BUSINESS CLIMATE LEGAL AND INSTITUTIONAL REFORM DIAGNOSTIC:

MACEDONIA'S AGENDA FOR ACTION

Final Report

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INTRODUCTION

Macedonia, or the Former Yugoslav Macedonia (FYROM) as it is officially known by the United Nations for the moment, seems to have come through the catastrophes of the Yugoslav collapse a stronger, prouder and more resilient country that is ready to do business with the region, Europe and the rest of the world.

In spite of continued domestic political tensions, the lingering vestiges of a weak socialist economy, and some difficulties finding its *place in the world* – including the latest round of debate with Greece over just what the Macedonians may call themselves – the country is moving forward with increased political and economic reform.

But, with rapid growth comes the occasional poor judgment, forgotten gap, and bureaucratic redundancy. In other words, reform can come at a price. This report explores both the quality of the reform and the nature of the price.

Macedonia: Matching Competitiveness to Reform

Even a casual look at Macedonia's recent excellent performance in World Bank Doing Business Reports clearly indicates the country's dedication to economic development and its commitment to integration with the rest of the world. Indeed, Macedonia was a World Bank "Top 10 Performer" in 2006-07.[1] But this indicator measures legal and institutional reform more or less quantitatively, and assumes that the private sector, civil society and middle and low level bureaucrats possess the necessary capacity to compete in a complex commercial environment.

A stroll through the streets of Skopje, and, to a lesser degree, the cities of Tetovo, Bitola and Stip, also presents the image of a growing economy. Haute couture is prominently displayed in Skopje's main square, and virtually every trendy international brand is available in an increasing number of upscale shopping malls. Fashionable restaurants abound, expensive cars are as common a sight as the no longer ubiquitous Yugo, and there is a palpable sense of confidence in many people that was absent in Macedonia's early years as an independent republic.

Programs that only a few years ago might have been viewed as frivolous in a weak transition economy, are now not only putting people to work, but also turning a profit and performing other social functions as well. Skopje's visibly successful recycling program is a perfect example. So, along with the new shops and restaurants, visitors to Skopje now enjoy tidier walks and riverbanks. As this growth and these programs build energy in Skopje, they will, ideally, spread to the rest of Macedonia, and the country will enjoy true prosperity.

But, as the saying goes, the devil is in the details. The reader will see that reform is measured not just by the evolution of a legal framework and the way it is implemented, but also by the way – and whether – the organs of civil society and the private sector itself adopt and accommodate the reforms. It is also measured by the confidence the private sector has in the country's prospects for the future, and by the entire system's predicted ability and readiness to adapt to threats on the horizon.

In Macedonia's case, the present success may well provide false hope for the future. Threats, such as looming integration with the EU, WTO compliance requirements, a stagnating global economy, a fractious coalition government that lacks effective internal communication, and a largely noncompetitive private sector that deeply lacks capacity add up to a perilous mix that may undermine Macedonia's aspirations.

It is, at this point, reasonable to ask: Does Macedonia's growth truly reflect the reforms undertaken? Or, is the growth at least partly a result of huge increases in demand in Europe, and Europe's unprecedented liberalized access

[1] World Bank Doing Business; 2006-2007. http://www.doingbusiness.org/features/Reform2007.aspx

to Macedonia's cheap labor and supply chains that does little to increase the country's self-sufficiency and sustainability?

A rapidly growing trade deficit paints a mixed picture of trade-led growth and consumer confidence, but also a situation in which imports are increasingly and rather dramatically outpacing exports.

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Unemployment remains very high, poverty systemic, and informal discussion with entrepreneurs elicits pride in accomplishments, but also frustration and, interestingly, sometimes a rather clear sense that they know something is wrong, but lack the resources to identify the root of the problem.

This study and report aim to dissect some of these inconsistencies, to discover whether and where earnest reform has superficially obscured meaningful gaps in Macedonia's roadmap for the kind of economic growth that leads to sustainable national prosperity.

The Diagnostic Process

The in-country portion of this diagnostic took place from October 5 to 17, 2008, when a team of consultants traveled to Macedonia to study the country's business environment. The team conducted over 150 interviews across the business environment, including with national and local officials, multi-national and SME owners/directors, agricultural enterprises, business associations, representatives from the banking and lending sector, and many others.

Interviews and observations took place in Skopje, Tetovo, Bitola and Stip. The team's objective was to obtain a broader picture of Macedonia's enabling environment for business and trade than in the previous reports, which were based solely on interviews in Skopje. Questions elicited a variety of perspectives and viewpoints, and sought explanations for how a certain subject works in all pertinent communities, whether urban, suburban, or rural.

The diagnostic culminated in a roundtable presentation and discussion on October 17, attended by representatives from throughout Macedonia's public and private sector. At the roundtable, team members introduced their preliminary observations, which were then subjected to feedback and elaboration from more than 50 participants. Electronic audience voting technology also permitted some unique data to be gathered anonymously, and motivated full audience participation.

Each chapter of this report is structured the same way. Specifically, following an introduction, each has four substantive sections, which are themselves followed by recommendations.

Legal Framework. The chapters first examine Macedonia's laws and regulations that serve as the structural basis for the country's ability to achieve and sustain market-based development. They discuss the following questions: How accessible is the law, not only to elite, well-informed groups, but also to less-sophisticated actors, rural constituencies, or foreign investors? How clear are the laws, and how closely do existing laws reflect emerging global standards? How well do they respond to commercial realities that end-users face? What inconsistencies or gaps are present in the legal framework? Macedonia's rapid progress in integrating with the European Union and in acceding to the World Trade Organization has resulted in dramatic alterations to the legal landscape.

Macedonia's Rankings in the World Bank Doing Business Categories

	2009	2008	Change
Doing Business Overall (181 countries surveyed)	71	79	+8
Starting a Business	12	23	+11
Dealing with Licenses	152	151	-1
Employing Workers	125	130	+5
Registering Property	88	94	+6
Getting Credit	43	51	+8
Protecting Investors	88	84	-4
Paying Taxes	27	32	+5
Trade Across Borders	64	76	+12
Enforcing Contracts	70	81	+11
Closing a Business	129	130	+1

Implementing Institutions. Next, the chapters examine those institutions that hold primary responsibility for implementation and enforcement of the legal framework. These institutions include government ministries, authorities, and registries, or, in certain cases, private institutions such as banks and credit bureaus. In addition, courts are examined with respect to their effectiveness in addressing disputes that arise in the commercial arena. Again, the indicators seek to uncover how these implementing institutions function not only within the capital city, but also in rural communities and among less-empowered constituencies.

Supporting Institutions. The chapters then look closely at those organizations, individuals, or activities without which the legal framework or policy agenda in Macedonia cannot be fully developed, implemented, or enforced. Examples include lawyers, banks, business support organizations and private services, professional associations, universities, and the media. Questions and analyses examine relative awareness of law and practice on the part of each institution, and the specific ways in which institutions increase public and professional awareness, work to improve the business environment, and otherwise serve their constituencies. In certain instances, weaknesses in one or more supporting institutions have been identified as critical areas for reform.

Social Dynamics. Finally, the chapters discuss key social issues. Roadblocks to reform, in particular, are considered, including those entities that may be undermining change. These indicators also seek to identify significant opportunities for bolstering the business environment – such as champions of reform or regional initiatives – as well as matters of access to opportunity and formal institutions. Social dynamics also concern such important matters of dialogue between private sector firms and between the private sector and government, access to education and vocational education, and peoples' relationships with community level government implementers, each of which may have a significant bearing on how the business environment truly functions. Indeed, often a full understanding of legal and institutional issues cannot be achieved without a nuanced consideration of a country's social dynamics.

Recommendations. Following this four-part analysis, each chapter offers a set of recommendations drawn from the key findings in each chapter, and reflecting current reform capacities, opportunities, and evident will to reform. Some of the suggestions within the respective sets of recommendations may overlap – that is, some may be consolidated into a single reform initiative – and all turn on the priorities and preferences enunciated by the Macedonian government itself. The recommendations in this report are intended to serve, among other functions, as a threshold list for donor coordination of immediate initiatives and preparation of scopes of work. In light of

The score awarded key indicators aligns with the following conclusions:

1 = strong negative
2 = moderate negative
3 = neutral (or having some negative and some positive qualities)
4 = moderate positive
5 = strong positive

Macedonia's professed interest in boosting its Doing Business scores, the recommendations are divided into those that relate directly to the areas of the Doing Business inquiry, and those

that are less directly related, but concern key aspects of improving the business environment. As this assessment was partially conducted in order to help define future activities for USAID's Macedonia Business Environment Activity, recommendations appropriate for undertaking by the project are indicated with an asterisk.[2]

Macedonia's Transition from CLIR to BizCLIR

This Business Commercial Law and Institutional Reform (BizCLIR) diagnostic is an update to the Commercial Law and Institutional Reform (CLIR) diagnostics conducted in 2000, 2003, and 2005 in Macedonia. The CLIR methodology was developed through USAID's Economic Growth and Trade (EGAT) office in order to provide as complete a snapshot as possible of the status of commercial law and institutional reform in a country. This methodology is based on individual components of the business environment such as the laws and institutions governing companies or competition.[3] For each component, the CLIR methodology explores the four dimensions of the commercial legal system as described above: Legal Framework, Implementing Institutions, Supporting Institutions, and Social Dynamics. By using the quantitative data collected in the previous reports as a baseline, this report provides both a snapshot of Macedonia's current business environment and a time series analysis of trends over the past eight years (Figure 1).

In 2007, USAID's EGAT office determined that the CLIR methodology could be improved by aligning to the more intuitive Doing Business framework developed by the World Bank in 2002. Since 2002, Doing Business has assisted countries in determining where their regulatory environments may favor or interfere with economic growth. For each of the topics it examines, the World Bank considers a few key indicia of whether and how the environment for doing business is "working," measured by such means as the number of procedures involved in achieving a goal, the number of days it takes, and the costs of the procedures in relation to per-capita income. The World Bank now gathers data from 181 countries and ranks each, thereby demonstrating how their respective regulatory environments compare to others throughout the world. In the most recent Doing Business report, issued in late September 2008 (referred to as the 2009 Report), Macedonia ranked 71st – a score that has improved significantly, but which also reminds the country that there is still a lot of room for improvement.

USAID's new BizCLIR indicators delve deeper into each subject covered by Doing Business by exploring, from both a qualitative and quantitative perspective their respective legal frameworks, implementing and supporting institutions, and social dynamics to better understand *why* a country is ranked where it is. In short, BizCLIR regards the Doing Business findings as "the tip of the iceberg" and aims to assist countries in improving their Doing Business areas by addressing the *whole* iceberg, including all that may be obscured.

The BizCLIR indicators consider each subject through a variety of lenses, illuminating, for example, how certain business processes apply to rural communities, micro-enterprises, and small and medium-sized enterprises (SMEs). The BizCLIR indicators further examine aspects of a subject-matter area that do not necessarily impact a country's ranking, but have considerable bearing on the business environment. The BizCLIR approach was chosen in light of recent demand for better understanding of the issues highlighted in the Doing Business initiative and the need to help donors and countries understand, with greater granularity, "how to reform."

In order to best represent Macedonia's progress since the first USAID CLIR diagnostic in 2000, the team scored both the CLIR indicator set (see figure 1) and the BizCLIR indicator set (figure 2). The qualitative portion of this assessment is presented following only the BizCLIR format as this approach best suited USAID's objectives.

[2] USAID's Macedonia Business Environment Activity aims to improve the environment for conducting business in Macedonia and accelerate economic growth. The Project accomplishes this by facilitating public-private dialogue on economic policy issues, promoting legal and regulatory reform, improving the fiscal capacity of local government, and advancing labor policies.

[3] The previous CLIR Reports focused on seven key areas of commercial legislation and practice: Bankruptcy, Collateral, Competition, Company, Contract, Foreign Direct Investment (FDI) and Trade.

Figure 1: CLIR Trends Since 2000, by component

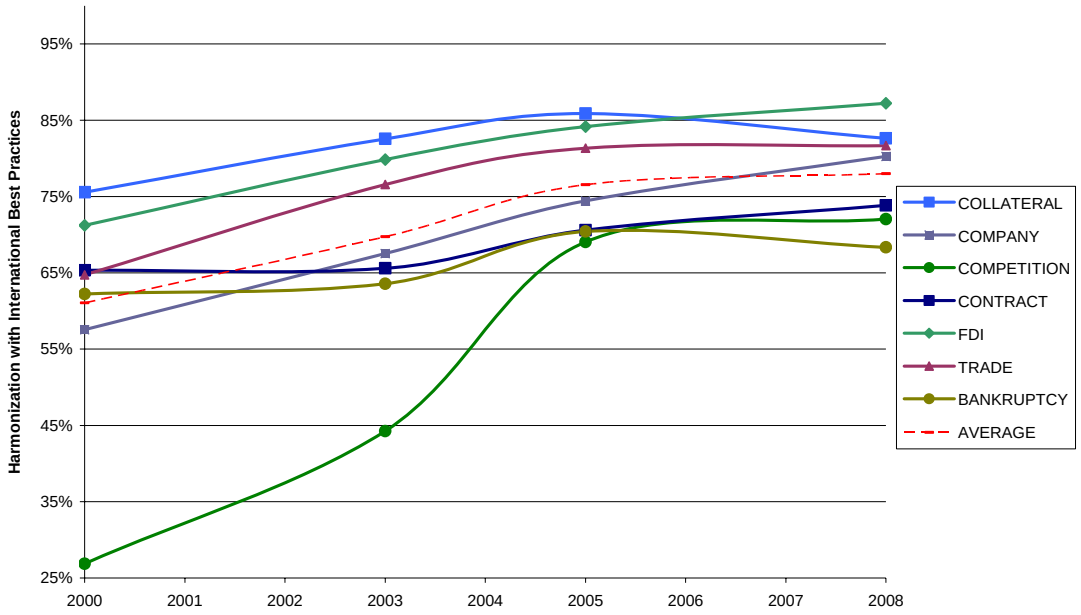


Figure 1 depicts how each business environment component analyzed has progressed over time with respect to international best practices since the original assessment in 2000. This diagram shows a distinct upward trend in each component of the business environment until 2005, followed by either slow improvement, no improvement, or a slight decline between 2005 and 2008. The assessment team cites several reasons for this pattern. First, the 2005 report found that Macedonia's legal framework was already relatively well harmonized with international standards at the time of that report's publication, leaving little room for improvement in that area. At the same time, that report noted a need for improvement in the implementation and enforcement of the legal framework, as well as in the social dynamics hindering reform. Figure 2 confirms that this trend has continued showing legal framework as the most harmonized area with international best practices and institutions and social dynamics lagging, in some case significantly, behind.

With respect to implementation, the 2008 assessment team found five cross-cutting themes mainly responsible for the trends described in both figures:

- Lack of consistent dialogue between public and private sector institutions
- Slow development of a culture of private sector competitiveness
- Low institutional capacity overall to implement legal framework
- Inadequate and non demand-driven Workforce Development
- Inefficient judicial dispute resolution system

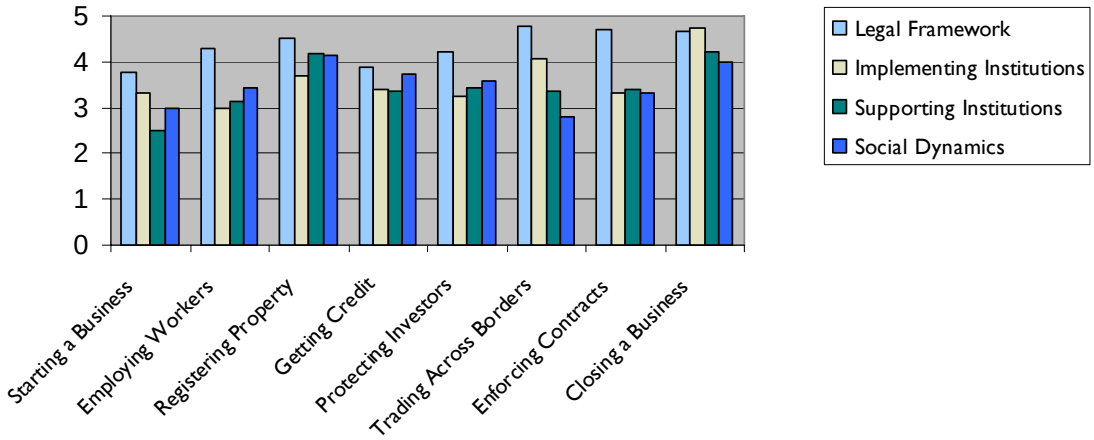
These themes will be discussed in more detail in the Cross-cutting Themes section of this Introduction.

Summary of Subject-Specific Findings

The findings of the eight Doing Business subject-matter areas examined in this diagnostic are summarized below.

Starting a Business. A great deal of progress has been achieved in Macedonia in this area since 2005. The legal framework has been refined, and most importantly, the implementation of the framework has been improved to the point that relatively few complaints are heard. Even the section expert was impressed after testing the business

Figure 2: BizCLIR Scores 2008, by dimension



registration system out first hand. Nonetheless, capacity in the Central Registry is still somewhat lacking, and the system for periodically monitoring and updating legislation still lags. A substantial informal economy continues to operate outside of official channels to the disadvantage of both the private and public sectors indicating that factors outside of business registration the legal framework are still discouraging formalization of businesses. Identifying appropriate incentives to bring this informal economy, especially in the agriculture sector, into legitimacy remains a challenge.

Employing Workers. With an official unemployment rate of nearly 34 percent, Macedonia needs to treat workforce development and job creation as priorities. The problem is traced to a mixture of the low capacity in the Macedonian private sector and the government's inability to balance the law and implementation in such a way that would motivate migration away from the informal economy. Typical of Eastern and Southeastern Europe, lack of access to appropriate education is also a contributing factor in the high rate of unemployment. Though there has been a dramatic increase in enrollment in professional and liberal arts-oriented higher education institutions, few graduates find work relevant to their degrees, and vocational education is rarely offered.

Registering Property. The right of Macedonians to own and rent real property makes up the bulk of this category, however to return to the iceberg analogy, this is only the tip of the issue. The category also includes the critically important area of intellectual and industrial property rights, policy that has been underdeveloped and largely unenforced throughout Eastern and Southeastern Europe for many years. Both of these areas have seen significant improvement in Macedonia in both the legal framework and implementation/enforcement of rights. Future work should focus on further simplifying the procedures for registering and protecting property. In addition, although a number of pieces of IPR legislation exist, the country is complying with its IPR WTO commitments, and several registration and enforcement bodies have been created, no real business friendly national IPR strategy has yet been developed.

Getting Credit. The system for access to credit is improved to the point that nearly everyone who receives credit is pleased. The creation of a private enforcement agency revolutionized lending by removing enforcement from the courts and adding a layer of ease to lenders so that they can reach out to more customers. At the same time, the new system fosters growth in access by responsible debtors. All parties are benefiting from the new system. Subject to recent dramatic changes in the way credit is viewed and handled worldwide, creditors now have the opportunity to expand

their offerings so that a wider set of entrepreneurs may gain access. Establishment of a private credit bureau to monitor and provide an extra layer of assurance to lenders will improve both repayment and access by smaller debtors. Likewise, broadened lending secured by inventory and accounts receivables will promote the development of new SMEs, as will the expansion of microcredit.

Protecting Investors. The legal and regulatory framework for protecting investors in Macedonia is highly standardized with internationally accepted practices and significant progress has been made since the previous assessment through the Law on Securities and the Corporate Governance Code. Unfortunately the degree of protection of investors in Macedonia still depends to a high degree on who the investor is. High-profile, international investors and larger local investors report few problems with the implementation of the law, however smaller investors and minority shareholders still experience significant barriers to the implementation and enforcement of the law. This reflects the Government of Macedonia's recent push to attract foreign investment to "The new business heaven" in Europe, but lack of concern for smaller local investors without alternative markets for investment.[4] Despite poor functioning of the courts in Skopje (and outside Skopje to a less severe degree), the GoM has been relatively successful at keeping larger investors satisfied with their level of protection. The public procurement process, which is still not transparent or sophisticated enough to reassure larger, especially foreign, investors, and the upheaval experienced in the recent political changes may contribute to a net loss of foreign investors, however, if these issues are not improved quickly. Smaller and local investors both in Skopje and in other areas note that preferential treatment given to foreign investors and poor enforcement of investor rights through the courts is discouraging local investors. Finally, minority shareholders in many companies are either ignorant of their rights or unable to enforce them and as such rarely receive dividends and are still occasionally pressured to sell their shares.

[4] The slogan for Invest Macedonia's recent campaign reads: "Invest in Macedonia! The new business heaven in Europe.". http://www.investinmacedonia.com/

Trade across Borders. Macedonia's imports and exports have increased both dramatically and proportionately over the past few years, creating wealth and consumer confidence. But it has also created a significant trade deficit that continues to widen every year. Though the legal framework has seen significant improvement through the processes of EU integration and WTO accession, high barriers to growth for Macedonian businesses still exist, and, indeed, are about to grow even more threatening. The next stage for development must be the government's capacity for implementing all the new EU and WTO compliant legislation. The government makes sincere attempts at implementation, but capacity is still low (only three people work in the WTO office at the Ministry of Economy) and political infighting keeps the various ministries from developing a more integrated approach. Capacity for trade in the private sector, moreover, is at best poor, and at worst abysmal. A deep mistrust of competitors and a very poor understanding of markets outside Macedonia keep businesses too uncompetitive for trade abroad. And, when, according to the schedule for EU integration, tariffs on products from the EU are abolished in January 2011, many of these businesses will find it impossible to compete even in the domestic market. Considerable work remains on the trade front even in the legal framework; no legislation legitimately protecting Macedonian business from dumping, subsidies and other unfair foreign trade practices has been developed.

Enforcing Contracts. Significant and meaningful progress has been made in resolving disputes and enforcing judgments in the courts. But this is only half the enforcing contracts picture. The best contract enforcement mechanism is contract *performance*. Unfortunately, there is a striking lack of a *culture of contract* -- an understanding and use of contract as a method for businesses to carefully allocate risk among themselves. Entrepreneurs continue to reduce risk by only doing business with friends, family or established long-term partners, thus dramatically increasing transaction costs over those typical in arm's length negotiated and memorialized agreements. The establishment, facilitation and promotion of alternative dispute resolution mechanisms, especially arbitration, would go a long way

towards ameliorating the situation, and would also be attractive to foreign investors. The prospect of arbitration of a contract dispute promotes a deeper understanding in the business community of contracting itself, and motivates a more careful reading of agreements. This ultimately leads to more arm's length contracting for two reasons: first, it allows Macedonians to allocate risk without raising transaction costs too high, and second, it gives foreign trading partners the satisfaction of knowing they are dealing with a reasonably sophisticated partner who is less likely to breach a contract.

