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Tajikistan: Improving the inspections regime by addressing regulatory implementation gaps

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Washington, DC 20433
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Background and rationale for the engagement

Over the past decade, several reforms have been adopted in Tajikistan to improve the business environment, but all to little effect. The approach towards the implementation of these reforms was limited, ad-hoc, and poorly monitored, leading to weak implementation. The limited or inconsistent levels of implementation prevented the private sector from reaping the full benefits of the reforms and responding to them with greater levels of investment. This further reduced the trust between the public and private sectors, and undermined the introduction of further reform initiatives.

One example of such poor implementation is seen in the Law on Inspections adopted by the Government of Tajikistan in July 2006. The World Bank Group's Trade & Competitiveness (T&C) Global Practice, through its IFC Business Regulation and Investment Policy Project (BRIP), funded by DfID and SECO development partners, has been helping the government to streamline inspection regulations for several years and was instrumental in developing the Law on Inspections. This law was based on best international practice and was expected to reduce discretion among individual inspectors in the inspection process, lead to planned inspections based on risk analysis, safeguard the rights of entrepreneurs in the inspections process, and make the entire process more transparent and straightforward for all parties. The annual compliance cost savings from the law were estimated at US\$8.7 million. However, in the years after the 2006 law came into force, it quickly became clear that inspections continued to be rampant and cause regular disruption to business operations. Incidents of entrepreneurs resorting to 'unofficial ways' of resolving problems arising during inspections rose to new and worrying levels.

To address these inefficiencies, the T&C team, together with the government and private sector representatives, performed two implementation gap assessments over the course of five years. These assessments revealed both the scope and the scale of the poor implementation of inspections and other regulations, and determined the causes of these failures. The results of these regulatory gap assessments were used in the development of the new Law on Inspections adopted in December 2015 and that came in force in July 2016.

This case study details the process of identifying and addressing gaps in the implementation of inspection regulations in Tajikistan. It describes the tools the T&C team used to assess the implementation gaps, how those assessments helped narrow the implementation gap of the Law on Inspections, and the lessons learned.

Causes of implementation gaps

The T&C team performed two regulatory gap assessments – one in 2011 and another one in 2014. The purpose of both assessments was to identify specific weaknesses in the implementation of legislation and to understand their causes. Surveying of businesses and civil servants was the core method used during both assessments, aided by desk research and focus group discussions. There were some differences between the two assessments, primarily in their scope and scale (Table 1).

Table 1: Comparative information about the implementation gap assessments conducted by the T&C team

Implementation gap assessment	Purpose and objectives	Triggers	Methodology	Issues assessed
<p>Gap assessment 1: November 2011 – Drivers of the Implementation of Regulatory Reforms and the Role of Local Governments</p> <p>(Initiated jointly by the State Committee on Investments and State Property Management of Tajikistan and the UK's Department for International Development)</p>	<p>To examine the existing limitations in the implementation of reforms at the local level, in particular (i) to identify existing difficulties which are faced by local authorities when implementing national regulations aimed at improving the business environment; and (ii) to identify practical measures for implementing business reforms at local level.</p>	<p>The idea for this survey on drivers of implementation of regulatory reform came from a series of private sector development discussions with the participation of private sector, business associations, government, development partners, and project implementers.</p>	<p>Conducted in 8 towns and rayons of the Sogd and Khatlon oblasts.</p> <p>The survey methods included observation from site visits; surveying of 150 respondents, including 81 interviews with government agencies and 16 focus group discussions (FGDs) with entrepreneurs.</p>	<p>Three common regulatory procedures:</p> <ul style="list-style-type: none"> ■ An inspection by a State Epidemiology Service (SES) and fire service ■ Paying social tax ■ Obtaining a land use certificate.
<p>Gap assessment 2: January – March 2014 – Analysis of the Gap in the Implementation of the 2006 Law on Inspections in Tajikistan</p> <p>(Initiated jointly by the State Committee on Investments and State Property Management of Tajikistan, the State Sanitary and the Epidemiological Service of Tajikistan (SES) and the UK's Department for International Development)</p>	<p>To better understand constraints on the implementation of the 2006 Law on Inspections focusing on: (i) analysis of the <i>de-jure</i> situation on the inspection reform; (ii) understanding the implementation gaps and their causes; and (iii) identifying recommendations and practical measures to facilitate implementation.</p>	<p>The findings of the 2011 assessment; continuous complaints by businesses about the inspections burden during public events, working group meetings; continuous complaints of the authorities about the lack of resources and inability to implement some clauses of the Law on Inspections.</p>	<p>Conducted in 4 districts of Dushanbe.</p> <p>Structured interviews with a sample of 100 entrepreneurs and 20 inspectors of SES.</p> <p>Businesses field of activity: catering, food production, trade of food products, pharmacies and beauty salons.</p>	<p>The assessment targeted solely the 2006 Inspections Law and the perceptions of its implementation by businesses and inspectors.</p>

