

### HOW TO END THE HUNT FOR FINES IN TAJIKISTAN – A PARTICIPATORY APPROACH TO INSPECTIONS REFORM



*Creating the conditions for development of a thriving private sector is a tall order in a country blighted by the aftermath of a civil war, poverty, isolation, and bad policies. Since 2003, the IFC SME Survey and Policy Project has sought to improve the regulatory environment in Tajikistan, the poorest and most remote of the former Soviet Republics. After a first survey to identify key issues and priorities, IFC Technical Assistance focused on pushing through a reform of business inspections that in 2002 had resulted in over three working weeks lost per year for 98% of businesses, with significant unofficial payments for all of them. Promoting such a change, going against the vested interests of thousands of bureaucrats and higher ranking officials, was a daunting challenge – as was the attempt to do so in a way that involved all stakeholders.*

#### CHALLENGES

Promoting any substantial regulatory reform in Tajikistan was particularly difficult because of a lack of competence and effectiveness in most of the state administration, widespread corruption, and weak rule of law. These problems were worsened by the civil war that ravaged the country in the 1990s and by the political settlement that followed, clearly putting peacemaking before reform.

Inspections reform looked a particularly hard sell, as it would affect the main source of income for many bureaucrats – and the system of “percentage,” by which officials pay “up” to their manager in a corrupt “food chain” – while lacking the support of any strong lobby, given how weak the private sector is in Tajikistan.

In some countries, strong leadership has been able to overcome such vested interests, and the reform process has relied on one or several “champions.” In Tajikistan, a divided and often incoherent government “presides” over an ineffective bureaucracy, which has plenty of power to interfere and harm but little capacity to enact positive changes. The President balances ministers against each other rather than leading a coherent agenda. Administrative bodies have their own agenda – self-perpetuation. With elections “organized” from above, and in the absence of a strong army, the power’s main support is the large “army” of small bureaucrats. Overall, power holders have little interest in pushing reform from above, even when they see the need for it.

#### *Inspecting all, often – and for nothing?*

To audiences in advanced economies, inspections rarely sound an obvious topic – are they not necessary to protect health? Are they really a problem? In Tajikistan, as in other post-Soviet countries, inspections are one of the heaviest burdens on business. They are also widely ineffective and fail to yield real social benefits – as one sanitary doctor put it, “My staff keeps inspecting small shops to get money, instead of focusing on real epidemiological risks”. In this context, reform is urgently needed to make sure that regulatory agencies actually do the work that they are supposed to do (prevent risks) instead of seeking rent.

**In 2005, 96% of all businesses were inspected on average close to 13 times, each spending around US\$130 in the process (50% of GDP per capita).**

#### THE APPROACH – PARTICIPATION COMBINED WITH EXTERNAL IMPETUS

With “endogenous” forces unable to generate a reform movement given the conditions, it was obvious that a very large agreement had to exist if the reform was to be a success – that is, to be a good reform (in terms of contents), to be adopted at the end (easy to make a good draft – harder to get it voted), and to be implemented (for which some measure of consensus is essential, as well as strong publicity from the start). For all these reasons, IFC TA supported a participatory process, seeking to involve all stakeholders at all stages of the reform – although this was no “pure” participatory approach, since diagnosis and initiative came from outside – i.e., IFC.

In this context, getting a law drafted and adopted was neither an end unto itself (the goal was to achieve reform by any means) nor a foregone option (it was the stakeholders’ discussion that concluded that adopting a single law would be the most effective approach on the legal side).

## RESULTS – IFC SUPPORTS EMERGENCE OF DIALOGUE, AND GETS A “RADICAL” REFORM OF INSPECTIONS PASSED INTO LAW

The process of the inspections reform was as important as the result. IFC TA succeeded first in having a constructive private-public dialogue emerge on inspections (and more widely on business regulation by the State), which in turn resulted in adoption of a legal reform (Law on Inspections and Amendments to the Tax Code). In the process, IFC managed to make many key players aware of the need for further regulatory reform.