Closing a Business. This area is an example of a legal framework that was under consideration and, had it been implemented, could have made the bankruptcy environment significantly worse off. Fortunately more considered opinions prevailed and, a few years later, a solid, predictable, and fair legal platform is in place. The difficulty now is in removing judicial bottlenecks in the resolution of cases, and in establishing bankruptcy as an efficient tool in putting assets back into productive use. The long term responsibility for the implementation of bankruptcy remains partially unclear, with control presently in the hands of the Ministry of Economy, but with some stakeholders lobbying for control by the Ministry of Justice. Standards for bankruptcy trustees have been established, but could be improved, and capacity remains lower than desirable. In the civil society sphere, the bankruptcy association is not functioning, though a chamber of trustees has been established and, while not thriving, is gradually becoming more effective.

Crosscutting Themes

Before delving into full category analyses, we identify five crosscutting topics that are thematic among most, if not all eight areas. Significant demand-driven, donor- and government-responsive, assistance would likely go a long way in creating the kinds of programming necessary to alleviate some of the specific problems highlighted.

Dialogue among and between various public and private sector actors needs to be improved before meaningful economic growth can advance–

There is a burdensome multi-level communication breakdown in Macedonia: Within the public sector, between the public and private sectors, and within the private sector.

Public-Public Dialogue – When businesses say they are "in every ministry," they mean that for different aspects of their businesses, different ministries are relevant. The Ministry of Economy (MoE) is typically the most relevant, but the Ministry of Agriculture (MoA) is often responsible for a large part of a business' value chain. Wine is a good example. MoA sets the policy from vineyard to bottling, then MoE becomes responsible for setting the policy governing the rest of the value chain. The problem is that, in setting and implementing policy, the various ministries rarely communicate, so that policies are often contradictory or inefficient, or gaps may be left behind.

Public-Private Dialogue – Demand-driven reform can only come through institutionalized predictable dialogue between business and the government functionaries who create and implement the policy. Without communication, policy is set from the top down only, without any bottom up response from the groups of people who are meant to benefit from commercial policy. In Macedonia, virtually every attempt to create a platform for dialogue has failed. The National Entrepreneurship and Competitiveness Council, established to serve as a vehicle for public-private dialogue and joint policy development, is rife with distrust and accusations, and little else has been offered in its place.

Private-Private Dialogue – At the private sector level, firms with similar or related interests need to communicate in order to be efficient. In Macedonia, not only is there a lack of communication, but there is significant distrust and occasionally even sabotage among these private sector groups. An example is the animosity that has grown between the Hotels Association and the Travel Agencies Association. At a Serbian trade fair, the Hotels

undercut the prices the agents were charging for *their* rooms. The wine industry is another excellent example (see case study on page 72: "Macedonia's Wine Industry – Waiting for Zero").

Without these three types of dialogue, private sector firms are like small islands in a fog. They cannot effectively advocate for the reforms that will most help them compete, and they cannot take advantage of the natural synergies available through cooperation with related firms, both horizontally and vertically.

Likewise, government is unable to create a united front in facilitating economic growth, and cannot be responsive to the needs of the private sector.

Distrust seems to be one of the common threads in the failure of dialogue. The private sector still distrusts a government that is new and still somewhat infirm, and government, whether this one or its predecessor, shows troubling signs of viewing the private sector as a *burden* to policy development. The assessment team heard government officials complain more than once that the private sector simply slows the policy process down.
It is also clear that some in government misunderstand the role of trade-related agencies. It is common, for example, for customs officials to see their roles only as enforcers of the law, and not customer-oriented trade facilitators.

Private Sector Competitiveness is severely lacking and would benefit from focused, sector specific, demand-driven assistance –

This crosscutting area follows directly from the discussion on dialogue. What little attention has been given to the private sector has had limited effect partly because it has been too focused on broad swaths of the private sector via the national Economic Chamber. Further, competitiveness programming has been channeled through those whose entrenched interests run counter to the growth of a vibrant new cadre of entrepreneurs.

For government, the donors, and civil society to be effective in developing a competitive private sector, they must become more focused on sector-specific, demand-driven assistance.

With all the development of complex new EU and WTO compliant legal frameworks, capacity for implementing them remains low–

Macedonia has expended considerable effort and resources in adopting the new and revised legislation necessary to comply with the EU integration process and with its WTO accession commitments.

EU integration is especially complex, given the vast numbers of directives, regulations and standards that must be complied with. The recycling industry alone requires the adoption of more than fifteen directives regulating everything from the way waste is transported to the methods for pre-cleaning plastic refuse.

But, attendant to the adoption of the rules, Macedonia needs to be able to implement and enforce them as well. This costs money, and requires the addition of trained individuals to government staff. A large obstacle to effective implementation remains Macedonia's difficulty retaining well-educated and well-trained Macedonians. Macedonia lags well behind in this area. The net effect is that business is now often bound by the new rules; but, with no facility for implementation, business cannot comply. In some cases this results in non-compliance. In others, it means that business simply doesn't get done because in order to trade abroad, especially in the EU, companies need to be able to comply with the rules.

Proper implementation requires the addition and retention of qualified staff in both government and non-governmental institutions. Appropriate incentives must be put in place to make these positions attractive relative to alternatives outside of Macedonia. In addition, significant additional and ongoing training must be provided to current employees in order to ensure that they understand and are qualified to carry out new directives.

Workforce Development lags well behind Macedonia's desire to participate in the global economy –

One of the root causes of Macedonia's lack of competitiveness is the absence, in most sectors, of a well-trained workforce. A common thread through most of the interviews with the private sector and business associations was that business owners in Macedonia rarely rely on managers to direct segments of their businesses. In fact, it is very common that owners are performing *all* the skilled labor in a firm that would otherwise be readily expandable if trustworthy skilled labor could be found.

As in many Eastern and Southeastern European countries, education is focused on increasing enrollment in liberal arts and professional programming, rather than in labor market-driven vocational education and lifetime trade training.

Macedonia needs to renovate the judicial dispute resolution system by creating a commercial court or through the use of dedicated commercial judges and staff –

All the experts on the assessment recognized the need for reform of the judicial system. Though significant improvement of the existing system's ability to clear cases has been experienced, the quality of the outcomes has been called into question in many of the categories.

Two options have been proposed: The first is the establishment of a dedicated commercial court that is entirely separate from the existing structure. The advantages of this are that rules more conducive to the commercial environment can be established, and there would be decreased likelihood that the system would be co-opted by the larger judicial system.

The second option is the establishment, within the existing structure, of a group of judges and staff that are dedicated to the resolution of commercial cases. Here, the advantages are lower cost, potentially better possibilities for oversight by the Ministry of Justice, and less likelihood of backlogged cases during the transition period.

STARTING A BUSINESS

Introduction

Since 2005, the Government of Macedonia (GoM) has heightened its efforts to draft new legislation and to fine-tune existing legislation directly affecting the environment for starting a business and the environment for doing business as a whole. Contrary to other Doing Business areas, the category of Starting a Business has contributed significantly to the implementation of laws over the past three years. Between 2008 and 2009, Macedonia's Doing Business ranking for Starting a Business has improved 11 places (from 23 to 12) demonstrating the country's success in drafting and fine-tuning legislation as well as in implementation.

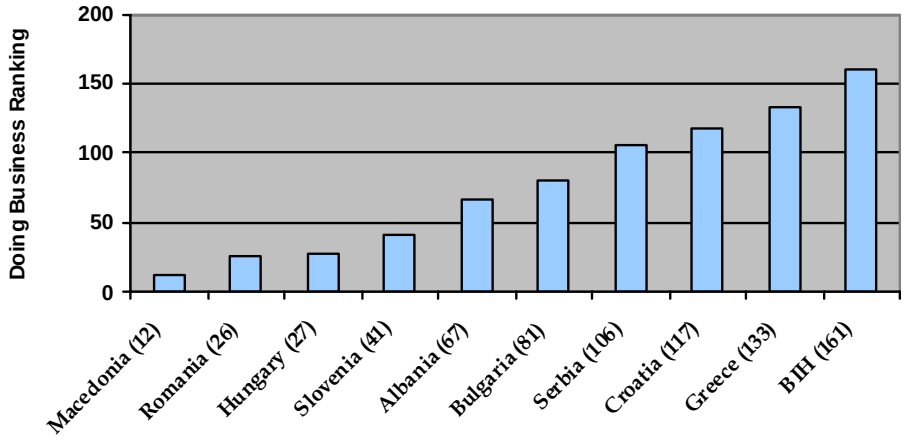
Starting a business – i.e. the formal registration of a company in order to obtain a legal authorization to perform commercial activities – is an area critical to entrepreneurship and the efficiency of commerce in any economy. A good system provides expeditious and inexpensive entry of new legal entities into the free market. As a result of the influence of increased commercial activity on all other aspects of the economy, the improvements in the process of starting a business serve as a multiplier for benefits in other areas. The 2005 Doing Business report noted this relationship and its call for swift implementation of the One-stop shop for Business Registration has resulted in many of the desired effects across the business environment.

Starting a Business

Doing Business Ranking 2009	12
Doing Business Ranking 2008	23
Procedures (number)	7
Duration (days)	9
Cost (% gross national income per capita)	3.8
Paid in Minimum Capital (% gross national income per capita)	0.0

The enactment of the One-stop Shop law mandated the establishment of the Electronic Commercial Registry within the Central Registry of Macedonia. This step, which will be described in more detail in the implementing institutions segment of this chapter, along with implementation of other relevant regulations, dramatically decreased the time needed to register a business.

Figure 3: Comparative Doing Business Rankings: Starting a Business, the Balkans and surrounding countries



There is general consensus among all stakeholders interviewed during this assessment that the Starting a Business area is covered very well by legislation, and is implemented efficiently. Despite this perception among stakeholders and the fact that Macedonia is a leader in this category throughout the region, there is still room for improvement of the system (see figure 3). More specifically, the communication between, and human capacity of, institutions that must coordinate throughout the process of starting a business must be improved in order to supply the Central Register with timely, accurate and relevant information.

Legal Framework

Key Laws

- The Company Law
- The Central Registry Law
- The One-stop-shop Law
- The Law on Privatization of State-owned Capital
- The Law on Transformation of Enterprises with Social Capital

Business Registration. The business registration process is functioning efficiently, mainly due to the quality and flexibility of the relevant legal framework. The principal reform was the transfer of the Commercial Registry from the Courts to the Central Registry (CR), changing the procedure from judicial to administrative, and resulting in the creation of a one-stop-shop system for registration. This single act eased the registration procedure considerably.

Under judicial authority, the procedure of filing documents and forms at several different institutions led to higher fees and longer wait times, making the registration procedure slow, overly complex and expensive. The One-stop-shop system, however, provides business registrants with a drastically simplified registration procedure, requiring only one visit to the Central Registry. The Central Registry is now the point institution responsible for communication with other relevant institutions involved in the registration process. Furthermore, during the administrative procedure, the application and all required supplementary documentation are only examined for their comprehensiveness. The CR does not conduct a substantive review of the documents, putting the onus of responsibility on the registrant rather than on a cumbersome system of bureaucratic checks and balances. All the relevant documents for this procedure are available on the CR website and a portion of the registration process can be accomplished electronically. This transfer of the registration authority from the Courts to the Central Registry benefits all stakeholders as it is now faster, cheaper, and partially electronically based.

The main laws that address and regulate this issue -- **the Company Law (2004)** , **Central Registry Law (2001)** and **One-stop-shop Law (2005)** -- are aligned with international standards and create a legal framework which offers an effective and efficient registration process. Since their enactment, these Laws have undergone only minor technical amendments/changes in an effort to smooth the implementation process. One key improvement to the One-stop-shop Law was the introduction of the General Business Clause. This clause allows a registered legal entity to perform all activities listed in the National Classification of Activities (NCA) except for those requiring official consent, license or other state authorization. These legal entities can perform these activities only after obtaining this authorization.[1] The legal entity shall also declare a main/priority activity (the NCA activity which is expected to generate most of the company's income in the first registered year), which will allow the Central Registry to sort companies by activity. The main/priority activity does not exclude or limit the use of the General Business Clause. The main benefit of these amendments to the Law has been further reduction of the time needed for registration of a legal entity.

Competition. The Law for Protection of Competition is well aligned with EU *Acquis Communitaire* – it sets international standards and offers a framework for effective functioning of the Commission for Protection of Competition as the main regulatory and implementation body. The main goal of this Law is to promote free competition in the domestic

[1] Interpretation of article 3 of the Law for amendments of the One-stop-shop Law (Official Gazette of R. of Macedonia, no.150, dated 12.12.2007)

Types of Companies

Macedonian companies are classified according to their form, regardless of whether they perform commercial or other activities as a:

- General Partnership;
- Limited Partnership
- Limited Liability Company
- Joint Stock Company
- Limited Partnership by Shares

market, resulting in greater economic efficiency and consumer welfare.

Overall, the Law provides a good basis for implementation of the measures for protection of competition. There are, however, a few issues that should be addressed through amendments to the current Law, in order to give the Commission more power while enforcing the law. These issues include the power of the Commission to effectively impose penalties when a breach of the Law occurs and the achievement of full financial independence of the Commission (currently being financed through the state budget).

Privatization. The Privatization process in Macedonia is almost complete. The GoM still plans to privatize Macedonian Railways (cargo as well as passenger transport), Macedonian Radio Television (segments that are not linked with the core activity), portions of Macedonian forests, and the public enterprise for managing housing and office space. Privatization will occur based on the legal framework that is already set forth and functioning – **the Law on Privatization of State Owned Capital and the Law on Transformation of Enterprises with Social Capital**. Other state owned enterprises may be privatized as well, which will require injection of additional investment and establishment of new legal entities through transformation of state capital into private or mixed property.

Investment Promotion. Presently there is no separate law that addresses the issue of investment promotion. However, the Government of Macedonia has recognized the need for investment promotion and has created a policy for attracting investors at the national level. The main implementer of investment promotion is the Agency for Foreign Investments (Invest Macedonia), which is directly supervised by the Prime Minister's Cabinet. The Agency is in fact an interdisciplinary institution elevated, although not officially, to the ministerial level.

The Government of Macedonia has adopted a four-year plan to attract investors (the Program for Stimulating Investments 2007 - 2010). This Program was established by the Ministry of Economy (MOE), the Department of Foreign Investments, and the European Commission (EC) and with substantial assistance from local experts (two of them part of USAID's Business Environment Activity (BEA) Project staff).

During the implementation period of the Program (2007-2010), Annual Action Plans will be prepared outlining objectives, prioritized projects, institutional responsibilities and timelines for implementation. Based on these Action Plans, Annual Financial Plans will be adopted outlining the financial resources earmarked for the implementation of measures as well as the sources of the funding[2]. Most of the measures will be implemented by Invest Macedonia, as well as other relevant institutions, including the Ministry of Economy (MOE), the Deputy Prime Minister's Office, as well as consultative partners such as the investors' councils and business associations.

Implementing Institutions

Business Registration. The Central Registry (CR) is the governmental agency responsible for the registration of legal entities, including companies that are listed in the trade register. There are ten registration offices throughout Macedonia (among these are the Regional registration offices in Tetovo, Bitola and Stip, the cities outside of Skopje visited by the BizCLIR assessment team) and the eleventh will open soon. In addition, approximately 30 regional offices provide logistics for the main registration offices. The CR currently employs 284 people. Compared to the three previously existing registration offices,[3] the additional offices constitute a great improvement. The increased number of offices have resulted in

[2] Source: Program for Stimulating Investment in Macedonia 2007 – 2010.

[3] The three registration offices cited here were the three commercial registration courts responsible for business registration prior to the establishment of the Commercial Registry within the CR.

Key Implementing Institutions

- The Central Registry
- Ministry of Economy, Sector for Entrepreneurship and Competition
- The Commission for Protection of Competition
- The Agency for Promotion of Entrepreneurship in Macedonia
- The Public Revenue Office

decreases in both the registration time and costs. All of these changes yield a more streamlined experience for end-users. The new registration procedure at the CR takes an average of four hours.[4]

The Central Registry provides the following key services to business registrants, among others:

- Reservation of a company name
- Establishment of a unique number for the registered business (EMBS) and a unique tax identifier (UTN). The UTN is obtained via electronic data exchange between the Public Revenue Office (PRO) and the Central Registry
- Creation of a record of the business' main activities by noting the code and name of the class and subclass of the activity, defined by the National Classification of Activities (NCA)
- Record of a bank account number for the business.
- Publication of establishment of the entity.

Upon receiving the application for registration, the Central Registry (i.e. the Registry administrator) reviews the application and determines whether it meets the following criteria:

- The entry application has been submitted in compliance with the law and the conditions for registration stipulated by law are met
- The signatory of the application is an authorized person
- The entry application contains all data compliant with the law
- All enclosures are attached to the application, as stipulated by law
- The data inserted in the application is the same as the data inserted in the enclosures
- There is no other registered entity under the same name, and,
- The entry application includes proof of payment of the registration fee.

If there are no complications, a decision for entry into the Commercial (trade) register is made, thereby giving the trade entity the status of a legal entity.

The CR has established a department for technical help which, free of charge, provides assistance and counsels interested parties planning to apply for registration. The Central Registry, as an institution,

> …aspires to become a service available to all citizens and legal persons, ready to respond to their demands and needs for the structuring of legal persons, financing parameters, owning rights and other necessary information. The distribution system of the Central Register enables access to all information contained in the data base through various channels: - Regional Registration Offices and Registration Offices…In these dynamic times of change and development tendencies, our intention is to be available with valid information and to become the central service to all citizens.[5]

This means that the Central Registry, through its unique and sophisticated system, communicates with all relevant institutions that "feed" the CR with data, as well as use the data from the CR for their purposes. This real-time exchange of information, however, requires compatibility of software and the data types from all institutions involved in the system. The CR is currently using the most advanced software available, but because some of the institutions providing data lack compatible resources, they may not be able to take advantage of the technology. Software upgrades giving relevant institutions the capacity to trade data and synchronize electronic data types would be expensive and time-consuming, but would ultimately improve the system overall.

[4] All forms (registration/information) can be downloaded from the CR web site http://www.crm.org.mk/obrasci.htm

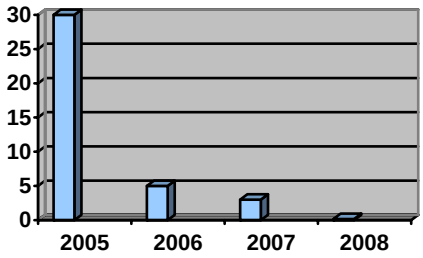
[5] http://www.crm.org.mk/crmen.htm

To this end, the CR will implement the second phase of the One-stop-shop system, covering electronic application and registration of businesses, linkage with other institutions (for example, to electronically file the first round of employees while simultaneously entering the entity into the Commercial Register), integration of several registers into the Central Registry, as well as introduction of Registers for bankruptcy of legal and physical persons, as stated by the Minister of Economy[6]. Establishment of electronic certificates in the registry process is also planned for this phase. We have recommended that CR employees attend regional and international seminars and workshops in order to exchange experience to further improve the system.

MoE, Sector for Entrepreneurship and Competition. The MoE Sector for Entrepreneurship and Competition, as a ministerial body, plays an active role in the promotion and support of developing a culture of entrepreneurship and competition in Macedonia. The Government has adopted a four year Program for Support of Entrepreneurship, Competition and Innovativeness of Small and Medium Enterprises (SME) (2006 - 2010). This Program will be implemented in separate yearly programs, which are described on the MoE website[7].

The Agency for Promotion of Entrepreneurship in Macedonia (APERM) is also directly involved in this sector. APERM is a state-owned institution established for the promotion of entrepreneurship and creation of competitiveness of small businesses in Macedonia as well as other similar programs adopted by the Government, concerning entrepreneurship and small businesses. APERM is the major institution on a national level regarding the implementation and coordination of national and international support to the SME Sector[8].

Figure 4: Number of Days Needed to Register a Business



APERM's goal is to create a favorable business environment, a well-coordinated institutional infrastructure for entrepreneurship and competitiveness support, and financial and non-financial forms of support for entrepreneurship. However, capacity building, for both administrative and technical skills of the APERM staff was cited as a clear priority according to several interviewees.

The Department for Artisans (handicrafts) is a part of the Sector for Entrepreneurship and Competition within the MoE. This Department provides support to the Chamber of Artisans, an independent institution which provides services for businesses specializing in the production of handicrafts.

The Public Revenue Office (PRO) is the tax authority that is directly involved in the process of registering a legal entity. Namely, upon receipt of the application for registration, the CR communicates with several institutions including the PRO in order to obtain the necessary information. The Law on Value Added Tax[9] requires that legal entities that trade goods and provide services are subject to VAT, whose value/income exceeds 1,300,000 Denars in the calendar year, to register for VAT. The general VAT rate is 18%, while a reduced VAT rate of 5% is applied for the trade and import of certain goods and services stipulated by the Law on VAT. No impediments have been described by interviewees regarding this issue.

[6] Macedonian daily newspaper "Vecer", accessed November 3rd; http://www.vecer.com.mk/?ItemID=EC5A3845245CAF44803B08E2AF44E924

[7] http://www.economy.gov.mk/MEKPretpriemnistvo/default-mk.asp

[8] http://www.apprm.gov.mk/about_us.asp#

[9] (Official Gazette of the R. of Macedonia no.44/99, 59/99, 86/99, 11/2000, 21/2003, 19/2004, 33/2006, 45/2006, 101/2006, 114/2007 and 103/2008)

Access to Information. The CR's distribution system, is available to all citizens and legal entities in the form of a public book. Anyone may request information, without having to present or prove legal interest. The CR also offers comprehensive information on all registries it administers through its web site. Information can be accessed easily and quickly.

Testing the system.
"After conducting an interview, I decided to test the functionality of the CR information request system by asking for information on a company's current ownership. Without having to wait in line, I filled out an application form at the desk, giving my personal data and the company's name. The whole process took only two minutes. I was asked to pay the tariff prescribed for obtaining this kind of information (274 denars or approximately US $6, including the Bank provision). By the time I returned to the CR desk 10 -15 minutes later, (the time I spent waiting in line at the bank in the same building) the information had been printed out and was waiting for me. Judging from this experience, the Central Register exceeded my expectations in terms of efficiency and quality of service." – *V. Ilievski, MBEA Program Associate*

Invest Macedonia also offers useful information through its website for foreign investors, as well as information for further steps and contacts that may be undertaken by the potential investors, all in favor of attracting investments and start up of new businesses.[10]

Other institutions also provide data, but not all of them have timely and/or accurate information, mainly due to outdated software requiring an upgrade or due to lack of personnel to maintain an up-to-date website.

The Commission for Protection of Competition. The Commission was established by the Parliament of Macedonia, and consists of a Committee President and 4 members. The Commission is an independent state body with the status of a legal entity. It is financed by the Macedonian state budget. The Commission reports directly to the Parliament and submits a yearly report to the Parliament no later than March 31st every year.[11]

The Commission's mandate is to work against contracts which prevent, restrict, or distort competition.[12] Its responsibilities include managing the implementation of the Law for Protection of Competition and the adopted bylaws and tracking and analyzing the market status based on a pre-determined methodology with the goal of enhancing free and efficient competition. In addition, the Commission is responsible for *ex-ante* control of state aid given to the legal entities in Macedonia through implementation of the State Aid Law. In addition, the Commission has the power to conduct *ex-ante* merger control of companies -- i.e. the Commission must predict an anti-competitive outcome of a concentration.