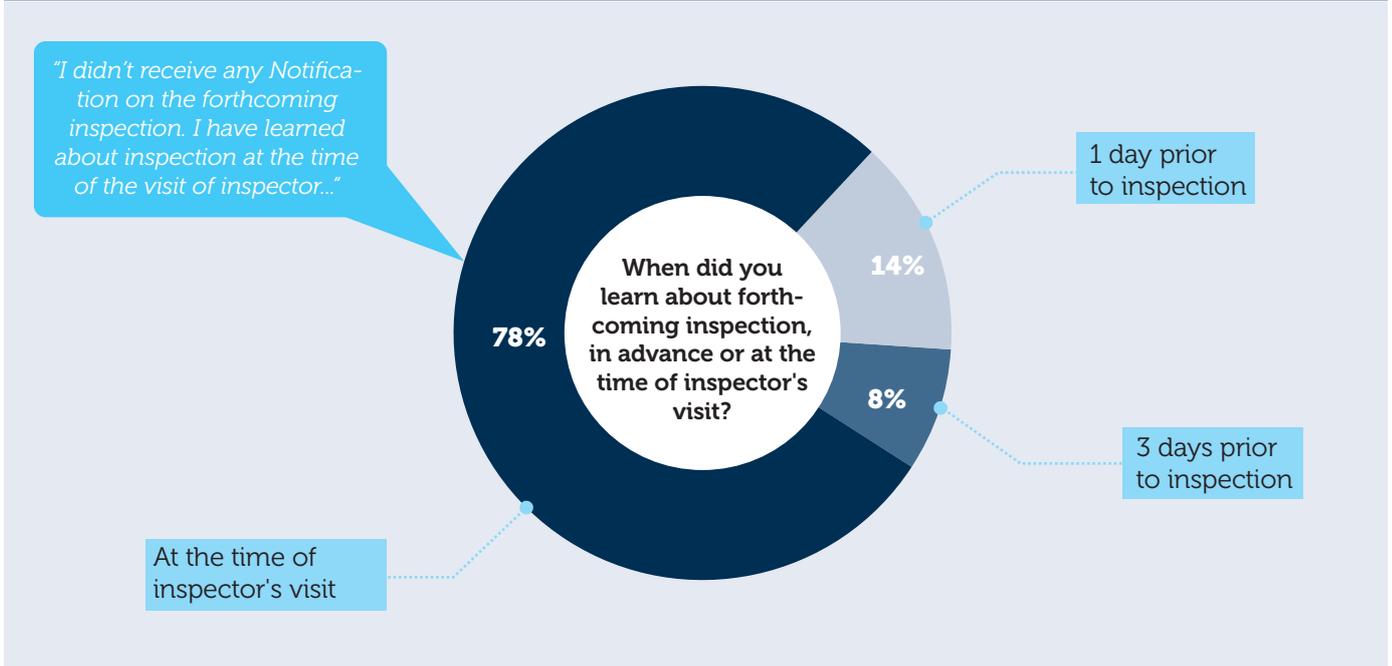
Perhaps the single clearest theme to emerge from the assessments was simply the lack of a consistent approach to ensure proper implementation of regulations and the absence of an effective mechanism to monitor implementation. The T&C team identified several themes during its fieldwork that contributed to the overall perception of poor implementation. These include:

- **Inconsistent implementation:** a single regulatory procedure, defined in national legislation, can be implemented in widely differing ways in different regions of the country, sometimes even with official costs that differ widely from the fees mandated in the national legislation.
- **Partial implementation:** new laws often contain several provisions that are never fully implemented. As a result, the basic tenants of the law may be implemented properly but businesses cannot take advantage of the full scope of the law.
- **Excessive discretion of local officials:** businesses frequently cited the high degree of discretion among local officials, with a number of examples such as introducing additional requirements to complete a regulatory procedure, refusing to accept application forms, and demanding a fee to complete the procedure within a reasonable amount of time.
- **Lack of knowledge of local officials and availability of information:** both government and the private sector suffer from a lack of accessible information on new legislation. Accessible here refers both to the physical availability of information, as well as the clarity of the language. The lack of information contributes to greater discretion among local officials.
- **Lack of recourse for improper implementation:** there are very few official channels, particularly at the local level, available to raise complaints over poor implementation. Some effort has been made to use hotlines to report compliance, but these have not been widely adopted. As a result, businesses are more likely to resolve their problems through personal relationships or by making 'informal' payments.

There was a common tendency to blame poor implementation on rent-seeking or corruption, but the training and institutional aspects were identified as equally, if not more, important and these were often the real causes behind poor implementation.

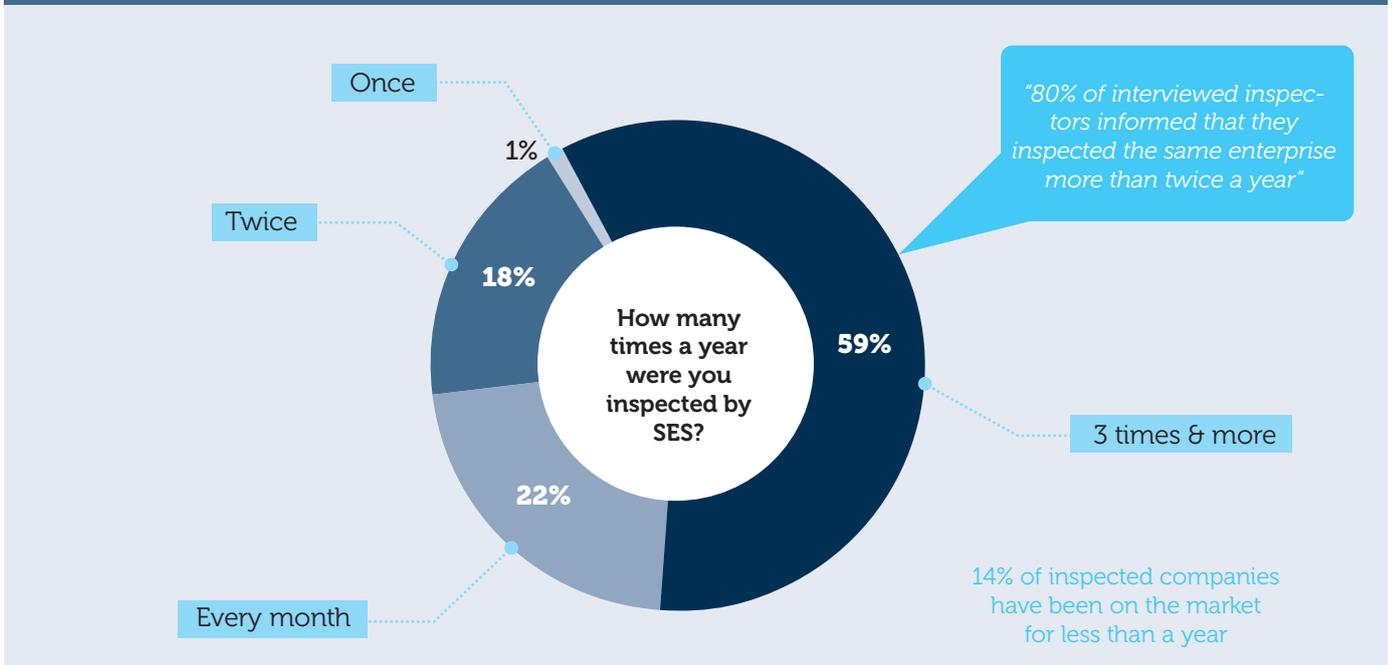
Further assessment of the eight years of implementation of the Law on Inspections revealed more systemic non-compliance with its provisions, specifically in the initial phase of the inspections process. For instance, typically inspectors did not comply with the requirements of prior notification of inspection, registration of inspection in a special book, and the use of inspection checklists.

