian Federation and Ukraine.

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