Although the Commission has been fully established, but still has limited power to implement and enforce the law. There is currently a sufficient number of staff, however many employees still lack capacity. The appointment of Commissioners appears to have limited basis in experience or other merit based criteria. Instead, appointments are made on political bases and depend on political affiliation. Because of this, the Commission is highly politicized.

The capacity of the staff should be further strengthened, particularly in their knowledge of inspection and enforcement procedures. There also remains a need for strengthening of the Commission's political and financial independence. Furthermore a number of legal adjustments need to be made to strengthen the Commission's power to directly enforce the law. Nonetheless, the Commission functions reasonably well in carrying out its prescribed duties in compliance with the Law.

Agency for Promotion of Entrepreneurship of Macedonia. Entrepreneurship in Macedonia is supported by the Agency for Promotion of Entrepreneurship of Macedonia (APERM), which was established by the 2003 law by the same name.[13] The

[10] http://www.investinmacedonia.com/Default.aspx

[11] Source: Law for Protection of Competition (Official Gazette of R. of Macedonia, no. 4, dated 17.01.2005)

[12] Source: Law for Protection of Competition (Official Gazette of R. of Macedonia, no. 4, dated 17.01.2005)

[13] Official Gazette of the R. of Macedonia no. 60/03

Agency is responsible for implementing the Program for Support of Entrepreneurship, Competition and Innovativeness of Small and Medium Enterprises. This is a four year program (2006 - 2010) adopted by the Government, and is supervised by the Ministry of Economy (Sector for Support of Entrepreneurship and Competition). According to APERM, "The SME sector in Macedonia comprises more than 98% of all active companies in the country for which they are regarded as a driving force of the overall economic activity. …The SMEs represent the most dynamic, but at the same time the most vulnerable, segment in the economic structure of the country. This is why the policy makers responsible for SME development need a reliable mechanism for systematic follow up and assessment of the condition of the sector"[14]. However, several interviewees pointed out that the Agency needs more funding in order to provide adequate support to the nascent culture of entrepreneurialism in Macedonia.

Supporting Institutions

Key Supporting Institutions

- Business Associations
- Business Incubators
- Banks
- Universities
- Notaries

Business Associations. There are several business associations in Macedonia that provide a platform for cooperation of companies through which they can further their collective interests. The Chambers of Commerce are the principal institutions providing such a platform. There are currently four domestic Chambers of Commerce: the Economic Chamber of Macedonia, the Association of Chambers of Commerce, the North-West Macedonia Chamber of Commerce and MASIT (the Chamber for IT companies). Each of these chambers is national in scope, and maintains regional offices in all areas of Macedonia, including those cities visited by the assessment team. All Chambers provide services to advise new businesses on navigation of start-up procedures and registration in addition to programs supporting members after they have officially become legal entities.

In addition to these organizations, **Business Incubators** have been created in cooperation with the MoE and several international donors to support and advise fledgling businesses. As presented on its website: "The Youth Entrepreneurial Service (YES) seeks to strengthen the local innovation system in Macedonia by stimulating practical entrepreneurship among the youth through complementary activities designed to ease the start-up of new ventures."[15]

Banks. Macedonian banks offer several types of crediting for businesses in general, as well as for business start-up[16]. In addition, the commercial banks have taken over payment operations throughout the country, which also increases the effectiveness of businesses and provides for uninterrupted execution of their daily activities. Despite the high level of functionality of the commercial banking system, the development of additional smaller credit institutions would help to stimulate the market for loans to small and medium enterprises, and would in turn generate additional growth from this sector.

Universities. Universities are the core source of theoretical knowledge regarding the drafting and effective implementation of commercial laws. However, through the interview process it was pointed out that they are rarely or never approached officially by relevant state or professional organizations in search of assistance regarding drafting of Laws or institutional capacity building. Academics are sometimes engaged and consulted, but on an individual basis rather than in their institutional role as a university professor.

Notaries. Notaries are engaged as part of the process of starting a business during the preparation of the registration documentation. Namely, under the Law, there are a number of documents which vary depending on the type of

[14] APERM website: http://www.apprm.gov.mk/sme1.asp?id=3

[15] http://www.yesincubator.org.mk/EN/zanas.htm

[16] Several Commercial Banks lending offers:
Procredit -http://www.procreditbank.com.mk/default.asp?ItemID=428D0AE050C00746ADAC1E164E7B45A0
KB -http://www.kb.com.mk/en/stopkrediti1.asp? id=k#
STB - http://www.stb.com.mk/eng/P_Krediti.htm

company that is about to be registered. This process is smooth and fast and no major obstacles were pointed out during the interview process.

Social Dynamics

Macedonia, in the process of EU and WTO integration, is harmonizing its legislation and practices with Europe and the rest of the globalized world. After a long period of political instability after the collapse of the Socialist Federal Republic of Yugoslavia (SFRJ), the Macedonian economy has now become a top priority. Intensive efforts are underway to further the objective of establishing a market-based, competitive and transparent economy that will eventually result in the growth of a favorable business environment, which will, in turn, induce investment and economic expansion.

However, in the shadows of all this headway, business start-ups – and general business competitiveness (*see the Trading Across Borders chapter*) – still suffer deeply from lack of capacity (especially in the cities outside of Skopje), poor communication with government and among themselves, and sometimes simply apathy. Business start-ups are also heavily burdened by the gray – or, informal – economy.

Entrepreneurial Spirit - Entrepreneurship in Macedonia represents a significant element in achieving economic growth and social stability. Entrepreneurship has always been a feature of the economy, but in the last several years its importance has been acknowledged, not only at the governmental level, but throughout society. By increasing awareness and providing support, entrepreneurship is being encouraged in order to boost employment and increase the number of businesses and business relations.

Nonetheless, Entrepreneurship is clearly lacking at ground level. The influx of foreign business and the stagnation of domestic industries without commensurate growth in innovation will eventually impact Macedonia, especially the young and ambitious.

Investment Trends Outside of Skopje - Between 2002 and 2008, the population of Skopje has jumped from 506,926 to 514,948 with a birthrate that has oscillated between stagnant and falling. Interviewees confirmed that this is primarily due to migration from other parts of Macedonia to the capital, a factor which worries investors considering investment in cities outside of Skopje. Despite Doing Business 2009 naming Bitola as the #1 city for ease of doing business in Eastern Europe, investment in Bitola lags significantly behind investment in Skopje. This trend, if continued, will only serve to perpetuate the Skopje-centric nature of Macedonia's economic growth and will further unbalance the distribution of wealth among Macedonian cities.

Informal Sector. The grey economy has a depressing impact on the macroeconomic performance of the country as a whole. High levels of informal business activity negatively affect the competitiveness of formally registered firms, due to unfair competition on the domestic market and increased fiscal and regulatory burden. They also deter foreign direct investment, which in turn decreases capital inflows and thus productivity in the country. The grey economy directly affects other aspects of Macedonian society such as the level of crime, the rule of law, social conflict, and political instability.

In 2008 USAID funded an analysis for "Measuring the Grey Economy in Macedonia and Drafting Policy Proposals for its Integration into the Formal Sector.[17]" This activity was designed by professors at the University American College[18] in Skopje and proposed measures to reduce the size and influence of the grey economy, especially through encouraging official employment and strengthening the private sector. The outcome of the recommendations will be closely monitored.

[17] http://www.bea.org.mk/Default.aspx?id=bee7 c1d8-3286-49e8-a3b1-bbf548d43f8f
[18] http://www.uacs.edu.mk/

Recommendations

To raise the Doing Business scores . . .

- Harmonization of electronic data from all institutions involved in the registration process – centralization of data in the CR and enhancement of communication among institutions
- Simplification of the procedures for registration of businesses that require special consent, license, or other authorization issued by a state body and shortening of the time period in which the state body must issue the required document
- Exchange of best practices with well performing countries and incorporation of technologically advanced solutions.

To strengthen the overall environment for Starting a Business . . .

- Further improvement of the One-stop-shop system – finalization of the phase II implementation process
- Regular review of legislation and intervention whenever needed to harmonize and improve the registration process*
- Technical upgrade of the CR system on a regular basis and continuous education of the staff in order to maintain a current knowledge of the most recent technological developments.

EMPLOYING WORKERS

Introduction

Unemployment in Macedonia has been a barrier to growth for almost two decades. The official unemployment rate as of the second quarter of 2008 is 33.8 %, and similarly high rates of unemployment have marked the last two decades of economic transition in Macedonia. In addition, the distortion of statistical data as a result of incentives to incorrectly register as unemployed complicates the development of strategies to target the problem.

The roots of persistently high levels of unemployment are diverse and difficult to isolate, particularly given the complexities added by the still relatively recent transition from socialism. At a most general level, the unemployment can be attributed to three factors on the job supply-side:

- Low economic growth driving minimal job creation
- Low flexibility and mobility of job categories
- Low capacity of state agencies to enforce labor and business registration laws - allowing the development of a burgeoning grey economy and providing no control over employers' activities (weak Labor Inspection etc.)

Workforce Profile[1]	
Population	2,022,547
Labor force	917,566
Approximate number of employees formally employed	607,125
Approximate number of unemployed	310,441
Percentage of workforce employed	66.2%
Unemployment rate	33.8%

Despite recent efforts at promoting the development of a healthy environment for workers and employers – the levels of economic growth and employment in Macedonia remain at an alarmingly low level. Certain changes in legislation and strategic planning documents have been completed in order to address this issue. A list of strategic planning documents have been adopted over the past several years, starting with the National Employment Strategy 2010, and the National Action Plan for Employment through Active Measures for Employment, as well as the Operational Plan for Active Employment Measures. These documents demonstrate increasing will to target the problems of unemployment in Macedonia, however they cannot succeed in a vacuum; without the proper supporting legal framework and implementation they remain just print on paper.

Employing Workers	
Doing Business Ranking 2009	125
Doing Business Ranking 2008	130
Rigidity of Employment Index	47
Firing Costs (weeks of salary)	26

The World Bank's Doing Business framework for employing workers measures the flexibility of labor regulations. They examine the difficulty of hiring a new worker, rigidity of rules on expanding or contracting working hours, the non-salary costs of hiring a worker, and the difficulties and costs involved in dismissing a worker. Macedonia ranks 125 overall – solidly in the bottom half of all countries ranked – for several reasons:

- High rigidity of hiring restrictions
- Poor institutional capacity of institutions implementing and supporting labor market policies
- Lack of coordinated dialogue between employers and employees

These measures of the environment for employing workers, however, provide a superficial snapshot of the underlying causes for Macedonia's high unemployment. The BizCLIR approach aims to create a more holistic picture of the environment for employing workers through the examination of both equally essential endpoints of the employment

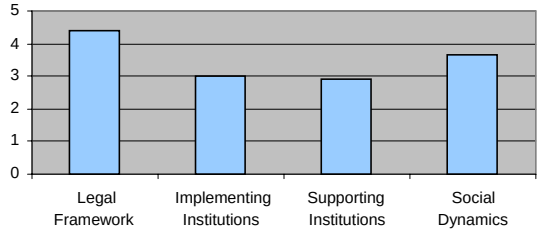
[1] Figures in this table are taken from State Statistic Office II 2008

equation—labor supply (a ready and qualified source) and labor demand (growing in size and sophistication). In addition, BizCLIR takes into account not only the legal framework for employing workers, but also implementing and supporting institutions and social dynamics. In order to gather this data, a team of experts interviewed stakeholders in the government, private sector, and civil society to fully understand the Macedonian system for employing workers in Macedonia. Figure 5 shows the breakdown of the BizCLIR indicator scores for employing workers.

Expanding upon the reasons for a low doing business score in the area of employing workers, the most important areas for further action within the environment for employing workers overall are the following:

- Lack of institutional capacity for creation and implementation of legislative and strategic documents in the area of Employment
- Unsuccessful measures for increasing the employment, especially among marginal and vulnerable groups in the society;
- Weak and ineffective social dialogue among stakeholders (employers, labor unions and government);
- Low job creation due to slow economic growth and insufficient investment
- Very large grey economy;
- Regional disparity;
- Social problems;
- Mismatch between the educational system and the labor market needs and demands.

Figure 5: BizCLIR Indicator Scores, Employing Workers



The above problematic areas are all interrelated and success in one relies on successful measures in all other areas. Therefore, a comprehensive approach to solving these problems is necessary, in order to effectively bridge the gap between the legal framework and its implementation. Recommendations for how to target these areas are presented at the end of this chapter

Legal Framework

Macedonia has numerous laws and regulations pertaining to labor and employment. The most important law by far is the **Law on Labor Relations (2005)**. It regulates the terms and manner of entering into employment, the rights of employees, restrictions on discrimination, salaries and other compensation. Collective agreements are the second most important legal tool for workers as they enable workers to level the playing field with their employers.

Key Laws

- The Law on Labor Relations (2005)
- The Law on Employment
- The Collective Bargaining Agreement
- Occupational Safety and Health Law (No 92/2007)
- The Law on Labor Inspection (No.35/1997)
- Law on the Resolution of Labor Related Disputes
- Law on Employment and Insurance in the Case of Unemployment
- Law for Agencies for Temporary Employment
- Law on Employment and Work of Foreigners (No 70/2007)
- Law on Social Welfare
- The Law on Pension and Disability Insurance
- Law on the Mandatory Fully Funded Pension Insurance
- Law on the Fully Funded Pension Insurance

Other important legislation includes the Law on Temporary Employment, which regulates the use of flexible forms of employment, the Law on Employment and Insurance in the Case of Unemployment, the Social Protection Law and the Law on Pension and Disability Insurance.

Access to the legal framework. Access to the legal framework governing labor and employment is sufficient to meet the needs of both the domestic business community and potential outside investors. All changes in the legislation (laws, regulation, amendments) are published in the Official Gazette. The Ministry of Labor and Social Policy operates a recently created web page offering information about laws and regulations that are accurate and updated on a regular basis. The web page is presented in the official languages of Macedonia and in English.

The Employment Service Agency (ESA) has a sophisticated web portal that also offers updated information regarding labor legislation in Macedonian and English, as does Invest Macedonia (www.investmacedonia.com), where all relevant information regarding operating a business in Macedonia is available and regularly updated.

The Labor Code. The Law on Labor Relations was adopted in July 2005. The Law establishes new and more flexible options for labor contracts, clarified and liberalized overtime provisions, limited events that qualified for paid leave, and rationalized redundant procedures. It also redefines the framework for collective bargaining, clarifying several rules and limiting the duration of collective bargaining agreements to 2 years.
The Law also clarifies the rules applying to fixed-term and part-time contracts, and promotes a more flexible set of employment options by loosening restrictions on the use of fixed-term, temporary, and part time employment contracts.

Previously, overtime was allowed under exceptional circumstances where extra labor was required, such as natural disasters and epidemics. Under the Labor Code from 2005, overtime was no longer limited to such cases. Weekly overtime was limited to 10 hours, annual overtime to 190 hours, with lower limits for minors.

The Law stipulates that membership in trade unions and employers' organizations is voluntary and it lays out rules for determining which parties may represent employers and employees in negotiating collective agreements.

In September 2008, Parliament adopted Amendments to the Labor Code which had been prepared in accordance with EU standards. These amendments provide for increased flexibility of the labor market by enabling a variety of flexible employment contracts not previously allowed under the law and by increasing the flexibility of working time. The amendments eliminated redundancies and the new criteria determining representation were established, stimulating the process of associating employers and employees and encouraging the use of electronic tools for registration and deregistration of workers. The new structure of the Economic and Social Council established under this amendment will also contribute significantly to the promotion of social dialogue. These changes should also stimulate the investment climate by making it easier to negotiate with and hire workers.

Basic labor rights. In Macedonia, the Labor Code provides for core labor standards as enunciated by the ILO, and, in general, these core rights are respected and enforced:

- Workers may associate freely and form labor unions (Labor Code, Title XVIII);
- Workers may engage in collective bargaining (Title XIX);
- The Labor Code prohibits forced labor (Title I, Article 2);
- The Labor Code prevents discrimination in employment on the basis of "race or ethnicity, color, sex, religion[, and] political opinion" (Title Ban on Discrimination, Article 6); and
- The Labor Code prevents child labor (Title XXIII, Article 18 and Article 250).

Although the right of collective bargaining exists, the vast majority of employees, especially in the SME sector, are not covered by collective agreements. Here it is also important to mention the ban on trafficking in humans, which is stipulated in the Criminal Code (Article 2 and 32), and which is prosecuted in the same way as other criminal offenses.

The Occupational Safety and Health Law prescribes the establishment of the Occupational Safety and Health Authority, which is responsible for the implementation of measures for preventing professional risks such as injury and disease and participating in the legislative process. In general, the Law provides for worker protection from illness and injury without restricting the operating needs of businesses.

Although the core labor standards are present in the Labor Code and other relevant legislation, there is limited implementation and enforcement, mainly due to the weaknesses of the State Labor Inspectorate (SLI) and other enforcement agencies. This topic will be addressed in detail in the Implementing and Supporting Institution sections of this chapter.

Hiring and firing. The Labor Code defines relations between the employees and employers in the form of a signed employment contract. The employment contract defines the rights, responsibilities, and obligations and of each party including in the areas of performance and obligatory social insurance.

In accordance with the Labor Code, the employment contract can be concluded for a defined or an undefined period of time. The employer has the right to accept or reject each applicant for a contract and can subsequently decide the term – or lack thereof – based on the qualifications and availability of each individual applicant.

The employer can use various forms for recruitment of employees: publishing a public advertisement of vacancies in the daily newspapers, use of the ESA in the job mediation process, recruiting through the relevant employment mediation agency, etc. The law stipulates that the employers cover the costs for advertising and job mediation.

The Employment contract can also be terminated by the employer in the case of lack of knowledge or capabilities or if the employee violates the contractual or other obligations arising from the labor contract. It can also be terminated in the case of economic, organizational, technological, structural or similar reasons on the part of the employer.

In the case that the employment contract has been terminated for economic reasons, the employer is obliged to try to employ the employee under another type of contract or to transfer him to another post, and/or whether it is possible to additionally train or retrain the employee for another position. If such possibility exists, the employer shall offer the employee a modification to the previously existing contract.

With the latest amendments to the Labor Code in September 2008, the period for a complaint against the decision to terminate employment or suspend duty has been reduced. In addition, labor force flexibility has been improved through the introduction of seasonal employment and part time employment.

Additional Provisions. The Labor Code contains general provisions on wages and hours (including vacation time). The work week is 40 hours, with a possibility to work no more than 10 hours of overtime per week and 190 hours per year. Wage and hour rules apply equally to men and women. With the latest amendments to the Labor Code, weekend and holiday work is now regulated in a more flexible manner from the employer's perspective. A minimum of 21 vacation days are allowed per year.

Enforcement of these areas is limited as a result of the weaknesses of implementing and supporting institutions, especially the State Labor Inspectorate. In the grey economy, abuses of restrictions on hours worked (i.e. keeping workers longer than the Law allows), salary payment, and provisions on Occupational Safety and Health are frequent.

Some systematic solutions undertaken by the GoM, especially recent tax cuts[2], changes as of 1st of January, 2009 regarding calculation and payment of gross salary and reduction of social contributions,[3] and new penalty provisions included in the Labor Code should contribute to creating more jobs, reducing the grey economy, and stimulating more domestic and foreign investment.

The Law on Immigration and Emigration. The Legal framework which regulates whether and under which conditions "foreigners" may live and work in Macedonia is established by the **Law on Foreigners** (2006) and the **Law on Employment and Work of Foreigners** (2007). The Law on Employment and Work of Foreigners stipulates the conditions under which foreigners can be employed, as well as procedures for obtaining a work permit. The main institutions responsible for implementing the laws are the ESA, the Ministry of Foreign Affairs and the Ministry of the Interior. With the latest amendments to the Law on Foreigners, the visa regime was fully liberalized to include all European Union member states and Schengen Convention signatories and all countries on the White List of the European Union. As a result of this amendment, the citizens of the listed countries will have the right to enter Macedonia next year without visas. The length of their stay will be limited by the Schengen visa conditions.

The Procedures and legislation governing the issuance of the work permits for foreigners is transparently announced on the Employment Service Agency web portal. The regulations are relatively well harmonized with the UN and ILO protocols and conventions for immigration/emigration.

The Status of Macedonian Public Service. The status of civil servants is regulated by the **Law on the Civil Servants**, adopted in July 2000. The Law contributed to the establishment of the Civil Servant

[2] Personal Income Tax has been reduced to 10%

[3] Initial reductions will be as follows: pension insurance: 21.2% → 19%, health insurance: 9.2% → 7.5% unemployment contribution: 1.6% → 1.4%

Agency, which is responsible for enforcing the laws and regulations governing public administration, determining the standards for employment in the civil service, and for promoting and implementing the strategy for continuous education and professional development for civil servants. The overall goal of the Agency is to improve the quality of services and the efficiency of the public administration on all levels of governance. The electronic system for online application has been established in the Agency, and currently almost 95% of all applications are available online.

Social Security and Social Protection. In contrast to all other forms of social protection, the pension system has undergone profound change since 1991. Until then it shared the same structure as the political, economic, and social welfare system with other Yugoslav Republics. The main impetus for reform was the quickly aging population, which was beginning to lead to an increased number of elderly people in the population relying on pensions and yielding higher insurance costs.

The pension system in Macedonia is regulated by the Law on Pension and Disability Insurance (2006) the Law on Mandatory Fully Funded Pension Insurance (2005), the Law on the Voluntary Fully Funded Pension Insurance, and several secondary regulations.

The three-pillar basis for the reformed pension system is part of the social insurance system in Macedonia and was set into law in 2000.
The first pillar is mandatory; it is a defined benefit program and is pay-as-you go. The second pillar is also mandatory and is based on defined contributions. The third pillar is currently in the process of being introduced and consists of a voluntary contribution to provide the contributor with fully funded pension insurance.

Those eligible to collect retirement benefits are male and female contributors aged 64 or 62 respectively with a minimum of 15 years' contribution to the pension fund. The contribution rate is 21.2% of the gross salary for contributors who will remain in the mono-pillar system and 13.78% of the gross salary for the contributors that will switch to the new two-pillar system. The contributors included in the new system pay a contribution of 7.42% of the gross salary for the second pillar. One important characteristic of the second pillar is that it is privately and competitively managed by pension management companies; the management companies make all decisions on how the contributions are invested. In this way, the system ensures that financial goals will drive the investment strategy, ideally maximizing the overall return in the best interest of members.

The system covers all salaried workers, including:

- Permanent, occasional, and temporary workers
- Professional and in-service trainees
- Apprentices
- Civil servants
- Political appointees
- Government officials.