Figure 1: Inspectors do not comply with the provision to notify entrepreneurs about inspection in advance



In addition, inspectors did not practice risk-based planning of inspections, instead inspecting 100 percent of entrepreneurs. This also indicated that the requirements of the law regarding the frequency of inspections was not put into practice (Figure 2).

Figure 2: Inspectors do not follow the law's requirement about the frequency of inspections



These findings clearly indicate that some provisions in the Law on Inspections, such as one that states that the first audit of a newly established company can only be carried out three years after the date of its state registration, was not practiced. Some 14 percent of surveyed businesses were start-ups whose period of operation had yet to surpass one year in business.

The study also revealed instances of the duplication of inspections by structural units of different levels of the State Epidemiology Service (SES). In particular, some entrepreneurs reported that they had been inspected by several units from district and city SES offices within a shorter period of time than permitted by the law. This was something that happened frequently. Similar non-compliance was also observed in the prior notification of inspections and the use of checklists. Almost all SES inspectors confessed that they did not use checklists on their inspection visits to businesses, with 97 percent of inspections occurring without them.



Key outcomes of implementation gap assessments

To address the identified implementation gaps in inspections legislation, the government initiated a special working group under the leadership of the State Committee on Investment and State Property Management. The working group was tasked with studying the results of the assessment in depth and developing a set of specific recommendations/actions to improve the levels of implementation. Working group members were representatives of the State Committee on Investment and State Property Management, the Ministry of Finance, the Ministry of Health, the Ministry of Economic Development and Trade, the T&C team and representatives of local business associations.

Studying the assessment results, and given the seriousness of the efforts made by the government and other stakeholders to improve the implementation of inspection regulations during the period between the two gap assessments (2012–13), the working group concluded that a new Law on Inspections would be the best option to resolve the problems and that the new law should include all recommendations from the assessment. The key rationale for choosing to develop a new law was that such a large number of revisions would have been required to both the old law and the bylaws that it was considered more straightforward simply to develop a new law from scratch. The old law, while introducing key principles and practices of the inspections process, failed to introduce, clearly explain and specify detailed practical steps in applying a risk-based system for assessing enterprises and defining the frequency of inspections based on the clearly defined risk criteria. The language of some of the clauses in the law was unclear, leading to ambiguity and double interpretations by different agencies.

Over the period 2014–15, the working group developed a new Law on Inspections that addressed implementation-related deficiencies and drafted new clauses that would facilitate more effective implementation by both inspectors and businesses (Table 2).

Table 2: How the new Law on Inspections addresses the identified implementation gaps