The Law and the Amendments to the Tax Code were adopted by the Parliament and signed by the President in July 2006. Taking into account the experience of difficulties in implementation of previous reforms, the Project made sure that, as much as possible, the legal reform:

- Avoided “declarative” or “programmatic” provisions and focused on concrete, applicable norms.
- Set precise limits to regulatory agencies powers, and left as few loopholes as possible.
- Gave directly usable rights to businesses to resist abuses of power, since most of them would not go to court to challenge abuses after they had happened.



### HIGHLIGHTS OF THE NEW LAW

#### FOCUS ON RISK

- Limits frequency and duration of inspections – requires inspectorates to plan their inspections based on risk
- Limits grounds for ‘unplanned’ inspections to officially proclaimed emergencies or specific technical issues for tax

#### COMPLIANCE ORIENTATION

- Prepare checklists for inspections and publish them officially
- Send advance notice of inspections to entrepreneurs

#### STRENGTHEN ENTREPRENEURS’ RIGHTS

- Establishes an official list of inspecting bodies
- Forbids inspectors to issue sanctions themselves
- Gives entrepreneurs the right to refuse an inspection if any of the conditions are not met
- Gives entrepreneurs the right to refuse access to documentation irrelevant to the topic of the inspection

Full implementation of the legal reform will require considerable effort. It will be one of the focuses of IFC TA for the coming two years. However, the strict cap on frequency of inspections set by the Law and by the revised Tax Code will yield immediate benefits to all Tajik SMEs.

## LESSONS LEARNED

### Lesson 1.

**You need strong credibility if you want key players to listen to you**

In Tajikistan, infrastructure or rural development projects often appear far more urgent than advisory projects. It was crucial for IFC TA to position itself as a credible actor, first through the high quality of the Business Environment survey conducted in 2003, and then through constant responsiveness to government’s needs. The Project reacted swiftly to requests, and provided ample review of international practice. Also, it was essential for the Project to combine readiness for confrontation, and for engagement:

- Confrontation – No compromise on the message. Survey results were hard on the government; intense “discussion” ensued, but in the end all key players agreed that the results were valid and had to be acted upon.
- Engagement – The Project did not just provide advice, but argued for it. It also worked with governmental partners directly on legal drafting, instead of just providing them with “reports.”

### Lesson 2.

**The problem needs to be known at the highest level**

Convincing “the top” can in no way be enough – but nothing can happen if the top is opposed. Given the government’s divisiveness and lack of coherence, the “keynote” message has to come from the President. It was instrumental for the Project success that its Business Environment Survey Report was read by the President’s advisors. Thus, the inspections reform made its way in several of the President’s key speeches, including his address to Parliament in April 2005.

### Lesson 3. “Champions” are not always enough

Basing reform success on finding the right champion(s) is quite a popular approach – while it may work in some places, it is unworkable in others. In Tajikistan, neither the State nor the private sector was able to produce an adequate champion:

- At the highest level, while the President gives “directions” in his speeches, his focus is more on image than on substance.
- In the post-Soviet duopoly ministries / President’s Administration:
  - Ministries have no real interest in policy, but rather are part of a huge “spoils system.”
  - The President’s Administration is rather technocratic, and sometimes pro-reform, but very often its initiatives are ignored by ministries, or followed only on the surface.
- The private sector is weak, not structured, and afraid.

As a result, although it was very important to find the right counterparts in State structures, in order to prepare and promote legal changes, these very counterparts clearly indicated that IFC had to find a way to gather wide support for these reforms and to minimize opposition.

### Lesson 4. Co-opt the opponents of reform

In a context where no “champion” is going to push through any reform, and where the private sector’s interests cannot make themselves heard, one cannot simply “roll over” the opponents of reform. It is therefore crucial to avoid radical opposition – in other words, to get the key regulatory agencies to either support, or only *moderately* oppose the reform.