Health Fund Contributions are 9.2% of the gross salary and Employment Fund Contributions make up 1.6%. In accordance with the Government announcement on January 1, 2009, the contribution rates will be decreased. The cut in contributions is designed as an incentive to employers to hire more workers.

Implementing Institutions

Key Implementing Institutions

- Ministry of Labor and Social Policy (MTSP)
- Employment Service Agency (ESA)
- State Labor Inspectorate (SLI)
- Courts

Institutions implementing the legal framework for employing workers are generally weak and require a comprehensive reform strategy. This strategy should include capacity building, implementation of ICT solutions, and structured dialogue and cooperation between relevant institutions. The state of specific institutions is described below.

Ministry of Labor and Social Policy, Skills Development and Labor. The mission statement of the Ministry for Labor and Social Policy (MLSP) of Macedonia defines its role in the areas of labor relations, employment, worker protection, unemployment insurance, and social welfare. Effective implementation of the diverse activities for which MLSP is responsible requires consistent commitment from both the Government and the enforcement institutions. This commitment has generally fallen short rendering the ministry unable to adequately carry out its duties.

Although labor reform has been a topic of concentration since independence, MLSP's first concrete roadmap for employment reform was the

National Action Plan for Employment (NAPE) 2004-2005. As is the case with most initial action plans, this plan was relatively ambitious and difficult to implement. Some weaknesses identified in the initial plan have been improved in more recent strategies outlined in the National Employment Strategy (NES) 2006-2010 and the National Action Plan for Employment 2006-2008, which are focused on medium-term goals for employment.

This includes the main challenges facing the labor market with respect to macro- and micro- economic policy, employment policy, labor market policy, and social insurance and social welfare policy. In addition to the activities that should be carried out by the MLSP, both strategic documents include a range of measures to be implemented by the Ministry of Education and its agencies, the Ministry of Economy and its agencies, and Ministry of Finance.

At the current stage of implementation of the NAPE and NES, several major weaknesses have been identified:

- Absence of coordination among the different government agencies and Ministries
- Objectives and priorities in the plans are stated in general terms
- Lack of analytical tools used in the process of planning the activities
- Absence of a system for monitoring of the activities.

A key problem in implementing the reform projects in general is that ministries do not have the skills needed to maximize the potential benefits of assistance programs. One limiting factor is the dearth of well-trained employment experts at MLSP. MLSP is weak in their ability to monitor projects and write reports, and they lack the ability to prioritize needs over the short, medium and long term. Their project management skills could be further improved by developing the capacity to use sophisticated tools such as Return on Investment. Although there has been some progress with public administration reform and training of the staff through donor programs, much still needs to be done at the ministerial and institutional levels. It is important to instill a culture of ownership and accountability within such organizations.

Project planning, implementation, and evaluation could also benefit from an integrated long-term sector-wide approach. Currently, most of the activities are driven by the donors and are not sustainable over time. In terms of internal governance in the employment policy field, it is important that the increase in permanent resources in the MLSP's Labor Department be implemented as envisaged in the institution's strategic plan. These additional employees are required in order to provide adequate support to local government throughout the decentralization process.
Finally, MLSP should dedicate more attention to the development of legislation through public private dialogue, public promotion of laws, and education surrounding these laws for employers and employees. If they are more aware of their rights, they will be more proactive in protecting these rights.

Currently MLSP receives institutional capacity building support from USAID BEA, EAR CARDS Employment Policy II Project and through EU Twining Project with the Slovakian Ministry of Labor for building the capacity of the MLSP in revising and enforcing the country's labor legislation in line with the EU legislation and EU best practices as appropriate.

Employment Service Agency. The Employment Service Agency (ESA) is primarily responsible for the delivery of both active and passive labor market policy in Macedonia. The ESA has jurisdiction over the implementation of all aspects of the employment service provision – registering the unemployed, paying unemployment benefits, providing guidance to jobseekers, and delivery of active labor market programs. The mission of the Agency is defined by the Law on Employment and Insurance in the Case of Unemployment (1997).

ESA has eight regional branches integrated by a network of 30 unemployment centers. So far the ESA has limited funds for active labor market measures (ALMM) (7% of the total budget). With the funds available they offer training opportunities to the unemployed, mainly linked to requests from employers. ESA currently plans to offer training to all unemployed people for personal development, rather than rigidly linking the training to demand from employers. However, until a Law on Adult Education is adopted, the ESA cannot refer employees to licensed training providers. The system is therefore based upon formal certification and so far there is no room for recognition of other forms of education. In order to meet demand for increased labor market flexibility, new legislation has been approved mandating the creation of an agency to run a temporary employment pool.

As mentioned above, ESA is responsible for the payment of unemployment benefits. Benefits are linked to salary based on the average net wage over the 24 months directly prior to unemployment. A major incentive for people to register themselves in the ESA is that the Agency pays the health contributions for all registered unemployed.

There are very limited data about the profiles of the beneficiaries of the unemployment benefits, and their welfare situation. The absence of the link between the ESA and the Agency for Social Works opens the door to work disincentives. Removal of the health insurance from ESA will probably contribute to a reduction in the workload of ESA staff and the number of unemployed registered in ESA which is between 70.000-120.000 people.

Currently ESA is carrying out its mandate to actively support the unemployed through counseling and job search support only to a limited degree. In order to improve its ability to provide counseling and job search services, training must be provided to ESA staff specifically for this purpose and a mechanism to match job seekers with ESA representatives able to assist must be created.

In 2008, several positive activities were undertaken in with respect to the Operational Plan of the Government for Active Labor Policies, in which new measures were introduced in the form of loans and subsidies for self-employment and micro businesses, entrepreneurship promotion was increased as was the number of people covered by active programs. However, the amount of ESA funding and resources dedicated to active program interventions has been extremely limited.

ESA also faces major challenges in the upgrading of its own premises, equipment, administrative structure and human resources. An especially important pending question is whether more accurate information on labor market movements and skills needed can be provided on a more frequent basis in order to provide the data on which the planned ESA IT system is based. Without this information, the IT system will not be able to fulfill its mandate of making this information available to job-seekers and employers, and resources spent on the IT system will not be put to effective use.

Implementation of the ESA IT system, specifically the integrated software for career management and one-stop services, as well as other activities stipulated in the strategy for transformation of ESA known as Vision 2011, will contribute to the transformation of ESA into a central service provider for the labor market.

State Labor Inspectorate. The State Labor Inspection (SLI) is the main state body responsible for sanctioning all firms and institutions that breech the Labor Law, whether regarding the legal status of the workers or the enforcing of safety regulations in the workplace. In light of both businesses and illegal workers currently operating as part of the booming grey economy in Macedonia, this body needs substantial authority to enforce legislation.

SLI is an independent body within the MLSP.[4] SLI is responsible for inspection of employer / employee relations, employment contracts, occupational safety and health, collective agreements, and other issues as prescribed by the Law. Currently it has 60 inspectors for labor relations and 28 inspectors for occupational safety and health.

In the last couple of years, the media has brought the issue of workplace health and safety to the forefront of public dialogue after several cases of worker health problems as a result of poor workplace conditions. Some of the employers in question had received permissible ratings from the Labor Inspectorate for safety and health standards, suggesting that the process of inspections should be reexamined and the number of inspectors should be increased.

With respect to the processes surrounding the informal labor market, numerous efforts have been undertaken in order to curb the wave of illegal and unregistered workers. One of the recent government measures to this end provides for a reduction of social benefit contributions paid by employers, a measure which is expected to motivate more employers to register employees. Whether the cut in social contributions will produce the desired result is yet to be determined, as motives for not registering workers are not always financial. On the other hand, cutting these contributions will certainly cause a decrease in the budget funds for respective social services – health and pensions – at least per worker if not overall.

[4] SLI activities are regulated by separate laws and by laws, however the director of the SLI reports to MLSP.

Considering that the companies registered in the Central Register now total more than 70,000, it is essential that the number of SLI inspectors be increased. In conjunction with this increase, the GoM must provide staff training programs and commensurate IT equipment and software for the State Inspectorate. In April 2008, the Strategy for Modernization and Qualification of the Labor Inspectorate, prepared in conjunction with the World Bank Trust Fund, was presented to the GoM and details of implementation are currently being arranged.

The strengthening of the Labor Inspectorate will contribute to increasing the number of informal employments and health and safety violations detected, ultimately resulting in increased and safer unemployment respectively in the country. Macedonia must focus on long-term solutions to the unemployment in the country such as stimulation of economic growth, and the associated private sector job creation, through an increasingly fertile investment climate. Reform of labor market institutions will play a fundamental role in the creation of an investment friendly business environment and should not be overlooked in this process.

Dispute resolution institutions. Courts in Macedonia are perceived as a slow and relatively inefficient mechanism for resolution of labor disputes. The general problem of the judiciary system is the lack of specialized labor dispute courts or at least of specialized departments. With respect to labor and employment disputes in particular, businesses and lawyers perceive judges to instinctively favor workers.

The current status of the resolution of labor relation cases in general courts cannot be assessed as satisfactory. At the time when unsolved cases were transferred from the labor courts to the general courts, there were not a sufficient number of judges qualified to resolve labor-related cases, resulting in the situation where cases were resolved mainly according to the whims of individual judges. Data shows that in 2006, out of all civil cases appealed in the Supreme Court of Macedonia 571 or 66,55% were cases concerning labor relations.[5]

[5] Analysis for the labor related disputes – USAID BEA Project, MLSP, 2007

The adoption of the Law for Alternative Resolution of Labor Related Disputes (87/2007) has opened the door to use of alternative dispute mechanisms. The Law prescribes the procedure for ADR as it applies to individual and collective labor disputes. In accordance with the Law, a Committee for ADR with respect to labor disputes should be established that will be responsible for the application of ADR, the selection of arbiters, the professional development of arbiters, etc. Although relatively unused in Macedonia until now, ADR provides an alternative channel to the daunting task of reforming the courts to the point where they function efficiently. It remains to be seen whether this mechanism will take hold enough to provide a viable alternative to the courts in the foreseeable future

Supporting Institutions

Key Supporting Institutions

- Labor Unions
- Private Sector Federation
- Universities
- Vocational Education Institutions
- The Economic and Social Council
- Donors

Labor Unions. In accordance with the Labor Code, labor unions are independent and democratic organizations of employees, where the employees join voluntarily for the purpose of representing, promoting, and protecting their economic, social and other individual and collective interests. The labor unions in Macedonia are organized on the national, branch, occupational and employer level.

In the period between 1991 and 2005, the Federation of Trade Unions of Macedonia (FTUM) was the sole workers organization which participated in tripartite social dialogue with the government and employers and in collective bargaining with employers. Until 2005, FTUM included 17 branch unions in both the public and private sectors. In early 2005 three branch unions separated from FTUM representing employees working in education and culture (SONK) and those working in the Ministry of Defense and financial institutions. The three unions joined the newly established Confederation of Free Trade Unions of Macedonia (CFTUM), which was set up in December 2005. For the time being, CFTUM is not represented in the Economic and Social Council (ESC).

In addition to FTUM and CFTUM, there are 14 independent trade unions in Macedonia which are registered with the Ministry of Labor and Social Policy. They are organized along branch and occupational lines and most of them were established after the year 2000. Also, many of these organizations are small and are not considered as representative by the Government. For instance, the Union of the Independent Trade Unions of Macedonia is a member of the European Association of Trade Unions and is registered as an employers organization at the national level, but is excluded from ESC activities.

As a result of recent changes to the Labor Code, specifically the loosening of criteria for determining whether or not a labor union is "representative" of the working population, the ESC will open the door for a more pluralistic presence of labor unions in the social dialogue process.

Labor unions are often plagued by several vices, making it difficult for them to operate efficiently and in the best interest of the majority of their members; among these vices are influence from political parties, fragmentation of interests, and limited organizational skills. As a result, major issues confronting workers in general – but more specifically workers in the SME sector and part time workers – are often not covered by collective bargaining. In most cases in which rights of employees are violated, Labor Unions have been ineffective. Due mainly to the aforementioned reasons, workers have been less and less interested in forming or joining labor unions.

Employer Federations. The 2005 Labor Relations Law sets the legal framework for defining the parameters of social dialogue in its bipartite and tripartite forms. The Law defines the rules for establishing workers' and employers' organizations and for the procedures governing collective bargaining. In particular, it provides the legal framework for establishment of the ESC, which serves as a forum for tripartite consultation between the government and social partners surrounding labor and social issues. In fact, the ESC was created by a tripartite agreement concluded between the Government, the Chamber of Commerce and FTUM in 1996. At that time, there were no independent associations of employers and the Chamber of Commerce was the only organization acting in the interest of the employers.

In accordance with the Labor Relations law, in 2006 three associations of employers were registered with the MLSP. They are the following:

- The Confederation of employers of Macedonia (CERM)
- The Organisation of employers of Macedonia (ORM)
- The Associations of Employers in Traffic and Communications

The first association was established in 2001 and was registered as a Citizen's Association. It claims a membership of 152 enterprises and primarily represents SMEs. It is a member of the South Eastern European Employers' Forum (SEEEF). The second association of employers, ORM, was established in 2004 and primarily represents large companies. The third – the Association of Employers in Traffic and Communications – was established in 2006 and represents, as the title suggests, employers specific to the sector of traffic and communications. The Chambers of Commerce represented employers both in tripartite social dialogue - for instance in the ESC - and in collective bargaining until 2005, despite the fact that this institution was not considered to be an independent association of employers according to the ILO freedom of association principles. In 2005, the Organisation of Employers of Macedonia replaced the Chamber of Commerce with respect to social dialogue in the ESC. The government considers the Organisation of Employers of Macedonia to be the sole organisation, which meets the representative criteria as currently defined by the law.

Although employers organizations have come a long way since the previous CLIR report, they are still generally subject to weak management, poor organizational structure on both a national and local level, and lack of knowledge about how to engage in the social dialogue process. Most of the employers do not differentiate between the old Chamber of Commerce system and the new Organization of Employers suggesting that the employers are not committed to establishing a collective voice and capitalizing on the benefits of social dialogue.

Universities. In accordance with the Law on Higher Education (2000), higher education institutions in Macedonia offer undergraduate, graduate, and doctoral studies, programs for continued studies in specific areas of knowledge. In accordance with amendments to the Law on Higher Education (2005), Graduate studies last anywhere

from three to five years at universities and a maximum of three years at vocational schools. Postgraduate studies are organized as postgraduate science or arts studies (Master's degree) and postgraduate expert studies (specialist studies). Postgraduate science or arts studies last at least three semesters, out of which two are focused on classes and one on preparation of the master thesis. Postgraduate specialist studies last for nine months, out of which one semester is focused on classes and three months on the preparation of a specialist thesis.

The highest doctoral degree can be acquired by attending a program for doctoral studies for a minimum of two years culminating in the defense of a doctoral dissertation. Alternatively one can register to defend a thesis not developed through attendance in a doctoral program. Both undergraduate and postgraduate studies are organized in accordance with the European Credit Transfer System (ECTS). The procedure for adopting the new Law on Higher Education in accordance with the principles and criteria of the Bologna Declaration is currently being implemented in order to further align the higher education system with that of the European Union. It is estimated that the law is currently 70-80% aligned with the Bologna Declaration.

Higher Education Institutions

Public Universities

- St. Cyril and Methodius University of Skopje
- St. Clement of Ohrid University of Bitola
- Goce Delčev University of Štip
- State University of Tetovo

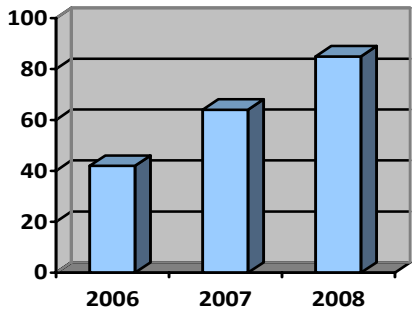
Private Universities and Faculties

- South East European University
- FON University
- University American College Skopje
- Slavic University
- European University Macedonia
- University of Studies Struga "EuroCollege"
- MIT Faculties
- New York University Skopje
- University for Audiovisual Arts - Parisian European Film Academy ESRA - Skopje

International Summer University

According to the latest information published by the Ministry of Education, the number of students enrolling in Macedonian universities directly after the completion of secondary education has increased significantly over the past several years (see Figure 6). To the detriment of the quality of university programs, however, most universities are focused mainly on attracting more students and meeting

Figure 6: Percentage of Students Enrolled in Macedonian Universities



current market demand for educational programs. A systematic approach towards adjusting the educational programs and curricula to the labor market needs is lacking. If universities continue along the current trajectory, this approach will cause a long term discord between labor market supply and demand.

Vocational Education. Vocational education in Macedonia has recently begun to focus on reducing the skills gap between the currently available supply of skills of the Macedonian labor force and the quickly changing demand for labor both in Macedonia and in the surrounding region. These efforts have taken two forms: Vocational Education Training (VET) and life-long learning programs for adults.

The Macedonian VET Centre was established in 2007 with the goal of providing the tools necessary to close this skills gap. However, in its short period of existence, it has struggled with minimal human and institutional capacity leading to modest impact at best, despite the existence of the necessary legal framework. The VET Centre should be responsible for curriculum development and accreditation of vocational training programs, and should work closely with schools and potential employers to coordinate the demand for skills with the programs' curricula. In order to be successful, the VET Centre needs immediate capacity-building assistance, improved access to human and institutional resources, an increase in funding, and the authority to carry out their mandate without burdensome government interference.

Recent research shows that, in the EU, an average of 36% of secondary school students attend vocational school, whereas the same measure in Macedonia is currently estimated at 60%.[6] This does not point to well-developed vocational training, but is rather an indication of the high percentage of students following the traditional system of attending "professional" schools which transfer obsolete skills almost useless in the current market. The majority of students graduating from such schools experience severe difficulties in finding a job. However, with a thorough reform of the secondary education system including champion organizations such as the VET Center, these obsolete programs can be replaced with new vocational training programs sensitive to labor market demand for skills at national and sub-national levels. This reform would provide the foundation for a comprehensive effort to equip Macedonian youth with skills enabling them to be competitive on the labor market.

The largest challenge to establishing this comprehensive approach is the decentralization of education. This factor acts as a multiplier on the previously mentioned challenges such as limited institutional capacity, insufficient social dialogue generated by employer organizations and labor unions, and limited resources from the central budget and from social partners. If, as decentralization progresses, effective public- private partnerships and public-private dialogue are established surrounding education, the educational system could be transformed into a much needed beacon leading the charge for labor market reform.

The Economic and Social Council. Although the Economic and Social Council (ESC) as Tripartite Body was restructured in the 2005 Labor Code, it still does not play the prominent role in the social dialogue it should. As an advisory body its conclusions and recommendations are not included in legislation or policies enacted by the Parliament and the Government. In order to increase the ESC's influence in the legislative process, ESC's capacity and opportunity to advocate to the government on equality must be strengthened. The ESC is the best opportunity Macedonia has to establish a meaningful and ongoing social dialogue.

[6] ETF Report: vocational education and training against social exclusion, 2007

Donors. USAID, the European Commission, the Council of Europe, UNDP, ILO and other specialized agencies and bilateral donors are currently providing assistance directly or indirectly in the area of labor policy and workforce development. Over the past decade, significant assistance has been provided by USAID programs for reforming the labor market, improving employment services, and developing economic and social dialogue in the country. Several EU Cards Projects supported employment policy reform and the creation of the National Action Plan for Employment (NAPE) and National Employment Strategy.

The World Bank launched a Social Protection Implementation Loan (SPIL) with the goal of stemming the growth in poverty and alleviating persistent high unemployment. The World Bank also supports MLSP in reforming labor-related legislation and is planning to collaborate on the review of social welfare related responsibilities of the Employment Service Agency.

It is important to note that, in addition to continuing to support all aspects of workforce development in Macedonia, donors should focus more on definition of respective roles of individual donors and establish well-coordinated strategy for targeting workforce development as a whole. Although communication and coordination have not been absent from past assistance programs, interviewees confirmed that the especially complex and interdependent nature of the factors affecting the workforce indicate that potential gains from heightened donor cooperation are still significant.

Social Dynamics

Labor Market Rigidity. Recent amendments to employment legislation have moved away from over-regulation of the labor market, however this measure in isolation is not sufficient to produce labor market flexibility if employers have no incentives to undertake the respective supply-side measures. The index of Macedonian employment rigidity is among the highest in the region and much higher than the average across Central and Eastern European or OECD states. In particular, the high rigidity of employment contributes greatly to distortions in the labor market.

In this respect, both employers and potential employees need to be encouraged to move away from traditional and rigid job types and embrace more flexible forms of work such as part time

employment. Once these psychological obstacles have been overcome, the economy can benefit from family- and gender-friendly jobs which can provide employment for many unemployed women and single parents. Moreover, part-time jobs will provide employment for young people and those engaged in education, both formal and vocational, who are not able to commit to a full-time job.

Skills. Professional skills are lacking throughout the economy, both in terms of quantity and quality of skills, especially in such areas as law, management, accounting, food sciences, engineering, design and other technical fields. These skills are crucial for transformation of the Macedonian economy into more sophisticated and higher value-added products and services.

The lack of meaningful education reform in the transition period since independence is reflected by the stagnant educational structure which feeds into the Macedonian workforce, the overall quality of human capital development,
and the consistently low employment rate. In 2007, in Macedonia, 47.7% of the population had completed only primary education or less, and only 40% had a secondary school diploma.[7] It is not surprising that the majority of these people cannot find gainful employment, as the present economy requires skills that these people do not posses. A more worrisome fact is that these people have left the educational system and therefore have almost no opportunities to return to a vocational or higher education program. This situation is further reflected by the unmet demand in the labor market for technical and managerial positions, which is among the highest in the region.

Secondary School Enrollment[8] *(among children ages 13 to18)*	
2006	*88%*
2007	*90%*
2008	*95%*

Over the past couple of years, with support from USAID and the EU, the Ministry of Education and Science launched several initiatives for reforming primary and secondary education with the goal of stimulating education in areas demanded by the labor market with respect to entrepreneurial and managerial skills.

New legislation mandating compulsory secondary education has contributed significantly to the increasing number of enrolled secondary schools students (see "Secondary School Enrollment" chart). Some progress has also been achieved through promotion of higher education and the GoM-led campaign "Education is force, education is power". Transfer of intellectual capital within companies, implementation of on-the-job training programs, increased investment in human capital, and implementation of international certificate programs as used in informal education and adult learning are key preconditions for workforce development, improvement of the business environment and competitiveness and economic growth in Macedonia.