Implementation gaps (the old law)	How the new Law on Inspections (2015) addresses them
Huge number of inspections due to non-compliance with frequency of inspections and requirements for risk assessment.	<p>Introduction of risk assessment system in the law</p> <ul style="list-style-type: none"> ■ Inspectors to carry out inspections based on risk assessment. ■ Inspections agencies to perform risk assessment of all businesses based on their probability to cause harm for society or nature. ■ Inspection plans to be developed based on risk assessment.
Lack of coordination between agencies and structural organizational units of inspectorates.	<p>Introduction of coordination mechanism of inspectorates</p> <ul style="list-style-type: none"> ■ A control mechanism in place which eliminates duplication of inspections by structural units of one agency at different levels. ■ Inadmissibility of inspection overlaps by different inspectorates. ■ If one structural unit of inspectorate (district, city, regional, national) conducts inspection of an enterprise, none of the other structural units is allowed to inspect the same issue on the enterprise in question. <p>Development of Annual Inspection Plans</p> <ul style="list-style-type: none"> ■ To eliminate duplication of inspections, Annual Inspection Plans of inspections to be coordinated among all inspection agencies. <p>Unified supervision database and information management system</p> <ul style="list-style-type: none"> ■ A unified supervision database and information management system to be established to ensure effective exchange of information between inspectorates.
Non-compliance with the established rules of inspection.	<p>Changing the views of inspectors about goals of inspection</p> <ul style="list-style-type: none"> ■ The new law introduces a separate article about the goals of inspection. It clearly stipulates that the goal of inspection is not to find a violation but to ensure safety of the environment and society.
Low awareness of entrepreneurs about their rights and obligations regarding inspection and lack of confidence in the system	<p>Introduction of consultations mechanism for entrepreneurs by inspectorates</p> <ul style="list-style-type: none"> ■ Approach to the nature of inspection to be changed and therefore inspectorates should provide consultations to businesses on compliance of their activities and reduce risks.
Entrepreneurs do not use their rights to appeal the results of the inspections.	<p>Hotline for businesses to appeal on the decision of inspectorates</p> <ul style="list-style-type: none"> ■ An authorized governmental body to establish a hotline for businesses to appeal and receive necessary information on appeal procedures, as well as information on decisions taken by inspectorates regarding complaints from businesses.

Implementation gaps (the old law)	How the new Law on Inspections (2015) addresses them
<p>Inspectors are not interested in carrying out their mission – to protect health, environment and safety.</p>	<p>Use the integrated approach to increase the capacity of inspectorates:</p> <ul style="list-style-type: none"> ■ Clearly define the mission of each inspectorate. ■ Develop admission criteria. ■ Develop incentives systems for inspectors. ■ Develop a performance appraisal system. <p>Evaluation, performance appraisal and accountability of inspectorates</p> <ul style="list-style-type: none"> ■ At the end of each calendar year, inspectorates to prepare and submit annual performance reports for consideration of relevant ministries and upper-level agencies. ■ The efficiency and performance of inspectorates and their executives cannot be assessed against such criteria as number of sanctions imposed, amount of penalties or other indicators associated with enforcement of penalties/sanctions on economic entities. <p>Training of inspectors</p> <ul style="list-style-type: none"> ■ An inspection agency to adopt training policy that envisages training on technical knowledge in the fields of supervision and general skills for carrying out inspections, investigation of alleged violations, consultation of businesses, conflict solving.
<p>Predominance of unplanned inspections initiated by law enforcement bodies.</p>	<p>Clearly regulate power of law enforcement bodies with respect to supervision of implementation of the law</p> <ul style="list-style-type: none"> ■ A strict framework established for holding unplanned inspections. <p>Frequency of inspection of businesses</p> <ul style="list-style-type: none"> ■ The new law establishes frequency of planned inspections depending on risk level of enterprises activities.
<p>Problems arising during inspections are resolved on the basis of “mutual agreement” between entrepreneur and inspector.</p>	<ul style="list-style-type: none"> ■ Public scrutiny of instances of “mutual agreement”. For example, the government could release short videos condemning unofficial payments for the inspectors. ■ An efficient and trustworthy complaints mechanism to be developed. ■ Remuneration schemes for inspections to be revised and improved.

In December 2015, the President of Tajikistan signed into law the new Law on Inspections, which subsequently came into force in July 2016. The working group had incorporated the recommendations of the implementation gap assessments into the new law. As a result, all proposed provisions found their way into the improved law, together with the draft bylaws that followed its adoption.

After the adoption of the law, a special Coordination Council was created. The role of the Council was to coordinate all inspection-related activities in the country, in addition to monitoring how different inspectorates implemented the new law and how they interacted with businesses. The Council also coordinated further work on developing or amending relevant bylaws to facilitate the implementation of the new Law on Inspections.