This meant engaging with the main regulators by playing on the potential benefits of the reform – strengthened management control over lower level bureaucrats, improved image, increased effectiveness, and therefore potentially positive impact on the career of the top managers. Crucial was the recognition that since a reform process appeared to have begun and have the support of the President, it was better to participate in the process, and thus have some ability to steer it. Finally, some agencies, such as Fire Safety, have dramatic needs for external (material) assistance, and understood that some measure of reform would make them more “attractive” to potential donors.

The central instrument of the participatory process was a series of four roundtables, held in the first half of 2005. These gathered representatives of all the “stakeholders” of the process: government (the President’s Office and key non-technical ministries), regulatory agencies (Tax, Sanitary, Fire, Ecology, Labor, etc.), business representatives (business associations and micro-finance organizations), international donors, and technical assistance projects.

The success of these roundtables was built on a key psychological factor: in front of peers, no official wanted to look a fool. This meant that the regulators were not able to simply deny the problems and pretend that all was fine – for the findings of the IFC Survey were well known, and the higher officials set the tone by stating that the inspections problem was serious and needed to be tackled. This “psychological pressure” was crucial to make the discussions constructive.

Also essential was the structure of the round tables, which combined:

- Presentation of the previous discussions, to build on established consensus and “frame” the discussion
- Presentation of the international experience to show the feasibility of reforms, and the directions which they could take – using mostly the experience of other post-Soviet countries, and practitioners from these countries to present them
- Splitting the participants in small working groups to develop concrete recommendations for reform to then be discussed at the plenary. This helped avoid “talk shops” that end with no real conclusion.



The series of roundtables formed the backbone of the reform process. The first resulted in agreement on the need to reform and on the key problems. The second produced agreement on the main points that the law should cover. The third and fourth kept pressure from non-State stakeholders during the process of actual drafting, so that the governmental working group, composed mainly of regulators, had some external “oversight.”

### Lesson 5. Donor coordination and participation are essential

To promote reform in a difficult context, the cohesion of donors is essential. IFC took care to have representatives of donors and TA projects in the roundtables, and to animate a coordination group on business environment issues. Such cooperation avoided “donor shopping” and regulators playing one advice against another.

Most crucial was coordination between IFC and the World Bank (IDA). IFC TA convinced the World Bank to include inspections reform in the Policy Credit conditionalities, and this was agreed upon by the Government (thanks to IFC’s preparatory work with the Governmental counterparts). IFC was tasked with evaluating fulfillment of this conditionality, which gave considerable leverage at critical moments in the reform process. In particular, in August 2005 the Tax Ministry, realizing the potential effect of the reform, opposed it categorically. This threatened to block the whole process, or to exclude tax inspections from the reform. The World Bank and IFC approached the problem jointly, and meetings with the Tax Ministry resulted in the agreement to go ahead with the reform – with the only change that reform of tax inspections would occur through changes in the Tax Code, and not through the Law on Inspections. IFC then proceeded to work with the Tax Ministry on these amendments, engaging in a very constructive cooperation.

### Lesson 6. When drafting a law, don’t leave loopholes, and give positive rights to entrepreneurs

A key strategy for regulatory agencies wishing to resist changes is to introduce many exceptions into the proposed law that is to reform their work. Such loopholes can very effectively void any effect of the reform. It was crucial to exclude all additions such as “except if foreseen in other legal norms” from the Law on Inspections.

In Tajikistan, as in many countries of the region and beyond, laws are enforceable when they apply against citizens, but rarely so against the State. Administrative bodies commonly disregard reforms and use their own “normatives”; law enforcement and courts are biased in favor of the State, and are often corrupt. In this context, the crucial issue was: How to achieve real change?

In the new law, the requirements to go to court to enforce rights were mostly given to the State side. Bureaucrats cannot inflict severe sanctions without a court decision. At the same time, most rights on the entrepreneurs’ side are directly applicable. The entrepreneur can simply refuse an inspection if the procedure is not respected – for instance, if the inspecting body did not provide advance notice, if the inspector does not have a signed order, or if the inspection would be in excess of the authorized periodicity.

#### About the Author

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