Gender Equality. The position of women in the labor market is weaker than that of men. Out of all females in the workforce, 30.7% were employed, while the female unemployment rate was 37.5%.[9] According to the LFS (2005) the share of women in the total inactive population is 61.6%, while the share of men is 38.4%. The share of women in the economically inactive population is higher than that of men among all age groups, with the exception of the age group 15-19. The significant difference in the employment and participation rates is due to the lower activity of women from Albanian, Roma and Turkish nationalities. According to the National Millennium Development Report (2006) women tend to be mostly represented in the lower-paid sectors such as health, social care and education. Also lots of women are working in the informal sector, mainly in the agricultural subsistence economy. Participation of women in the spheres of decision making and public life both at the national and local levels is still marginal. Despite an increase in the participation of women in Parliament from 4.2% in 1990 to 17.5% in 2002, women are still largely underrepresented. The section for equal opportunities aims at strengthening the administrative capacity of the Ministry of Labor and Social Policy in this field. The section includes a unit for gender equality and a unit for protection against any form of discrimination. Strong efforts are needed to improve the situation of people with disabilities. Implementation of the law on equal opportunities for woman and men has progressed only slowly. Equal

[7] Ibid.
[8] Statistic of the Ministry of Education and Science, http://www.mon.gov.mk

[9] Labor Force Survey 2006, Employment Service Agency

opportunity committees have been established and equal opportunity coordinators designed in 30 municipalities. However, women remain vulnerable to discriminatory practices and further efforts are needed to promote women's rights, notably in the rural areas and to increase female participation on the labor market.

Recommendations

To raise the Doing Business scores . . .

- Improve of the institutional capacity of MTSP for creation and implementation of employment policies*
- Continue to strengthen the physical and human resources of the Employment Service Agency and its local offices in order to improve the quality and scope of the services provided by ESA*
- Improve employee-employer relations and build the capacity of employers organizations and labor unions*
- Modernize, reform and build the capacity of the State Labor Inspectorate in order to improve its efficiency in fighting the grey economy
- Move the responsibility for health insurance provisions for unemployed persons from ESA to the Health Fund
- Review the functionality of unemployment compensation to identify and address possible disincentives
- Promote programs to encourage vulnerable groups to join the labor market

To strengthen the overall environment for Employing Workers . . .

- Develop functional social dialogue at the national and local level
- Adapt the education process to labor market demand
- Advocate for and adopt the flex security concept (lifelong learning, active labor market policies, flexible employment contracts, social security)
- Increase the scope of, and budget for, active interventions on the labor market
- Implement international standards regarding informal education and adult learning through certificated programs for professional development and appropriate learning platforms (i.e. revolving fund for employment, etc.)
- Promote entrepreneurship and programs for self employment
- Establish a professional HR Association that will place emphasis on the importance of the workforce as a driving force for businesses*

REGISTERING PROPERTY

Introduction

Unimpeded ownership of property, simple property registration procedures, and the ability to freely transfer property are fundamental characteristics of a fertile business environment. Establishing a strong legal framework that protects and guarantees the right to own property is the first step toward achieving these ideals, however a strong legal framework does not guarantee that these laws will be implemented and/or enforced. Despite a relatively comprehensive legal framework surrounding property registration in Macedonia, incomplete property records and a general lack of confidence in the implementation of officially established registration procedures are significantly depressing private sector investment in Macedonia. In addition, difficulty establishing clear ownership of property is unnecessarily constraining collateral and mortgage financing, making it difficult for citizens to mortgage and transfer property.

The Government of Macedonia (GoM) has recognized the importance of developing a system for protecting property rights in order to encourage economic growth and extend the economic prosperity of the country. With this goal in mind, the GoM has begun to address the problems in this sector by establishing a single agency for cadastre and property registration – the State Authority for Geodetic Works (SAGW). In addition, the 1986 Law on Land Survey, Cadastre, and Registration (LSCR) of Real Estate Rights[1] formed the basis for land ownership and title registration, and included most functions necessary for a viable and secure cadastre and real property registration system. Several other laws have been adopted related to land ownership and registration, including laws on denationalization, urban construction, and agricultural land.

Registering Property

Doing Business Ranking 2009	88
Doing Business Ranking 2008	94
Procedures (number)	6
Duration (days)	66
Cost (% of property value)	3.4

Ongoing reform of the Real Estate Cadastre and Registration in Macedonia has not only contributed to the improvement from 94 in 2008 to 88 in 2009 in the World Bank Doing Business Survey, it is often described as single-handedly improving the investment climate in Macedonia.

The value of protecting intellectual and industrial property has been increasingly recognized by Macedonia since the Ministry for Development assumed responsibility for Industrial Property just after the dissolution of the Socialist Federal Republic of Yugoslavia (SFRJ). Since then, Macedonia has established several laws that protect both industrial and intellectual Property, joined the World Intellectual Property Organization (1993), and has joined several international conventions and treaties surrounding intellectual property rights (IPR). Implementing and supporting institutions responsible for the protection of IPR are fragmented, however, and the will to enforce the legal framework, both from the government as well as from private sector organizations affected by the breach of intellectual and industrial property rights, is severely lacking. Until enforcement of the laws already in place finds a dedicated champion, little progress can be expected in this area

[1] Official Gazette No. 27/86, 17/91, 84/05, 109/05, 70/06

Legal Framework

The Commission of the European Communities aptly summarized the current state of the legal framework on property registration in Macedonia in 2008:

> "The law on the real estate cadastre has been amended, resulting in a strengthening of the institutional set-up and requiring a formal decision on a registration request within 15 working days… The backlog of unsolved property disputes has been reduced further, from some 9,000 unresolved property cases at the end of 2007 to 7,700 by July 2008. However, in general, legal procedures are still slow and this adversely affects legal certainty and impedes the proper functioning of market mechanisms".[2]

As indicated by this excerpt, there is a solid legal framework in place in Macedonia pertaining to protection and registration of property rights. The Constitution, as the supreme legal act, lays a foundation for the equal protection of all types of ownership and recognizes the right of ownership as one of the fundamental rights and freedoms.[3]

Key Laws

Real Property

- The Law on Ownership and Other Real Property Rights
- The Law on Agricultural Land
- The Law on Construction Land
- The Law on Denationalization
- The Law on Survey, Cadastre, and Registration of the Rights Over Real Estate
- The Law on Real Estate Cadastre

IPR

- The Law on Copyrights and Neighboring Rights
- The Law on Industrial Property
- The Law on Protection of New Agricultural Plant Varieties

The Law on Ownership and Other Real Property Rights guarantees protection of ownership, stipulating that the ownership right can be restricted and taken away in the public interest.[4] There are three types of ownership: private, municipal, and state. Until recently, the regime of ownership of foreigners was subject to reciprocity; however, as the country is striving towards EU accession, in July 2008 the law was amended to allow foreign citizens and legal entities originating from OECD and EU countries to own land and real estate under the same conditions as domestic individuals and legal entities.[5] Those individuals and legal entities from countries which are not members of the OECD and EU can own real estate subject to reciprocity.

The Law on Agricultural Land[6] regulates the utilization, protection and transformation of agricultural land. Agricultural land can be private or state owned. State owned agricultural land cannot be subject to sale.[7] Agricultural land can not be owned by foreigners, and foreign individuals and legal entities can use agricultural land only upon a lease agreement. There is a legal gap in the legislation regarding the lease of agricultural land. Though the lease of agricultural land has been considered, the Law contains no provision to regulate the content of the lease agreement. Therefore, in practice, the lease agreement for agricultural land is being governed under Contract Law provisions.

A significant legal inconsistency burdens the lessee of agricultural property. One law recognizes the ownership rights of the property owner over the fruits of the land, while another recognizes the rights over the fruits by the lessee only *after* the crops are harvested. The effect is the ineligibility of the lessee to use future harvests as finance collateral.

[2] Commission of the European Communities Brussels, 5.11.2008 SEC(2008) 2695 Commission staff working document The Republic of Macedonia 2008 Progress Report EN {COM(2008)f674}

[3] See Article 30 of the Constitution of Macedonia Official Gazette No. 52/91.

[4] Official Gazette No. 18/01, No. 92/08

[5] except for agricultural land, which can not be owned by foreign citizens, Article 246 from Amendments to the Law on Ownership and Other Real Rights Official Gazette No. 92/08

[6] Official Gazette No. 135/07

[7] Article 17 of the Law, Official Gazette No. 135/07

The Law on Construction Land[8] stipulates that construction land can be owned by the state or by individuals and legal entities both domestic and foreign, in accordance with applicable legislation. Ownership includes the right to build on the land, to use the land, and to transfer these rights to others. State owned construction land is managed by the GoM. The GoM can sell the land, or distribute it by concession or lease.[9]

Summary of Property Registration Steps in Macedonia[10]

No.	Procedure	Time to complete	Cost to complete
1	Obtain a non-encumbrance certificate on the property	1-3 days (simultaneous with procedure 2)	MKD 600
2	Obtain a copy from the Cadastre sheet	1 day (simultaneous with procedure 1)	MKD 125 (Title deed) + MKD 50 (Tax stamp)
3	A lawyer prepares the sale contract	1-2 days	MKD 24,640
4	Obtain a non-encumbrance certificate on the property	30 days	MKD 100 (administration fee) + 3% of property value
5	The contract is approved by a public notary	1 day	maximum of MKD 10,000), in accordance with the 2002 Notary Tariff
6	Apply for registration into the Cadastral Office	30 days	MKD 250 (for change of ownership) + MKD 125 (for the new title deed) + MKD 50 (Tax stamps)
* Takes place simultaneously with another procedure			

The Law on Denationalization[11] defines the procedure for restitution of property that was confiscated by the state under particular circumstances. The final deadline for restitution application was set at the end of 2007.

The Law on Privatization and lease of state owned construction land[12] provides for private ownership over state owned construction land used by individuals and legal entities.

The Law on Survey, Cadastre and Registration of the Rights over Real Estate[13] created a legal framework for surveying, as well as the establishment of a viable real estate cadastre and registration system. However, certain procedural shortcomings related to the establishment of the Cadastre as well as the procedure for implementation of the changes in the already established real estate cadastre were identified. The State Authority for Geodetic Works was identified as one of the major obstacles preventing progress, as it did not meet the requirements for effective service provision to its clients. Therefore, on a World Bank recommendation, a new **Law on Real Estate Cadastre**[14] **(Law on REC)** was adopted**.** The new Law on REC transformed the SAGW into the Agency for Real Estate Cadastre, as a separate legal entity with the following responsibilities:

- Establishment and management of the Geodetic Cadastre information system;
- Performance of basic geodetic works;
- Registration of the real estate ownership rights;
- Establishment and maintenance of the real estate cadastre;
- Maintenance of the register of spatial units;
- Establishment, maintenance, and provision of public access to the national infrastructure of spatial data; and,
- Supervision of the operation of sole proprietors – licensed surveyors and companies registered to perform geodetic work

The Law provides for the establishment of a Chamber of Private Surveyors with public authorizations. In addition, the Law on REC introduced a new procedure for registration of real estate rights shortening the deadlines for registration to 15 days (previously 30 to 60 days). The new procedure also removes the

[8] Official Gazette No. 82/08
[9] Lease can be minimum 5 years and maximum of 99 years.
[10] World Bank Doing Business 2009
[11] Official Gazette no. 20/98, 31/2000 43/2000 42/2003 44/07
[12] Official Gazette No. 4/05, 13/07
[13] Official Gazette No. 27/86, 17/91, 84/05, 109/05, 70/06
[14] Official Gazette No.40/08

requirement for hearings, thus streamlining the procedures and shortening the deadlines for issuing data and registering property.
According to the new law:

- A title deed and a copy of the cadastral plan can be obtained in **one day** as opposed to the previous norm of 15 days;
- The deadline for registering or erasure of mortgage is **one day**;
- A certificate for migration of the land can be obtained within **3 days** (interviewees pointed out that this procedure can presently take between 15 days and two months);
- Execution of a sale or purchasing agreement in **1 to 3 days** (now 15 to 20 days);
- Registration of a new building **in 3 days;** and,
- Registration of real estate that is not yet registered in the Cadastre and does not have a title deed, upon submitted request **within 15 days**. (this procedure according to interviews now takes between 30 and 60 days)

A novel addition to this law was the introduction of a list of *pre-entry* of buildings under construction.

All mortgages registered in the court are transferred to the Cadastre and maintained electronically. Implementation will, however, require a number of new regulations, resulting in the continued use of the old law and procedures for now.

Intellectual and Industrial Property. The Constitution of Macedonia[15] lays the foundation for guarantying the rights arising from literary, scientific, artistic and other types of intellectual creation.

Macedonia's first law on industrial property was adopted in 1993, and the **Law on Copyrights and Neighboring Rights** was adopted in 1996. With the goal of meeting conditions stipulated by related international conventions, IPR legislation was amended several times over the past five years. **A new Law on Industrial Property** was adopted in 2002, with amendments in 2004 and 2006 to bring it into harmonization with EU integration principles.

[15] See Article 47 of the Constitution

Only minor changes have been made since 2006, and the law is now widely considered to be compliant with both EU standards and WTO commitments. As Macedonia will be a member of the European Patent Organization as of January 2009, the law needs to be further aligned with the European Patent Convention EU directive on enforcement of IPR, WIPO, the Trademark Law and Patent Law Treaties, Trade-related Aspects of Intellectual Property Rights (TRIPS), and public health. Therefore a new law is currently being drafted and is expected to be adopted next year.

The Law on Copyrights and Related Rights (Official Gazette of the RM, 47/06, 3/98, 4/05 and 131/07) introduced, along with rights for authors and performers, a regime for executing and protecting the rights of phonogram and film producers and of radio and television organizations. The Law establishes an enforcement mechanism and penalties for infringement. In 2007 the Law was changed to enable further harmonization with the Misdemeanor Law. Like the others, this law is considered to be well harmonized with EU and WTO standards. In addition, the Ministry of Culture is in the process of drafting a new Law on Copyrights and Neighboring Rights which resembles EU laws particularly as they govern collective management societies. This is one of the weakest groups in Macedonia with respect to copyright protection and the new law is expected to improve the societies' functionality.

The Law on the Protection of New Agricultural Plant Varieties is the first step in the ratification procedure of the International Convention for the Protection of New Varieties of Plants (UPOV).

The national legal system of protection and enforcement of industrial property rights includes other regulations such as: Law on Administrative Procedure Criminal Code, Litigation Law, Enforcement Law, and others, some of which apply to several topics covered in this report and are discussed in other chapters. Both the laws described here and the laws which cover multiple areas are well aligned with international standards, however much remains to be done regarding implementation and enforcement, as violation of intellectual property rights is still a serious problem. This issue will be addressed in more detail in the following sections.

Implementing Institutions

Land administration responsibilities are dispersed across number of Ministries, state bodies and institutions.

Key Implementing Institutions

Real Property

- Ministry of Environment and Spatial Planning (MESP)
- Ministry of Transport and Communications (MTC)
- Ministry of Finance (MoF)
- Ministry of Agriculture (MoA)
- Municipalities
- Agency for Real Estate Cadastre

IPR

- State office for Industrial Property (SOIP)
- Ministry of Culture

The Ministry of Environment and Spatial Planning (MESP) sets out administrative boundaries and establishes the geographic limits of municipalities and other administrative entities. The spatial plan is valid for 15 years, but may be changed by Government order.

The Ministry of Transport and Communication (MTC) is responsible for overseeing urban planning policy and proposing legislation. There is typically a General Urban Plan (GUP) for each town or "special purpose area", set up by a private company contracting with municipalities. A GUP is adopted for a period of ten years and contains the primary zoning of land use and classification of transport routes.

The Ministry of Finance is responsible for the process of denationalization of the land that was nationalized by the state during socialism. Denationalization is implemented through the local offices of the Ministry of Finance at the municipal level. Deadlines for the de-nationalization have been extended several times – the most recent extension occurred at the end of 2007. The procedure is supposed to take no more than 6 months, however the denationalization process is described as a severe constraint to foreign investments and is criticized by the EC (for more information, see the Social Dynamics section of this chapter). It should be noted that because records of property ownership are difficult to search, and are located at the Ministry of Finance instead of the MTC, properties that may be planned for denationalization can go unnoticed when companies contract directly with municipalities.

As expected with such inefficient procedures, the return of property confiscated during the Yugoslav period remains far from complete. Virtually, no progress has been made on the return of properties of the Orthodox Church and the Muslim community.[16]

The issue of unresolved cases and cases that are pending to be resolved by the Government Second Instance Commission for denationalization is also critical. If the applicant is not satisfied with a final decision, he or she can file a complaint to the Administrative Court. The court procedure is generally very lengthy and is often plagued by multiple claims on one piece of land. For example, a small portion of land in the middle of one big land parcel can remain disputed and prevent the whole land parcel from being denationalized. In addition, until the denationalization process has been completed the land cannot be transferred. The GoM should determine a concrete deadline for completion of denationalization procedures, after which land can no longer be restituted and only a compensation according to fair market value will be applied.

The Ministry of Agriculture (MoA) is responsible for monitoring and recording the sale of agricultural land, little of which is actively traded. Macedonia has 1,275,000 hectares of agricultural land, comprising about 50% of the total area of the country[17] Agricultural land is protected and land use conversion is prohibited except when specified within the appropriate special planning framework. The same is true for initiating a change from one class of agricultural use to another; this process is controlled except where expressly stated in the spatial planning framework.

[16] Commission of the European Communities Brussels, 6.11.2007 SEC(2007) 1432 Commission staff working document Macedonia 2007 Progress Report EN {COM(2007)663

[17] Source Ministry of Agriculture web site.

Municipalities. Physical planning responsibilities have largely been transferred to the municipalities as a result of the broad government decentralization effort in 2005. Currently Macedonia is divided into 84 municipalities and the capital, Skopje, is separate. The municipalities have various land management functions, including:

- Building land management
- Building construction management and use
- Illegal constructions
- Urban planning and physical planning, and
- Tax assessment and collection (transferred from the public revenue offices).

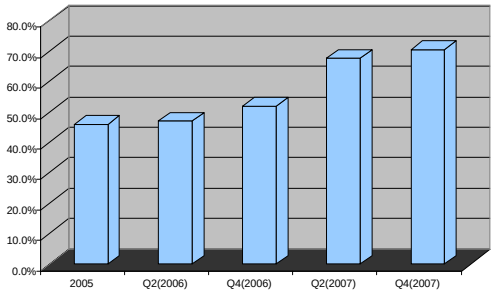
The municipalities do not own the land within their territory, however they have responsibilities with respect to identification, use, and valuation of the land. No steps have been taken to develop the capacity of the municipalities to manage state-owned property.[18] Building permits are also regulated at the municipal level.

The Agency for the Real Estate Cadastre . In recent years, Macedonia has been heavily involved in improving and upgrading the system of registering real property rights. The GoM has adopted the "single agency model" for land cadastre and registration. The SAGW (State Authority for Geodetic Works) was established in 2002 following establishment of the Real Estate Cadastre (REC), in 1986 bringing together the cadastral element and the title registration elements into a single authority. Introduction of the single system replaced the earlier system which was comprised of different cadastral systems and a separate system for title registration – the "Land Cadastre"[19] and the "Inventory Cadastre."[20] The Agency has 29 regional departments located in larger cities throughout the country with a central office in Skopje. SAGW employs a total of 830 employees. The Agency is responsible for the Cadastre, the process of surveying, maintaining the surveys once completed, and the registration of real property rights**.**

The GoM has requested and received support from the World Bank to help finance its Cadastre and Registration System Improvement Program, including formulation of specific land and real estate policies necessary to complete the real estate cadastre and ensure the full functioning of land and real estate markets. With EU integration a high priority, these issues are critical, and will require a system of land rights and property registration that provides security of tenure and fair and efficient property markets. The Loan Agreement between Macedonia and the IBRD for financing the €10.3 million "Real Estate Cadastre and Registration" Project was signed in 2005. The main objective of the Project is to build an efficient and effective real estate cadastre and registration system, contributing to the development of efficient land and real estate markets. Completion is planned for 2009.

The diagram below depicts the increase in cadastral representation since the reform program was established.

Figure 7: Percentage of established real estate cadastre



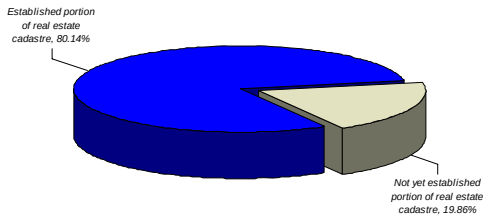
[18] Commission of the European Communities Brussels, 6.11.2007 SEC(2007) 1432 Commission staff working document Macedonia 2007 Progress Report EN {COM(2007)663

[19] Established through the marking of boundaries by property users, followed by a precise and accurate geodetic survey or aerial survey. The register provided information on buildings and other objects on the land but it states only their total area; thus providing information on users as possible right-holders, It did not provide information on mortgages and other encumbrances. Those were registered at the court.

[20] Established in the 1950s. It involved the survey of large blocks of land within which multiple parcels exist. For each block, a Possession List was prepared but it did not include cadastral information on individual parcels within the block. The system did not provide information on buildings or mortgages and encumbrances.

According to the PMU, by the middle of September 2008, the Cadastre covered just over 80% of the territory of Macedonia. Even though the percentage of real estate covered by the Cadastre is high, most interviewees noted that a large portion of urban areas, including much of Skopje, are still not covered, though progress has been made.

Figure 8: Status of the real estate cadastre, September 2008



In the field of **Intellectual Property Rights**, several implementing institutions coexist.

The State Office for Industrial Property (SOIP) is an independent government agency responsible for implementing the Industrial Property laws. SOIP is also authorized to initiate the ratification of international agreements and monitor their implementation, to ensure proper cooperation with international, European and regional organizations for industrial property and cooperation with other entities included in the system for industrial property rights protection, and to promote industrial property protection. The Bureau represents Macedonia and participates in the work of the bodies and committees of WIPO, EPO and other international organizations such as the EU, WTO and bilateral promoters of free trade.

The Ministry of Culture is in charge of the follow up, analysis and proposal of development actions to promote copyright and related rights protection. The Ministry of Culture supervises enforcement of the Law for Copyright and Related Rights.[21] Amendments passed in 2005 gave the State Market Inspectorate the authority to conduct surveillance of the reproduction and distribution of audiograms, phonograms and computer programs, while the Ministry of the Interior remains responsible for enforcement against illegal distribution and organized crime.

The State Market Inspectorate. The Law on Industrial Property and the Law on Copyrights and Neighboring Rights state that the State Market Inspectorate is responsible for the inspection related to application of the laws in particular for trading and utilization of the protected industrial property rights and distribution and public announcement of copyrights and neighboring rights.

The Ministry of the Interior is responsible for the protection of IPR where it intersects with the Criminal Code. Thus the Ministry of the Interior has the power to seize counterfeited goods within the territory of the country. The Ministry of the Interior reports to the prosecutor offices on violations of copyrights and neighboring rights, protected satellite signals, audio and visual works and phonograms, unauthorized usage of trademarks, and unauthorized usage of inventions or software.

The Customs Administration is responsible for enforcement of IP laws at the border. The Law provides that Customs can undertake measures upon request as well as *ex-officio*.

In general, intellectual property legislation remains largely unenforced. Three concrete reasons for lack of institutional enforcement were noted by interviewees throughout the diagnostic process.

First, most of the institutions that are involved in the process of IPR protection and enforcement do not have the capacity to properly carry out the legislation – both in terms of funding as well as human capacity.