The government has since conducted a preliminary analysis of the impact of some of the new provisions of the law. The analysis reveals that the submitted inspections plans under the new law for 2017 by all 31 inspection agencies cumulatively amount to 71,362 inspections, representing 28.7 percent of the planned inspections for 2016, equivalent to 3.5 times fewer inspections. This is clear evidence that the new Law on Inspections has greatly reduced the number of planned inspections, given that the number of planned inspections in 2017 is 71.3 percent less than in 2016.

The fact that inspectorates were asked to present their plans and officially submit them for the consideration of the Coordination Council of inspectorates forced them to systemize and coordinate their inspection plans for 2017. The existence of the Coordination Council responsible for the correlation of the planned and conducted inspections at the end of the year places additional pressure on inspectorates to meet the provisions of the law.

Lessons learned

Quantifying the problem helps to convince stakeholders to take action. Such implementation gap assessments help projects to convince clients that there is a problem, explain what is causing the problem and prepares them to take effective action. Words and anecdotal evidence are only good up to a point but, if they are accompanied by numbers, the perceptions and reactions to them are different. The numbers received from both assessments surprised even businesses – they knew about the problems because they felt them every day, but only realized the scope and scale of the problem when they saw data from the surveys.

Prepare to be patient. It took about five years from the moment the implementation gaps were identified until the first serious efforts to narrow the gaps emerged. Even having hard data and evidence at hand, persuading all stakeholders remained challenging and required hundreds of meetings.

Public-private dialogue events should be part of the process. The PPD-type of events at which the two sides of the reform gathered at one table were helpful, especially at the stage of identifying solutions to the identified problems. The team organized many such events, both under the leadership of the working group and outside the group when the new Law on Inspections was being discussed and developed. Similar events were also organized at the stage of the draft law's discussion, at which each of the proposed clauses was scrutinized by public and private sector participants.

Partner with local business associations. Business associations provide direct access to businesses. This was particularly helpful in organizing focus group discussions when selecting relevant entrepreneurs to participate. Business associations have a lobbying voice (even if not always as strong as needed), so government has to invite them to key meetings and listen to them. The team leveraged these benefits when partnering with the local American Chamber of Commerce.

Conclusion

This case study demonstrates how the T&C team, jointly with key government partners and private sector and development sector stakeholders, responded to the need to address the heavy burden of inspections prevalent for many years in Tajikistan, irrespective of the good legislation in place. The team designed and performed a simple and flexible mechanism that solicited feedback on implementation from both sides of the reform – businesses and inspectors. This mechanism enabled the team to identify key issues of poor implementation and their causes, and to then develop solutions to eliminate them. In the Tajik case, a new Law on Inspections was selected as the best solution to address the identified implementation weaknesses.

That said, the new law is not viewed as a panacea for curing the burden of excessive inspections. In parallel to the law, the T&C team is helping the government to develop new bylaws, amend existing bylaws, and improve the capacity of inspectors to enable them perform their duties more effectively and efficiently. Improving the capacity of inspectors is a critical dimension to the process. They are the people who implement the law and who work with new approaches, tools and mechanisms. How well they know, understand and are able to apply the knowledge determines the effectiveness of new approaches proposed by the law.

Likewise, ensuring that entrepreneurs know about the law and understand how its clauses apply to them is critical. Together with the private sector stakeholders, the T&C team is now looking to select the most effective ways of raising awareness of businesses about the legislation, the compliance requirements and their rights according to the law. The team has identified a huge gap in entrepreneurs' knowledge of the inspections compliance requirements.

In addition, the T&C team, jointly with key government partners and private sector stakeholders, is now considering options for establishing a regular mechanism for soliciting feedback from the private sector on the status of the implementation of inspection regulations. The new Law on Inspections envisions the necessity for introducing such a mechanism. One relevant experience that the team is considering is from the neighboring Kyrgyz Republic, where an online business-to-government feedback mechanism has been operating for a couple of years. The Tajikistan government is looking to design an inspection portal based on the one developed by the Kyrgyz government (www.proverka.kg), where an online feedback mechanism is embedded in the portal. The government is open and willing to achieve this goal, and so the T&C team is using this momentum to develop new ideas for improving the business climate in Tajikistan and to make it a more investor-friendly destination.





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