Second, as demonstrated by the list of implementing institutions above, enforcement lies in the hands of many different institutions and it is often unclear who is responsible for specific cases of infringement. In order to combat this problem, the Ministry of Culture recently developed a national strategy for the protection of copyrights, but it has been slow to gain approval by the government. In addition, this Strategy does not address industrial property rights. Unless a comprehensive intellectual property and industrial property

[21] Official Gazette of RM, no 47/96, 3/98, 98/02, 4/05 and 131/07

enforcement plan is developed, the problem of institutional coordination will remain.

The third weakness noted by interviewees was the lack of specialization within the institutions involved in IPR protection. For example, within the Ministry of Interior, employees who received IPR training and have been working on IPR issues for years are being transferred to other positions and replaced with people that have neither training nor experience in the field.

This is also the case with the State Market Inspectorate (SMI). Inspectors from the SMI are responsible for inspections not only in the IPR area but in many other areas as well. In fact, IPR inspections make up a very small portion of SMI's total responsibilities. They receive no specific IPR training and the only way that inspectors develop skills in IPR is by conducting IPR inspections over the course of several years. In addition, when working in the field, SMI inspection officers do not immediately seize counterfeited goods, but instead prepare "minutes" indicating that forged goods have been found and should no longer be allowed to be sold on the market.

The highest level of IPR protection and enforcement is **the judiciary**. One of the problems that has been identified as an obstacle to the implementation of legislation is the fact that judicial enforcement remains very weak. There are no special departments within the courts authorized to hear IPR cases and the vast majority of judges have no experience in this area and have not received proper training on the resolution of IPR disputes. Slow court procedures and low penalties imposed by the courts do not discourage infringement.

Supporting Institutions

Notaries. Notaries were introduced in Macedonia in 1996[22] as independent and impartial public servants who authenticate, and in some cases also prepare, contracts. Their duties regarding the registration of property consist of the preparation and/or authentication of contracts for sale/purchase of real estate. Prior to the introduction of notaries, these types of contracts were certified by the courts.

[22] Law on Notary Public Official Gazette No. 59/96, 25/98, 6/2002, 66/2006).

Key Supporting Institutions

Real Property
- Notaries
- Cadastral Surveyors
- Courts and legal profession

IPR
- National Coordinating Body for Intellectual Property (NCBIP)
- Collective Rights Management Societies

There are no official standardized forms developed for notaries. The law prescribes only the elements required to be included in the contract prepared by the notary. Notaries' fees are stipulated by the Ministry of Justice.[23]

Interviewees confirmed that the notary system functions quite well in comparison to the old system of court certification. Fees for authenticating real estate contracts are considered reasonable and the time required for contract authentication is not unnecessarily prolonged.

Property Assessors (Surveyors). Until recently, the SAGW was responsible for organizing, executing, and then verifying and recording cadastral field work. In 2006, with the establishment of the Private Cadastral Surveyor, the responsibility for the execution of cadastral work transferred to the private sector. The SAGW remains responsible for the methodological control, as well as the provision and maintenance of the geodetic control networks, however it has lost most of its best surveyors and sees no prospect of replacing them. The Cadastral Office seems to prefer information provided by SAGW surveyors, and as no formal standards have been established as to the grounds on which data provided should be accepted or rejected, various Cadastral Office employees determine standards on an individual basis. In order to level the playing field for private surveyors, concrete criteria for acceptance should be established.

[23] Official Gazette No. 76/07

According to the new Law on Cadastre, the private surveyors must organize themselves into a Chamber of Surveyors. The process of the establishment of this Chamber has not yet been completed, but should be expedited in order for surveyors to be able to confront the issues they face with respect to acceptance of their findings as a collective body.

The Real Estate Cadastre and Registration Project (*The World Bank*). The main objective of the World Bank's Real Estate Cadastre and Registration Project is to build an efficient and effective real estate cadastre and registration system in order to support the development of efficient land and real estate markets. It is expected that, through the efforts of the Project, a complete Real Estate Cadastre (REC) that covers the entire territory of Macedonia will be established, and registration of all property rights in urban and peri-urban areas will become standard practice. The project also aims to streamline procedures for converting the land cadastre into a real estate cadastre (conversion of possession rights to ownership rights) in rural areas and to enable the registration of transactions in one day in all SAGW offices. SAGW plans to become a self-financing agency operating according to modern business practices and to transfer all cadastral surveying from Cadastre surveyors to private surveyors.

Since the beginning of the Reform of the Real estate Cadastre many positive results have been accomplished. Two surveys were conducted to determine the level of satisfaction of the services provided by SAGW. The first survey was conducted in January 2006 and the second in January 2008.

The table on the right shows the average level of satisfaction of respondents on a scale from 1 to 5 after using the Cadastre.

Although it was pointed out by several interviewees that the Cadastre work has significantly improved the operation of the system in the last two years, more work is still necessary. The Law on REC is relatively new, (it was adopted in March 2008) and its application has not yet shown results. Not all by-lays have been adopted, and employees of the Cadastre have not yet been properly trained to implement the law. There are many new procedures that have been introduced with the implementation of the Law that are still creating confusion among the employees of the Cadastre and their clients and little guidance has been provided with respect to these procedures. These issues of procedural awareness and capacity building could be improved by targeted assistance from either the World Bank Cadastre program or other donors.

Satisfaction Level of Real Estate Cadastre Users

City	Respondent Category	2006	2008
Skopje	Direct Users	2.63	3.18
	General Population	3.14	2.94
	Professionals	2.00	2.90
Tetovo	Direct Users	3.47	3.85
	General Population	3.45	3.54
	Professionals	4.09	4.00
Kumanovo	Direct Users	4.12	3.46
	General Population	3.18	3.23
	Professionals	3.08	3.30
Stip	Direct Users	4.56	4.25
	General Population	3.43	3.43
	Professionals	3.00	4.00

Courts and the legal profession. Unsettled property disputes are considered to be one of the weakest points of the protection and registration of property. There are number of property disputes that are not being resolved in front of the courts due in part to the inefficiency of the judiciary and in part to lack of ownership documents.

In the field of intellectual property rights, several supporting institutions intervene to promote the appropriate enforcement of the law. The **National Coordinating Body for Intellectual Property (NCBIP)** was established in 2007 in order to create and maintain an efficient integrated system for the protection and enforcement of intellectual property rights. NCBIP is comprised of

representatives from all state bodies that are involved in the implementation and enforcement of intellectual property rights, including the Ministry of Culture, Ministry of the Interior, Customs Administration, Ministry of Economy, State Market Inspectorate, Public Revenue Office, State Office for industrial Property, and Secretariat for European Affairs.

The table below shows the number of seized pirated and counterfeit goods (April 2008-September 2008) by various institutions. [24]

Seized Pirated and Counterfeit Goods, by institution

	Customs Authority	SMI	Ministry of Interior	Coordinative body for intellectual property	Total
Pirated goods CD/DVD burners	N/A	13701	7064	13066	33,831
Counterfeit goods	620,656	N/A	N/A	N/A	610,656
Washing powder (in kg)	18,000	N/A	N/A	N/A	18,000
Alcohol (in liters)	9,450	N/A	N/A	N/A	9,450
Lebels (in m)	550	N/A	N/A	N/A	550

Collective Rights Management Societies. The Association for Protection of Music Copyrights (ZAMP) is one of three collective rights management societies in Macedonia.[25] ZAMP is responsible for equal protection of national and foreign authors in accordance with bilateral and international Conventions. ZAMP is a member of the International Confederation of Societies of Authors and Composers (CISAC) that unites 217 author societies from 114 countries worldwide. This organization, as well as the other collective rights management societies, is not effectively leveraging its network in order to advocate collectively for the protection of the rights of its members.

[24] Information provided by the State Office for Industrial Property

[25] The other Collective Rights Management Societies are: The Association for collective management of neighboring rights of music performers and producers (COMIP) and the Macedonian Music Industry (MMI) which is the association for collective management of rights of phonogram producers and performers

Social Dynamics

Transition from the Yugoslavian system. After World War II, a large portion of private property in the Socialist Federal Republic of Yugoslavia was nationalized by the government. Once Macedonia became an independent country adhering to a market-based system, the government began the process of restitution (denationalization) of the nationalized property. Property rights from pre-Yugoslavian times were difficult to prove, and many claims were submitted to the courts in an attempt to try to regain lost assets. The government determined that it would try to honor these claims throughout the process of denationalization, either financially or through restitution, however these procedures have been long and tedious and have, in many cases, been tied up in the courts since shortly after independence.

This problem significantly complicates the dynamic of the sale of property to both locals and foreigners. As property rights have been so difficult to identify in Macedonia in recent years, many people attempt to take advantage of this system in order to profit financially. One example of this phenomenon was cited by a foreign investor just outside of Skopje. He purchased the land to build his company outright and initially only built his factory on part of the land. After a few years he began to build new facilities on the rest of the land and shortly thereafter received a letter stating that he must stop building because a man claimed to own a small portion of his land. The man, who in fact held a legitimate claim on the land, offered to sell his land for $1 Million so that the investor could finish building however the land was only worth a small fraction of the quoted price. The investor chose to build around the man's land instead of taking his case to the court because he expected that no verdict would be reached in the foreseeable future.

Many interviewees claimed that this issue can be so onerous that it alone will discourage a foreigner from investing in Macedonia. While this problem is certainly not only present in Macedonia, it does represent a significant barrier in achieving the government's aggressive goals with respect to foreign investment-led economic growth.

Public awareness. A campaign aimed at informing the public about the reforms of the Cadastre, the novelties in the procedures related to executing the re-measuring and registration of the ownership right over real estate was part of the Real Estate Cadastre and Registration Project. The main objectives of the campaign are to promote the SAGW and the Cadastre as transparent institutions, to educate the public about the responsibilities of the SAGW, and to promote ongoing reform. The campaign was supported with brochures, TV and radio advertisements, billboards, etc. While the campaign was somewhat successful, continued activities targeting awareness building are necessary in order to promote universal use of the Cadastre.

As stated above, the area of **intellectual property rights** has seen some improvement during the past few years, particularly in the areas of legislation and Macedonian participation in international treaties and conventions. Macedonia's IPR legislation is aligned with EU requirements and international standards; however, the implementation of the legislation still remains problematic. NCBIP is becoming more active in undertaking measures to seize counterfeit goods. But this is not enough.

Dr. Valentin Pepeljugoski, an Attorney working for the American Chamber of Commerce (AmCham) in Macedonia, addressed the issue of IPR in Macedonia during a presentation at the bilateral Conference organized by AmCham Macedonia with AmCham Serbia. "The situation on the market is bad. [There is a] 71% piracy rate in the field of commercial software; No legal DVD titles of American majors [are sold in the market]".[26]

Enforcement of the legislation has been pointed out by many as the weakest link in the chain. However the social dynamics surrounding IPR also play a significant role in preventing its enforcement in Macedonia. Political will to enforce IPR legislation is very weak. Interviewees point out that a portion of this disinterest can be attributed to the fact that Macedonia has a high percentage of families living in poverty, and paying the equivalent of $15 for a CD or DVD is simply not an option. Another portion of this disinterest can be attributed to lack of awareness on how to deal with this issue, both among government officials as well as among members of implementing and supporting institutions such as the courts or the media. The third factor cited by interviewees affecting lack of political will is that affected companies are not properly advocating for their rights. AmCham in Macedonia has attempted to rally companies around a collective IPR advocacy plan and awareness building activities for the public, however interest has been relatively scarce in providing funding for these activities. The Commission of the European Communities came to similar conclusions in Macedonia's progress report for 2007: "…There has been some progress in the area of enforcement, both at the border and within the country. However, piracy and counterfeiting remain widespread. The country still lacks a comprehensive strategy and an action plan for building up the capacity necessary to implement and enforce the acquis on both copyright and industrial property rights."[27]

Recommendations

To raise the Doing Business scores . . .

- Complete the ongoing reform of the Cadastre
- Establish centralized electronic Cadastre, and provide up to date on-line access to all interested parties
- Simplify the procedure for registering ownership
- Provide conditions for conducting all real estate transactions through the Cadastre in electronic form
- Properly implement the new Law on REC
- Improve efficient and consistent enforcement of existing IP laws (establish

[26] Quotation from a Presentation of Dr. Valentin Pepeljugoski, Attorney at Law AmCham Macedonia - Bilateral IPR Conference, Ohrid, October 16-17, 2008

[27] Commission of the European Communities Brussels, 6.11.2007 SEC(2007) 1432 Commission staff working document Macedonia 2007 Progress Report EN {COM(2007)663

better cooperation and coordination between competent authorities)

- Implement stronger penalties for IP offenses
- Develop capacity of agencies and bodies involved in IPR protection (provide continuing training and education to officials, judges, prosecutors and police officials, inspectors)*
- Introduce a better system (tools and reporting structure) to support collective rights control in Macedonia
- Bolster public awareness about the importance of protection of intellectual property (organize massive public campaigns and trainings for the public, increased media coverage)*
- Develop a National Strategy on IPR*

To strengthen the environment for registering property overall …

- Complete the process of denationalization
- Draft all by-laws stipulated by the New Law
- Draft clear procedures and policies for employees in the Real Estate Agency
- Speed up the procedure for privatization of state owned construction land

GETTING CREDIT

Introduction

Macedonia's high Doing Business scores for Getting Credit accurately reflect a system that is functioning well. This can be attributed to several things:

- The primary legal structure, the Law on Contractual Pledges, is straightforward and effective;
- The Pledge Registry is well-run, efficient and widely used;
- Enforcement of pledges when a debtor defaults has dramatically improved with the advent and maturation of the private enforcement agent system;
- The notary system is well-understood, effective and provides a valuable service;
- There are various types of lending institutions that service the full spectrum of the market from financing very large enterprises to providing microfinance to start-up entrepreneurs.

Each of the three previous assessments has noted improvements in the credit environment. This one is no exception. Indeed, the biggest negative in the 2005 assessment, poor enforcement through the courts, has been thoroughly addressed through the industry-wide embracing of private enforcement agents to enforce court decisions, immoveable property mortgages, and moveable property pledges.

As with any commercial law regime, some problems persist. In the area of immoveable property lending, the as-yet incomplete reform of the cadastre continues to limit lending secured by such property and an effective home mortgage market has yet fully to emerge. Efforts to change the pledge registry to more of a notice system have so far failed. Some stakeholders grumble about the costs of notaries and private enforcement agents, while at the same time making clear that the new system is profoundly more efficient than court-based enforcement. Some lenders complain that the National Bank regulation is too restrictive, but it must be noted that, in today's worldwide economic environment, significant deregulation of financial institutions is unlikely to occur. Notwithstanding these few issues, the environment for Getting Credit in Macedonia is very good and improving.

Getting Credit

Doing Business Ranking 2009	43
Doing Business Ranking 2008	51
Legal Rights Index	7
Credit Information Index	4
Public Registry Coverage (% adults)	6.5
Private Bureau Coverage (% adults)	0

Legal Framework

The improvements in the laws outlined in the 2005 CLIR report remain in force. The laws in this area are quite stable and few amendments need to be made and, in fact, few have.

There are a couple of points worth mentioning. Under the **Law on Contractual Pledges**, all assets of an enterprise can be pledged to a single lender. In addition to registration, such a pledge must be published in the official Gazette to be effective. In addition, it is now allowable, under certain circumstances, for a lender to retain collateral in satisfaction of the debt, without the necessity of a public or private sale. There is no indication from stakeholders that this option has been widely used.

The Law on Enforcement is very effective and widely utilized. The key is that the debtor must agree as part of the loan agreement that, once stamped by a notary after default, the pledge agreement becomes an execution document without the necessity of recourse to the court. The lender then provides the execution document to a licensed enforcement agent who gives notice of the execution to the debtor and may thereafter repossess the collateral and sell it. Further details on actual practice will be provided in the section on implementing institutions.

The response to this procedure has been highly favorable. Among the comments from stakeholders are: "excellent results"; "best law reform we have made"; "best law in the country"; and "very efficient."

Implementing Institutions

Key Implementing Institutions

- Lenders
- Pledge Registry
- Cadastre
- National Bank
- Notaries
- Enforcement Agents
- Ministry of Justice
- Courts

Lenders. There are 18 **banks** and 11 **savings houses** in Macedonia under the supervision of the National Bank. Thirteen of the banks have dominant foreign ownership. Although there are no formally specialized types of banks, different institutions focus on different markets, thereby providing different types of lending products to a broad spectrum of the market.

The large commercial banks focus on secured loans to major enterprises, but that focus is not exclusive. At one such bank, 50% of the loan portfolio consists of loans of €1 million or more to large enterprises, 40% consists of loans of €75,000 and up to small and medium enterprises, and 10% are loans of €75,000 and less to smaller enterprises. Of the latter group, a small portion consists of loans of €15,000 or less made without security, but with co-signers and some degree of disclosure of assets owned.

Although the Law on Contractual Pledges provides for it, there is very little working capital lending secured by inventory and accounts receivable. Lenders report that they believe such lending to be too risky based upon the transitory nature of the collateral. In developed economies, this type of lending is very prevalent as a means of providing working capital in cyclical industries and the manufacturing sector. This is one aspect of the market where commercial activity could be considerably encouraged through an increase in lending. Most moveable property used as security is equipment.

There is a general sense that banks in Macedonia are not directly affected by the current international credit crisis. This sense of stability arises because there is little investment in "toxic assets"—securitized mortgage based securities or collateralized debt obligations—and because lending has largely been funded from deposits and capital rather than borrowing from foreign banks (that amount is estimated at 8%). However, others point out that this sense of security may be false; for example, some stakeholders recognize that their lending rates are directly affected by international rates (such as Euribor) and that the equity owners of Macedonian banks are largely foreign enterprises whose ability to provide ongoing capital may be more directly affected.

The commercial banks use in-house lawyers and appraisers rather than private sector professionals. Borrowers rarely use lawyers; the terms of loans are dictated by the banks. Inclusion of consent to notarized execution is standard in secured transactions.

The Cadastre can be a Barrier to Getting Credit: how the cadastre can be frustrating to even an expert.

- Father leaves his house and his legal office to his daughter, who is a notary and highly sophisticated in immoveable property matters
- Father built the office himself and ownership of the house has been established by a court decision and subsequently registered
- However, according to the cadastre, the underlying land is registered in the name of the father's brother
- No one knows how this happened. Best explanation is that when Macedonia was mapped from the air in 1968, the land was put in the uncle's name, probably based upon an interview with some now unknown person on the ground
- The uncle has provided a statement, equivalent to a quit claim deed in our system, that he has no interest in the land
- The cadastre still refuses to issue her a deed unless she provides an historic document that she doesn't have
- Only existing remedy is to sue the cadastre, and until the case is resolved, she cannot use the land as collateral for credit

There is a smaller, but very important, segment of the lending market occupied by banks that focus on small to medium sized enterprises (SMEs). When one such bank entered the market in 2003, SME's had little access to the credit market. The business model is very different from that of large commercial banks. The bank promotes its products extensively, using direct contact in neighborhoods, billboards, sponsorship of social and cultural activities, "cold calls", and other similar techniques to identify potential customers. There are branches in every town in the country and a bank representative has visited "every village" to establish a presence and identify potential customers. Loans are made after extensive due diligence, including hands on investigation of the business and analysis of the capabilities of the customer's managers. Once made, the loans are monitored intensely with frequent personal contact between the lender and borrower. The bank tries to identify problems very early and works with the borrower to solve unforeseen problems. Typically, the loans have high penalty rates and designed and managed to encourage a disciplined approach to repayment from the beginning.

The average loan size is €4000; there is little reliance either on official documents or security. The loans are based upon the borrower's business plan and an ongoing, personal relationship with the customer.

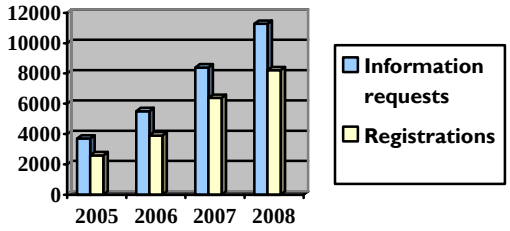
A final player in the lending spectrum is the savings house. While their slice of the market (1 to 2% per the National Bank) is very small, they play an important role in small business development and the creation of an entrepreneur class.

One such savings house has modeled itself on a western-style credit union. This institution has about 8000 members throughout Macedonia and has made loans in a maximum amount of €5000 totaling about €10 million over the ten years of its existence. Its focus is microfinance to small and underserved borrowers and its market includes educational loans, consumer loans, small business loans to physical persons, and agricultural loans. As is typical in the microfinance model, it usually requires two to three co-signers, making the loan more of a community or family obligation than the obligation of a single person.

Many loans are for startup purposes or unforeseen needs: the small merchant who needs inventory, the taxi driver whose vehicle needs major repairs, the small farmer who needs funds to plant the crop, and so on. The average term is 36 months and rates can be substantial. For many customers, the availability of credit is much more important than its cost. Most loans are unsecured; there are no mortgages on immoveable property but occasional pledges on moveable property. Two other points deserve mention. First, the National Bank limits a savings house's loans to two times its capital. Although the demand exists for greater lending, as shown by a 7% annual growth rate, the ceiling prevents the institution from meeting the anticipated need. Second, at least one of these institution wants to develop mobile banking to bring services to all parts of Macedonia.

Pledge registry. The success of the pledge registry is borne out not only by anecdotal evidence from stakeholders but also statistics of use. The trends identified in the 2005 CLIR report have continued to grow. The two key statistics are requests for information and actual registrations. The first is indicative of the extent to which lenders use the registry in making lending decisions and the second is indicative of actual secured loans made. In 2005, the estimate for annual requests, based on nine months of actual statistics, was 3700 and for registrations was 2600. In 2007, these numbers were 8390 and 6380, respectively; through the end of 2008, the extrapolated estimates are 11,272 and 8,211. These numbers confirm a 45 to 50% increase annually in requests and registrations and a steady 30 to 35% in the amount by which requests exceed registrations.

Figure 9: Pledge Registry Information Requests and Registrations



Prior assessments have commented that the fees for use of the registry are too high. In 2003, for example, registration was 2000 denars ($40 at the then exchange rate). Current fees are much lower; 250 denars ($6) for information and 700 denars for registration ($16).

There is a central registry in Skopje and offices in 14 cities around the country. In 2009, the system will incorporate online filing as well as automated search.

Cadastre. The problems that exist with the cadastre have been fully explored in other parts of this report and will not be repeated here. However, one issue directly affects the availability of credit. One of the notary's obligations in documenting and verifying a mortgage is to confirm ownership of the property in the proposed borrower. The inability of the notary to verify ownership because of difficulties with the cadastre "locks up" the capital represented by the real estate and lessens available credit overall.

National Bank. The National Bank supervises and sets standards for the country's financial institutions. It directly impacts the availability in the following ways:

- It operates the credit registry, the only viable credit information system currently available in Macedonia. The information is available to member banks only; trade creditors or other non-institutional lenders have no access. The information is limited, including the following: total amount of debt, number of banks that have lent to the borrower, and broad categories of performance (A,B,C, or D). There is no detailed credit history and the information is only updated every quarter and distributed about a month later. Therefore, some information may be as much as four months old. While a private credit bureau has been authorized by law, it has not yet been established.
- The National Bank regulates capital requirements for banks and savings houses. The obligatory capital reserve for banks is 8%; the average is 15.6% (larger banks are at about 12% and smaller banks are closer to 40%).
- Deposit insurance has been provided since 1995; 17 banks are covered. Accounts up to €10,000 are covered 100%; accounts from €10,000 to €20,000 are covered up to 90%. A new law will extend this coverage to both business and household accounts.
- As credit growth gets higher and higher, the National Bank has modified its reserve requirements and weights for certain types of credit where the quality is getting worse. Prominent among these are consumer loans, including credit cards and bank overdrafts. The National Bank increased the Basel I weight assigned to these loans from 100 to 125 for purposes of calculating obligatory capital.
- The National Bank has the authority to enforce accounting standards. From 2009, International Financial Reporting Standards (IFRS) will be required and the National Bank intends to enforce them aggressively.

Notaries. Notaries are essential to the secured lending system in Macedonia. They perform the following key tasks:

- Verify the ownership of property. With titled property, this is done through the cadastre or the central registry. With untitled property, this is done through an examination of financial statements plus a statement of the owner under oath.
- Verify whether the property is subject to any other mortgages or pledges
- If the borrower is a legal entity, verify that it exists and that the agent has authority
- If required, verify that an appraisal has been obtained.
- If the property is over 20% of the assets of the company, verify that there is an authorizing resolution from the owners or shareholders
- If the debtor has consented in writing at the time of the loan, the notary can rely upon a declaration of the lender that the loan is in default and convert the mortgage or pledge into an execution document. The execution document may be foreclosed and sold by a notary if the collateral is immoveable property; if the collateral is moveable property, the execution document is returned to the lender who then engages an enforcement agent. Generally, enforcement agents will handle repossession and sale of both moveable and immoveable property.

Enforcement Agents. The creation of the private enforcement agent system was revolutionary in Macedonia because it gave credibility to court judgments, mortgages and pledges. The previous court-based enforcement system was largely viewed as inefficient, unreliable and extremely slow. This system is viewed as efficient, reliable, and quick—although some stakeholders complain about the cost.

There are a set number of enforcement agents allocated for each basic court. The jurisdiction of the enforcement agent coincides with the jurisdiction of the basic court. In Bitola, for example, there are 11 allotted spaces, although there are currently only 4 agents who have been approved by the Minister of Justice. Like notaries, enforcement agents may conduct their business as a legal entity. If the entity employs assistant enforcement agents, those individuals must also be approved by the Minister of Justice.

The largest portion of the work performed relates to enforcement of court judgments. One agent reported the percentage as high as 95%. The system is still in transition; by the end of 2008, all of the judgments remaining in the court system are to be transferred to the enforcement agents. Estimates of the number of such judgments varied; one source indicated the number was in excess of 600,000. There is concern that this transfer will overwhelm the enforcement agent system, particularly since most observers assume that a large percentage of those judgments may be uncollectable. Nevertheless, most agree that the transfer is a good thing because it will remove the courts completely from the enforcement process, even if there is some short-term pain.

The law provides for an appeal against the actions of an enforcement agent but the window is short and such appeals are relatively rare. The appeal must be filed within three days and goes directly to the president of the basic court who must decide promptly. For the sale of property, an appraisal is required. This does not cause substantial delay; the appraisal can generally be acquired within 15 to 20 days, and the sale can occur 15 or 20 days thereafter. Even in circumstances where multiple sale procedures are necessary because of lack of bidders at the required price, the sale can be completed within 3 to 4 months.

Courts. The role of the courts has diminished significantly with the advent of private enforcement. Of course, in the case of unsecured debt where a judgment is necessary to liquidate the obligation, the courts will continue to play a role. With the impending transfer of all enforcement out of the courts, the continuing role of courts in secured credit enforcement will be minimal.

The Ministry of Justice. The Ministry of Justice's role is to supervise, license and oversee notaries and enforcement agents. This includes determination of the number and identity of such professionals and the promulgation of the tariffs for their compensation.

Supporting Institutions

Key Supporting Institutions

- Chamber of Notaries
- Chamber of Enforcement Agents

The notary system has been in effect for 10 years. Currently, there are 120 to130 notaries. A notary must be a legal graduate. As with enforcement agents, jurisdiction is coincidental with basic court and allocated on that basis. The original idea was to authorize one notary for each 20,000 in population; now there is no upward limit and the Minister of Justice can increase the number at his discretion. There was a recent substantial increase of authorized positions.

The Chamber of Notaries is an obligatory organization by law that is funded by a 3% fee on gross income of each notary. It provides two training sessions per year for its members. It is active but its leadership is frustrated. From its perspective, it plays no significant role in the selection of new notaries; although applications are provided to the Chamber, and candidates are vetted by the Chamber, its recommendations play no official role in the selection process. The Minister is free to choose as he determines. The Chamber's recommendation is to move to the Croatian model under which the Chamber proposes a list of candidates from which the Minister must choose.

The other source of frustration is the amount of compensation, or reward, notaries may receive. The Chamber believes that rewards in Macedonia are the lowest in Europe and have not been changed in the ten years the system has been in place.

Chamber of Enforcement Agents. This Chamber is in its infancy. Its organizational structure and operation are similar to those of the Chamber of Notaries described above.

Social Dynamics

Lending is alive and well in Macedonia; arguably too much so. Ten years ago, there was very little lending to borrowers other than large enterprises and even that market was very conservative. Today, lending is available to a broad spectrum of society from multiple institutions and on a wide range of terms.

Secured lending is well established and will continue to increase with the continued developed of a reliable cadastre. However, working capital needs of business will not be adequately met until the banks broaden their lending practices to include inventory and accounts receivable-based financing. Home lending will likely also increase as the cadastre improves. However, there is the risk of a significant social cost if such lending is not responsibly done causing too many families face the risk of losing their homes.

The credit information system is not sufficiently developed. An operating private credit bureau is essential to address this need. Interestingly, the degree of interest in such a bureau varied widely among lenders, depending on the focus of their business. A representative of a large commercial bank stated that he had not heard of much interest in such a system while a representative of a bank focused on SMEs expressed great interest in the development of such a bureau. It will take time for it to become effective, given that the existing database controlled by the National Bank will not be available to the private bureau. In short, it will have to start from scratch.

The advent of savings houses helped to remove fear of borrowing. Their message was that people could borrow without shame and could make deposits of small amounts not accepted by the larger banks. These institutions significantly broadened the demographics of borrowers; for example, 47% of a large savings house's customers are women. They involve the community in lending by establishing locally based credit boards who participate in the credit approval process.

But there are warning signs. The National Bank notes not only that the fastest growing segment of the market is consumer loans but also that that sector has the highest default rate. This is similar to the pattern in other European countries where consumer lending has taken hold. Traditionally, European bankruptcy laws exist only for entrepreneurs or corporate businesses. Recently, consumer bankruptcy laws have been introduced not only in developed economies like Germany and Italy but also in economies like Slovenia. Consumer bankruptcy does not seem to be on the radar in Macedonia but it should be.

Recommendations

To Raise Doing Business Scores…

- Expedite the development of a private credit bureau (currently authorized by law) to expand the availability, relevance and detail of credit information more broadly

To strengthen the overall environment for getting credit…

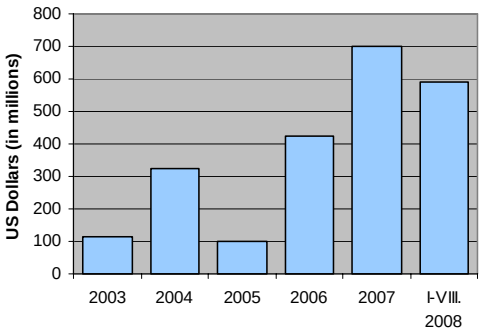
- Support the timely completion of the modernization of the real estate cadastre
- Encourage lenders to broaden their lending practices to businesses, in particular inventory and account receivable financing, after acquired property financing and entire enterprise financing*
- Support the electronic linkage among public registries and increase electronic access to all registries
- Revise the regulation of savings houses to encourage more microfinance lending*

PROTECTING INVESTORS

Introduction

The Macedonian environment for protecting both local and foreign investors has seen noteworthy but uneven improvements since 2005. Essential laws and regulations such as the new Securities Law (2005), and the Corporate Governance Code (2007) have been enacted/ implemented over this period. Given the extent to which laws are currently harmonized with international standards, the remaining challenge for Macedonia is to master their implementation. Key implementing and supporting institutions continue to fall short of their mandates to implement and enforce the well-established legal and regulatory framework, leading to a mixed message for those considering investment in Macedonia. The figure below indicates the previously volatile nature of recent foreign direct investment in Macedonia, although the most recent data (I-VIII. 2008) suggests that a more consistently upward trend may be on its way.

Figure 10: FDI in Macedonia, by year[1]



The reality in Macedonia is that the extent to which investor rights are protected depends on who the investor is. High-profile, international investors and larger local investors report fewer problems with the implementation of the law, however smaller investors and minority shareholders still experience significant barriers to implementation/enforcement. This trend parallels recent efforts of the Government of Macedonia to attract foreign investors to "the new business heaven in Europe"[2] and their concurrent lack of concern for smaller local investors who are, in effect, a "captive audience." Despite poor functioning of the courts in Skopje (and outside Skopje to a less severe degree), the GoM has been relatively successful at keeping larger investors satisfied with their level of protection, although this appears to be achieved largely through informal channels. The public procurement process, however, which is still not transparent or sophisticated enough to reassure larger, especially foreign, investors, and the upheaval experienced during the recent political changes may contribute to a net loss of foreign investors if these issues are not improved quickly. Smaller and local investors, both in Skopje and in other areas, note that the general perception of preferential treatment provided to foreign investors, both in terms of incentives and enforcement of laws, is discouraging local investors. Finally, despite the efforts of several donors, minority shareholders in many companies are either ignorant of their rights or unable to enforce them and as such rarely receive dividends and are still occasionally pressured to sell their shares to the company management at below market value.

Protecting Investors

Doing Business Ranking 2009	88
Doing Business Ranking 2008	84
Disclosure Index	5
Director Liability Index	6
Shareholder Suits Index	4
Investor Protection index	5

[1] Invest Macedonia; http://www.investinmacedonia.com.mk

[2] The slogan for Invest Macedonia's recent campaign reads: "Invest in Macedonia! The new business heaven in Europe.". http://www.investinmacedonia.com/

Legal Framework

The 2005 CLIR report found that the legal and regulatory environment at that time was already based on a sound foundation and required small but essential adjustments in order to fully harmonize with the international community. Since 2005 many of these adjustments – such as the new Securities Law, and the Law on Investment Funds – have been made. This is reflected by the minimal but positive change in indicator scores for the legal framework for both Company and Foreign Investment CLIR categories. Whereas the overall legal framework indicator for Company Law jumped from 80% to 93% between 2002 and 2005, this indicator only increased by 3% to 96% in 2008. The Foreign Direct Investment legal framework indicator has remained relatively steady at 93% in 2002, and 94% in 2005 and 2008.

Trade Companies Law (2004). The Company Law has largely remained the same since the report in 2005. The law's provisions are in accordance with OECD standards and EU legislation particularly with respect to joint-stock companies (both listed and non-listed) regarding:

- The disclosure of the companies' operational and general financial status;
- Disclosure of executive compensation and non-executive board remuneration;
- Cumulative voting when provided by the charter of the company;
- Limitations on the number of directorships of directors and managers;
- Disclosure and regulation of large transactions and related party transactions;
- Non-competition and conflict of interest measures applicable to directors and managers;
- Establishment of baseline director and managerial standards of care that, if breached, can give rise to personal liability;
- Protection of shareholders during reorganizations (merger, acquisition and division);
- Rights of minority shareholders;
- Shareholders' right to information about the company; and
- Accounting requirements applicable to medium and large-sized joint stock companies that are in line with international financial reporting standards.

Key Laws

- Law on Trade Companies (2004)
- Law on Investment Funds (2000), New Draft Law currently being reviewed by the GoM, (2008)
- Law on Securities (2005)
- Corporate Governance Code (2007)

As a result of an amendment to the Trade Companies Law passed in 2007, shareholders no longer have the ability to exercise pre-emptive rights on the offering of new shares. Although this effort to diversify shareholder base could increase the ability of foreign investors to take a stake in Macedonian companies, it also creates a simultaneous disincentive for these same investors when considering their own desire to pre-empt future offerings. At the urging of the international community, the GoM altered this amendment to state that at the time of EU accession, a pre-emptive rights clause would automatically take effect. While a step in the right direction, this amendment does not solve the problem and should be completely reversed to allow full pre-emptive rights as guaranteed in the original 2004 Trade Companies Law.

Securities Law (2005). The new Securities Law enacted in 2005 is the most dramatic change in legislation which took place between the publication of the 2005 and 2008 reports. This amendment replaced the Securities Law from 2000, which had been amended several times causing confusion as to the actual contents of the law at any given time. In addition to stemming this confusion, the new Securities Law harmonized Macedonian legislation with the International Organization of Securities Commissions (IOSCO) Principles and laid the groundwork for EU Compliance. This amendment to the law allows for greater independence of MSEC and provides a basis for enhanced supervision and more effective enforcement. More specifically, noteworthy new provisions address the following:

- Foreign brokerage house subsidiaries in Macedonia
- Insider dealing and market manipulation
- Brokerage house reporting standards
- Disclosure requirements for joint stock companies registered with MSEC

- Capital adequacy of investment firms and credit institutions
- Regulation of Public and Private offering of Securities
- Regulation of the Central Securities Depository

The general perception of the new Securities Law is that it is well-aligned with international standards, however it does not cater well to the relatively undeveloped state of Macedonia's capital market and the limited capital market experience currently prevailing among the investment community in Macedonia. For example, this law calls for self-regulation of the Central Depository for Securities (CDS) and introduces the obligation to appoint independent members to the management body who are not employed by, or otherwise affiliated with the Depository, any shareholder or member of the depository or other legal entity or licensed securities market participant. This culture of self-regulation has not yet taken hold in Macedonia and such a provision currently only increases the opportunity for the CDS to continue unregulated. In addition, in a country as small as Macedonia, hiring someone completely unaffiliated with the organization is unlikely under the best circumstances. This kind of provision will become increasingly applicable and enforceable as the Macedonian Capital Market and the culture of independent oversight continue to develop.

The Guarantee Fund for Capital Markets. In addition to this amendment to the Securities Law, the Ministry of Finance is currently working on an amendment to the guarantee funds for capital market participants in order to further strengthen investor protections. The goal of this fund is to enable settlement of capital market transactions in the case that an investor has insufficient funds to complete the transaction. These efforts are also directed at standardization with EU directives; more specifically Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes**.** These changes, if perceived dependable in the case of default, will go a long way toward increasing investor confidence in the Macedonian Market.

Law on Investment Funds. The Law on Investment Funds replaced the 2000 Law on January 27, 2009. The original law provided for the establishment of open- and closed-end funds but created high barriers for the entry of investment funds. To encourage the development of investment funds and strengthen the overall investment climate in Macedonia, the Ministry of Finance (MoF) (assisted by USAID's BEA project) drafted the recently enacted Law on Investment Funds. This law focuses on harmonizing standards with EU directives with respect to the following:

- Net asset valuation
- Activities of fund management companies
- Range of financial instruments available for investment (i.e. transferable securities and international investment funds)

The law also clarifies the supervisory role of Macedonian Securities Exchange Commission (MSEC) with respect to investment funds. The new draft law provides for a risk management system that enables assessment and monitoring of private investors' portfolios and the total investment fund's portfolio at any time.

The new Law also includes a chapter on acquiring a qualified shareholding in the investment fund's management company stating that MSEC should approve and issue the license for qualified shareholding. In addition, the new law provides for the possibility that MSEC could deny permission for operation of a given investment fund's management company in the case that it began its operations less than one year prior or has not established an investment fund within six months.

The new law will greatly clarify the procedure for investment fund creation and market entry and will strengthen the ability of MSEC to supervise this nascent market in Macedonia. This is an important step in Macedonia's convergence with global markets, as it will increase Macedonia's ability to participate in a multi-billion dollar market while at the same time ensuring appropriate supervision.

Corporate Governance Code (2006). The Macedonian Corporate Governance Code has been developed as a companion to the new

company law.[3] Although it does not seek to replicate the standards set by the Law on Trade Companies, it does incorporate and build on corporate governance provisions provided by the law. The Code is based on the latest OECD Corporate Governance Principles, the OECD White Paper on Corporate Governance in Southeastern Europe, the EU Corporate Governance Action Plan and the new Macedonian Business Code of Conduct developed by the Macedonian Corporate Governance Council and Corporate Governance Codes from other countries.[4]

Application of the Code

The Macedonian Corporate Governance Code is primarily composed of a set of practical provisions for managers, directors and shareholders of joint stock companies listed on the Macedonian Stock Exchange (MSE).[5] It introduces best practices to companies and shareholders with respect to the equitable treatment of shareholders, the disclosure of information, integrity and accountability of managers and directors, and other aspects of good corporate governance that inspire investor confidence. Non-listed Macedonian joint stock companies are also encouraged to comply with the Code.

Enforcement of the Code

Listed companies may depart from the principles and best practice provisions. Due to its voluntary nature, non-compliance with some of the best practice provisions may be justified in certain circumstances. Whether all provisions of the Code can be applied by Macedonian companies is dependent on the company and its shareholders. The MSE listing requirements dictate that companies must explain any deviation from the Code's best practice provisions and shareholders, boards of directors, management boards and supervisory boards must be prepared to enter into a dialogue on the reasons why their company cannot or does not comply[6]. Managers and directors should explain to shareholders in their annual report and during general meetings of shareholders whether, and if so why, and to what extent, they do not apply the best practice provisions of the Macedonian Corporate Governance Code – also known as the "apply or explain" principle.[7]

The Code does not replace or modify Macedonian legislation and companies complying with the Code are still required to comply with the Law on Trade Companies as well. The Code contains references to the Law in order to facilitate differentiation between statutory rules and voluntary best practice provisions.

The Macedonian Corporate Governance Code was adopted by the board of directors of the MSE on June 1, 2006 and has been in effect since January 1, 2007. Since then, compliance has steadily increased among listed companies as a result of the combined efforts of MSE, MSEC, and several donor projects, however few non-listed companies are in compliance. As the code is mandatory only for companies listed on the Super Tier of the MSE, and companies not listed at all on the MSE are subject to significantly less oversight, interviewees believe increased compliance among non-listed companies will be slow to improve.

Implementing Institutions

Key Implementing Institutions

- Macedonian Securities Exchange Commission (MSEC)
- Registries
- Central Register
- Registry for Foreign Investors
- Central Depository for Securities Directorate for Technological Industrial Development Zones
- Courts
- Macedonian Stock Exchange (MSE)

[3] The text of the Corporate Governance Code can be found on Macedonian Stock Exchange Website at www.mse.com.mk

[4] For example, Tabaksblat Code – the Dutch Corporate Governance Code, 2003:47. Mr. Rients Abma of the Dutch Ministry of Finance served as an advisor to the committee during earlier drafting sessions of the committee

[5] Thirty eight (38) companies are listed on the MSE.

[6] The companies listed on the super tier of the MSE are obliged to comply with the provisions of the Corporate Governance Code. Four companies are currently listed on the super tier.

[7] Tabaksblat Code – the Dutch Corporate Governance Code, 2003:47

Securities Exchange Commission. The Securities and Exchange Commission of Macedonia (MSEC) was established by the GoM on June 19, 1992. It is comprised of a president and six members who are appointed and dismissed by the Macedonian Parliament. The Commission has four departments:

- General and Legal Issues
- Licensing
- Capital Market Oversight
- Capital Market Research, Analysis, and International Cooperation

These departments are staffed by a total of 13 employees who specialize to varying degrees in Capital Markets and Licensing.

The Commission's mandate is to ensure the legal and efficient functioning of the Macedonian Securities Market and to protect the rights of investors as laid out in the Securities Law, the law on Investment Funds, and the Law on Takeovers. In addition, the Commission aims to consistently increase public confidence – both local and international – in the Securities Market. As a result of the new Securities Law in 2005, the role of MSEC has changed significantly. MSEC's activities now include the following:

- Regulation of all trading on the Macedonian Stock Exchange (MSE) as well as over the counter (OTC) transactions
- Review and processing of all documentation submitted for issuing securities
- Oversees brokerage houses, banks, and investment funds in their dealings with securities
- Inspection and oversight of the Central Depository of Securities
- Prescribes conditions for trading on foreign exchanges.

Interviews with MSEC stakeholders confirm that MSEC's activities have increased dramatically over the past few years. It is currently providing the necessary oversight with respect to the issue of and trading of securities, however MSEC's capacity is limited by budgetary constraints and a lack of capital markets experts within Macedonia. Interviewees described SEC staff as "overstretched" and reported that staff currently spend a large percentage of their time dealing with administrative issues with little time to pursue further training or to deepen their understanding of individual cases. In addition, capital markets training is not widely available in Macedonia and trainees must often seek opportunities outside the country. In order to increase the ability of MSEC to protect investors and improve the functioning of capital markets within Macedonia, the government must increase funding, allowing staff to expand well beyond the current level of 13, particularly in the supervisory department. In addition, increased funding is required to simultaneously improve the quantity and quality of currently available capital markets training.

Registries. The **Central Registry** (CR) has made great strides since the previous report in 2005. Investors can now register a new business in four hours, provided they present all required documents at the CR. The CR is currently undergoing phase II of reform in which the goal is to allow electronic submission of the application to register a company, and electronic linkage with the Employment Service Agency and health insurance companies so that employees can be automatically registered with these organizations at the time of company registration through the CR. The Central Registry is described in more detail in this report's chapter on Starting a Business.

In addition to these changes, the CR officially established the **Registry for Foreign Investors** (RFI) on October 1, 2008. This Registry was one reform initiated by the Regulatory Guillotine, a project spearheaded by USAID's Business Environment Activity. It is currently only active in Skopje, but over the next 6 months, the system should be launched in every office of the Central Registry throughout the country. As of the time of this assessment, the RFI has handled two cases. The Registry for Foreign Investors was previously a function of the Ministry of Economy but was difficult for them to implement due to administrative hurdles inherent in such a large ministry. Responsibilities are still in the process of being transferred from the MoE to the CR, however reports from interviewees are positive with regard to its functionality thus far.

The Central Depository for Securities. The Central Depository for Securities (CDS) is responsible for maintaining records on all security holdings in Macedonia. More specifically, the CDS:

- Maintains the register of securities
- Issues international securities
- Clears and settles securities based on the principle of "delivery vs. settlement"
- Provides additional services to the issuer of securities.

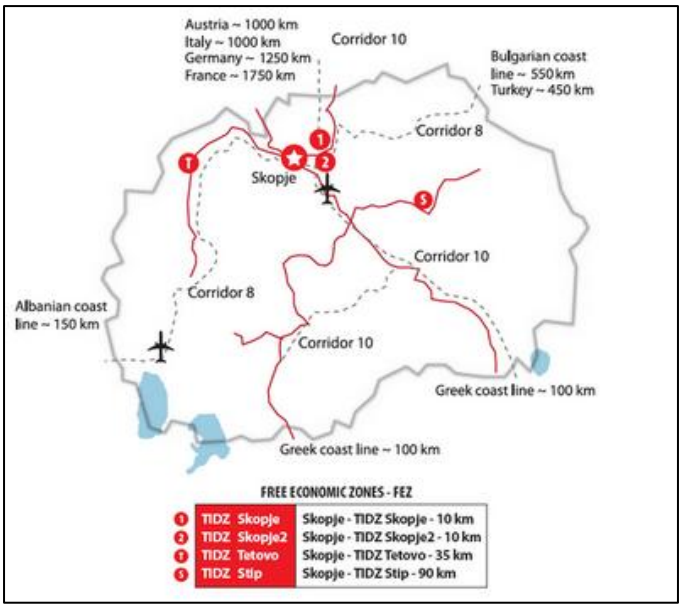
The records maintained by the CDS are the only source of this information in Macedonia giving the organization sole power over the recording and dissemination of information on Securities. In order to obtain this and other information from the CDS, an interested party must first pay an access fee of 16,000.00 Denars (the equivalent of about $340.00 at the time of publication). After this initial amount, additional fees are determined based on the service performed by the CDS and range anywhere from the equivalent of over $2,500.00 for registering a new issue of securities to about $2.00 for implementing a non-trade transfer or preparing certain data. All other transactions are priced individually and fall somewhere along this spectrum, or alternatively one can purchase an annual membership for about $3,200.00 and pay reduced individual transaction fees.

Interviewees confirmed that CDS has greatly improved the quality of its services over the past two years. Whereas two years ago, one could only obtain information regarding shareholder structure after an unpredictable amount of time subject to the biases of personal relationships, this information can now be quickly and easily obtained. MSEC is also relatively satisfied with the recent performance of CDS after a temporary suspension of Director of the Depository this past summer. The one flag raised by several interviewees was that the CDS does not cater to minority shareholders and acts, in effect, as a passive barrier to enforcing minority shareholder rights. While not exorbitant for majority shareholders and organizations needing to obtain shareholder information, CDS fees can prove burdensome to minority shareholders if regular access to information is required.

Directorate for Technological Industrial Development Zones. The Directorate for Technological Industrial Development Zones (TIDZ) is responsible for overseeing and liaising with investors from the point of initial interest in investing through final construction and full functionality.

TIDZs are zones designated for highly productive and technologically advanced clean manufacturing of goods to be exported from Macedonia. Within these zones, special investment incentives apply beyond those normally associated with free economic zones.

Figure 11: Technological Industrial Development Zone Locations



Investors in TIDZs are entitled to a 10–year profit tax exemption and to a 50% reduction of personal income tax for a period of five years, making the effective rate of personal income tax 5%. Investors are exempt from payment of value added tax and customs duties for goods, raw materials, equipment and machines. Land within Macedonian TIDZs is available under long-term lease for a period of 99 years.

Other benefits include completed infrastructure and exemption from utility taxes including natural gas, water, electricity, sewage, and access to a main international road network. Investors are also exempt from paying a fee for preparation of the construction site. Fast procedures for business activity registration are provided in the TIDZ that further reduce the costs of start-up.
The GoM pays special attention to production activities, activities from the IT area (software development, hardware assembling, digital recording, computer chips and the like), scientific research activity and new technologies with high environmental standards, for which

additional benefits are planned within the TIDZs. Investors in TIDZs who operate in these areas are exempt from the requirement of submitting a guarantee as collateral for any customs duty delinquency.

As of the completion of this assessment, the only active TIDZ was located just outside of Skopje proper, however Figure 11 shows the locations of the second zone planned for Skopje in addition to TIDZs planned in Tetovo and Stip. The active zone in Skopje currently has two investors, Johnson Matthey, and Johnson Controls. When interviewed for this assessment, investors inside the zone were generally satisfied with the infrastructure provided in the zone as well as with the fulfillment of the listed incentives. The zone is still under construction and some portions of the infrastructure have not yet been installed, however the government has reportedly been responsive in finding work-around solutions to occasional deficiencies. Interviewees were also in early phases of production and operation, however they report being on plan to meet profitability targets based on zone incentives.

Courts. The Courts remain a roadblock to commercial dispute resolution in Macedonia, however interviewees note a distinct difference between courts inside and outside of Skopje (see box "*A bright spot: Courts outside of Skopje*). Judges are rotated with every change of governing party, and as such are subject to political influence. Interviewees who had been involved in commercial cases stated a general perception that the time taken to resolve the case had discouraged them from using the court system on future occasions.

A bright spot: Courts outside of Skopje

Despite decreasing trust in courts in Macedonia's capital city, perception of courts outside of Skopje is that efficiency is slowly on the rise. Although interviewees in Bitola, Stip, and Tetovo cited a need for continuing education of Judges and incentives to induce quicker processing of cases, they generally viewed the courts as a mechanism for (albeit slow) dispute resolution; not an immovable impasse.

The situation with respect to disputes involving shareholder and investor rights is particularly poor as a result of limited specialized training for judges regarding the stipulations of commercial laws and institutions. Judges who do receive this training can be moved post-training to cases on entirely unrelated topics rendering their training useless. In order to improve this situation, judges must receive frequent specialized training in commercial law and must be able to remain in their positions long enough to gain significant experience in commercial cases. For a more detailed description of the Macedonian commercial court system, please see Chapter 9, Closing a Business.

The Macedonian Stock Exchange. The Macedonian Stock Exchange was established in 1995 and is a private institution funded solely by membership fees paid by listed companies. Listing is open to Companies, the State, State Institutions, and Municipalities, however the MSE lays out requirements for each type of entity in order to remain listed. Full listing requirements are found on the MSE website, however key requirements are listed below:

- Registration in the Trade Register as a brokerage house, bank or subsidiary of a foreign brokerage house;
- License for operations with securities issued by the Securities and Exchange Commission;
- Compliance with all MSE laws and acts;
- Membership in the authorized Securities Depository;
- Minimum of two full-time authorized brokers;
- Compliance with nominal capital and liquid capital requirements as well as an appropriate exposure coefficient as stipulated by the Securities and Exchange Commission

The MSE is still relatively small with respect to the world's major indices. There are currently 28 companies listed on the MSE with a turnover in 2007 of approximately €41.7 billion. Since its creation in 1995, it has developed three indices: the Macedonian Blue Chip Index (MBI10), the Macedonian Stock Exchange Index of Publicly Held Companies (MBID), and the Macedonian Bond Index (OMB).

The stock exchange plays a large role in implementing corporate governance principles by requiring super-tier companies to comply with the Corporate Governance Code (2006) and mandating all other listed companies to explain why they are not in compliance with the Code's best practice provisions.[8] As mentioned above, it also strongly encourages corporate governance principles to be discussed at general shareholder meetings and in annual reports.

Many non-listed companies interviewed reported hesitancy with respect to transitioning to issuing equity and being listed on the stock exchange. The main reasons given for this hesitancy by local investors as well as interviewees from relevant institutions included the following:

- Complexity of listing requirements
- Not interested in large-scale growth of company
- Lack of trust in system of publicly traded securities
- Lack of understanding of the system
- No need for external financing

Although institutions implementing corporate governance compliance will inevitably continue to develop in Macedonia, currently the MSE, as supported by MSEC, has proven quite effective. In order to encourage more companies to meet listing requirements for the MSE, tangible benefits of joining the MSE must be touted, training surrounding the securities market must be increased, and efforts must be made to increase trust in the culture of contracts in Macedonia.

Supporting Institutions

Key Supporting Institutions

- Invest Macedonia
- Akcioner 2001
- Media
- Donors

Agency for Foreign Investments (Invest Macedonia). Invest Macedonia is the primary government institution supporting foreign investment in Macedonia. Its mandate is to attract new investments to Macedonia and to support the expansion of the existing base of overseas companies in the country. Invest Macedonia is comprised of three departments – Investor Servicing; Marketing and Communications; and Administration and Coordination.

Since the transition of governing parties in 2007, the drive to stimulate economic growth has led to a heightened emphasis on foreign investment. This emphasis has manifested itself in an increasingly aggressive campaign to attract foreign investment in countries and regions such as the United States, Western Europe, Russia, China, etc. Invest Macedonia currently has 20 investment agents stationed in 16 countries throughout the world. These investment agents have the sole mandate of attracting high value investments to Macedonia and smoothing these companies' entrance into the Macedonian Market.

Significant foreign investors over the past several years include:

- Johnson Matthey (UK)
- Mobilkom Austria (Austria)
- Societe Generale (France)
- Johnson Controls (USA)

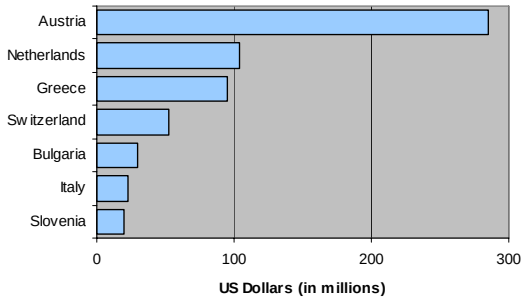
and several have resulted directly or indirectly from Invest Macedonia's efforts. In addition, MoUs have recently been signed with the following companies:

- Montupet (France)
- Tri View (Korea)
- Orlandi (Italy)
- Iskra (Slovenia)
- Borteknik Otomotiv (Turkey).

Figure 12 shows the breakdown of foreign investment by country between 2002 and 2006 in millions of US Dollars.

[8] Macedonian Stock Exchange Super Tier consists of four companies meeting heightened standards for both corporate governance and general listing requirements.

Figure 12: Source of FDI by Country, 2002-2004



In addition to seeking out foreign investors and facilitating their transition to operating in Macedonia, Invest Macedonia also provides a large quantity of useful information for foreign investors on its website including: a building / site database by municipality; relevant tax policies; licensing requirements; incentives to invest; etc.

Invest Macedonia's role as an institution supporting the protection of investors is largely an informal one. Although its mission statement mandates it to "support the expansion of the existing base of overseas companies in the country" it does not specify exactly how Invest Macedonia should execute this task.[9] Thus far it is apparent that Invest Macedonia is carrying out a variety of tasks in order to protect investors to the extent that they will not only stay in Macedonia but also encourage their international peers to invest as well. This includes facilitating relationships between foreign investors and the highest level of government officials and ensuring that procedures surrounding taxation and other incentives, both inside and outside of TIDZs, unfold in a transparent manner and exactly as promised.

At Macedonia's current level of foreign investment, this approach seems to be functioning, however without an established system for providing specific services and a functioning dispute resolution system, as investment increases the ad hoc nature of this arrangement may not be sustainable. This was also stated from a different perspective by several interviewees who noted that Invest Macedonia's campaign to attract foreign investment tends to paint a positive picture of investor protections despite the fact that they may or may not be able to ensure this protection should the volume of cases where protection is needed increase significantly.

Akcioner 2001. Akcioner 2001 was created in 2002 as an NGO with the goal of protecting shareholder rights in Macedonia. The association currently has over 16,000 members from all over Macedonia. Akcioner 2001 is a member of the European Shareholders Group "Euroshareholders" based in Brussels and representatives from Akcioner 2001 take part in the annual meetings of Euroshareholders. Akcioner 2001's activities have not changed significantly since the drafting of the 2005 report, however they remain an important piece of the corporate governance puzzle, and as such are again enumerated here.

Akcioner 2001 is committed to helping small shareholders assert their rights through:

- Education of shareholders about the protection of their rights through workshops and seminars;
- Legal aid and legal counseling, free of charge;
- Advocacy programs to change policy in Macedonia;
- Organization of shareholders for collective actions;
- Mediation between companies and shareholders;
- Education of judges, attorneys at law and the general public.

Since the drafting of the 2005 report, Akcioner has added "Education of judges, attorneys at law and the general public" to their activities as a result of recommendations made in the previous report and several other publications.

[9] Invest Macedonia; http://www.investinmacedonia.com/

Although the CG&CL project's annual survey capturing shareholder awareness of corporate governance standards and practices cited in the previous report has not been updated since 2005, many interviewees confirmed that awareness of minority and majority shareholder rights has increased significantly since 2005 among minority shareholders in larger companies (especially those listed on the MSE). Among smaller companies and many companies outside of Skopje, however, minority shareholders still do not know their rights overall, and are often coerced into allowing the board to take certain actions or even into selling their shares. They rarely receive dividends and, if they are aware that they should be receiving dividends, do not fight for this right because they are intimidated or can't afford the associated costs.

Akcioner's role in assisting these shareholders is increasing, however they have limited funding and capacity to assist in such cases. In order to increase their ability to effectively deal with the challenges faced by minority shareholders, capacity building measures and additional funding must be provided.

In addition to activities added since 2005, Akcioner 2001 now focuses on fostering partnerships between their members and private and public sector stakeholders with respect to shareholder rights and Corporate Governance. These partnerships include relationships with organizations such as the Macedonian Stock Exchange, the brokerage community, the Public Revenue Office, the Central Depository, the Securities Exchange Commission, the Agency for Privatization, the Anti-Corruption State Committee, the accounting and auditing association, the Ministry of Economy and Ministry of Finance, among others. Through these partnerships, Akcioner hopes to leverage the capacity of these organizations in order to deliver services to more minority shareholders than Akcioner could reach alone.

Media. The role of the media in Macedonia has changed significantly over the course of the past several years. Interviewees reported that political pressure increasingly discourages the media from providing an unbiased representation of events both inside of, and external to, Macedonia. This is of particular significance to investors as the media often provides a method of exposing and subsequently discouraging unlawful treatment of investors. In Macedonia, pressure to print only articles that present the government in a favorable light or risk losing one's job is currently extremely high, effectively removing the media as an option for exposing corrupt practices.

Donors.

Business Environment Activity (USAID). USAID's Business Environment Activity (BEA) is a $7.9M project beginning in October 2006. The project focuses approximately 25% of its resources on commercial law and corporate governance reform, and in the first two years of operation has pursued several influential projects. First, the project has augmented compliance with and implementation of the Corporate Governance Code through publication of the Corporate Governance Manual – a practical Manual for Macedonian joint stock companies regarding implementation of good corporate governance practices. Second, the project has assisted with the drafting of a Corporate Governance Code for the banks. Although the corporate governance code does not become mandatory for banks until next year, interviewees cited banks as a beacon on the corporate governance landscape in Macedonia, suggesting that this initiative has already been quite successful. Third, the project has worked closely with MSEC to provide training for MSEC employees, increase awareness among the shareholder community, and promote coordination between MSEC and its main partners such as the MSE. And finally, the project has facilitated the specialization of Judges and Lawyers in commercial topics.

In the future the project plans to pursue its shareholder rights protection awareness campaign through workshops in conjunction with the Macedonian Securities Exchange Commission both inside and outside of Skopje. The project also plans to educate companies on the benefits of using Initial Public Offerings (IPO) as a means to raise capital. As of now, only a few companies in Macedonia (mostly banks) have had this opportunity. In addition, BEA intends to continue trainings for judges and lawyers in the areas of commercial legislation.

Corporate Governance Project (IFC). The Southeast Europe Corporate Governance Project is implemented by the International Finance Corporation's (IFC) and financed by the Government of Switzerland through the State Secretariat for Economic Affairs (SECO) as part of the Private Enterprise Partnership for Southeast Europe. The project is currently active in Macedonia, Serbia, Montenegro, Bosnia and Herzegovina, and Albania, however activities are independently designed and implemented in each country. The program started in 2005 and has a total funding of $2.7M to be used across the region.

The goals of the project in Macedonia are as follows:

- Assist companies and banks to improve their corporate governance practices.
- Work with institutions from the public sector to establish effective corporate governance frameworks.
- Support educational institutions to increase training capacities in the field of corporate governance.

This project was instrumental in the drafting of the Macedonian Corporate Governance Manual and cooperates with the BEA project, among others, to raise awareness surrounding the code and encourage its implementation.

Judiciary Reform Project (World Bank). In 2006, the World Bank committed $12.4M to pursue recommendations from the Judicial Reform Strategy produced by the GoM in 2004. The following are the project's core activities:

- Commercial legislation
- Training of judges / notaries
- Build a new building for court in Skopje

Although this project targets an aspect of the corporate governance framework which still has severe deficiencies, the project has contributed to significant progress in the area of bolstering judicial infrastructure and developing the IT systems utilized by the courts.

Social Dynamics

Political Dynamics. The current modus operandi of Macedonian politics is not conducive to attracting and retaining investment in Macedonia. Each time the ruling party changes, all government officials are removed and replaced with officials from the new ruling party. This lack of continuity affects each of the Doing Business categories, however its effects are especially difficult to overcome in the protection of investors. Take, for example, incentives that have been set by an acting government to attract investors. As soon as the government is replaced, it may no longer suit the government to uphold the promised incentives leading the government to revoke them. As a result investors can never be certain that the conditions under which they decide to invest will remain for any prolonged period of time.

To highlight a more tangible example mentioned above, following the elections in 2007, shareholders lost their right to pre-empt a new issue of shares. According to interviewees, this measure was adopted in order to enable more foreign investors to gain a foothold in companies where one majority shareholder has prevailed since shortly after privatization. However, the lack of pre-emptive rights also acts as a strong deterrent to foreign investors as it limits rights after shares are already held. After elections in June 2008, the law was once again amended to add a clause reinstating pre-emptive rights at the time of Macedonia's EU accession, however during this same period, over 200 laws or amendments were passed by the parliament without proper debate. That the government has the ability to make such sudden changes to legislation without community input is a major deterrent to investors.

According to interviewees, public tenders are also subject to political influence. On several occasions, major international investors have submitted bids for public tenders and by law should have been selected, however they were either wrongfully not selected for the tender, or after being selected for the tender were unable to complete their investment due to obstacles relating to bankruptcy procedures, land rights, construction permits, etc. In order to increase foreign investments in public tenders, this process must become significantly more transparent and accountability for all government officials must be increased.

Local vs. Foreign Investors. There currently exists a general consensus among local investors that they are at a disadvantage relative to foreign investors. Although the government now

permits local investors to take advantage of the incentives available within TIDZ's, the general perception is that only foreign investors are welcome inside these zones. In addition, the government's stated priority is to attract foreign investment in order to elevate Macedonia to the level of other internationally recognized investment hubs. Locals concerned about the form of these investments point out that larger Greenfield investments produce turbulences in the labor market by raising salaries and making Macedonia less competitive on the labor market. Throughout the interviews conducted for this assessment, three points of general consensus emerged. First, local investors do not feel that their rights are protected by the government. Second, the government's strategy is discouraging local investors from starting their own businesses both in Skopje and elsewhere in Macedonia. And finally, the government's preferential treatment of foreign investors is creating a resentful attitude towards the foreign investors who do decide to invest in Macedonia, making locals less interested in helping to protect foreign investors' rights should a dispute arise.

Recommendations

To raise the Doing Business scores . . .

- Decrease the lag between securities transactions and their announcement to the public*
- Improve intermediate reporting of securities transactions
- Increase director liability in transactions detrimental to the shareholder or the company
- Standardize rights of shareholders in suits with international best practices with respect to plaintiff document requests and proof requirements*

To Strengthen the environment for protecting investors overall…

- Increase transparency of public tender process through automation of processes where possible
- Improve institutional coordination and ensure accurate dissemination of information to investors*
- Introduce frequently recurring specialized commercial law training for judges and allow judges to remain in their positions long enough to gain significant experience in commercial cases.*
- Increase funding to MSEC in order to allow for augmented staff and increased training*
- Increase available training for notaries public and bankruptcy trustees in the drafting of foreign investor contracts*
- Reverse amendment to Law on Trade Companies to reintroduce the right of first refusal back immediately instead of at the time of EU accession*
- Increase focus on promoting investment outside of Skopje
- Increase the ratio of career civil servants to political appointees.

TRADING ACROSS BORDERS

Introduction

Trade is Macedonia's future. This is a maxim that cannot, and typically is not, denied; yet, major obstacles to the realization of this future still exist. Little has been done to recognize the scope of the obstacles, much less to remove them.

Though trade has increased impressively in recent years, continued expansion is unlikely in the face of behaviors that fail to recognize the realities of Europeanization and globalization.

Moreover, though imports and exports have seen steady relative growth over the past few years, and the share of imports covered by exports has remained relatively stable, the absolute trade deficit has increased dramatically. This leaves Macedonia in a difficult position in drawing in and retaining much needed foreign currency, and makes Macedonia, with its relatively low GDP and per capita income, look unproductive.

This is not to say that nothing has been accomplished. Indeed, the central government and a number of GoM agencies and institutions have made great headway in seeing that the new standards demanded by Europe are implemented appropriately. This report discusses these successes as well as some of the potential dangers that face those who must implement the new framework of EU compliant legislation.

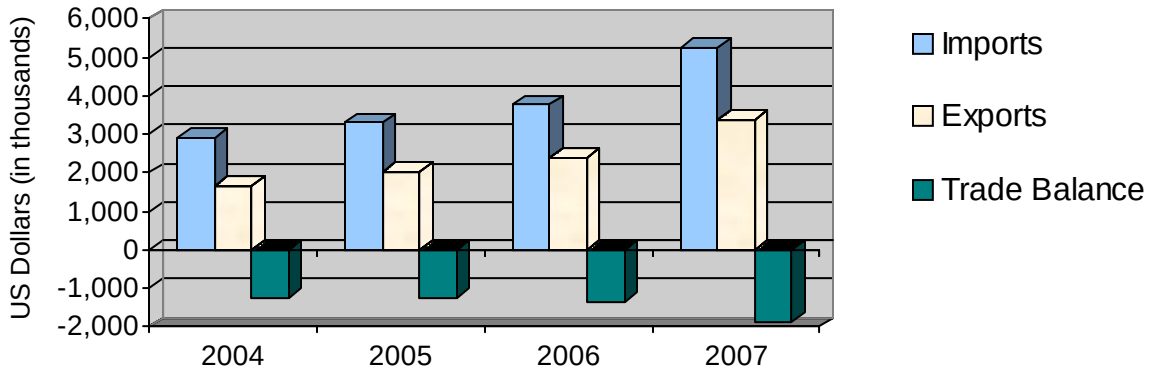
Trading Across Borders	
Doing Business Ranking 2009	64
Doing Business Ranking 2008	76
Documents for Export (number)	6
Time for Export (days)	17
Cost to Export (US $ per container)	1,315
Documents for import (number)	6
Time for Import (days)	15
Cost to Import (US $ per container)	1,325

There are three major categories of obstacles:

- Deficient efforts to raise private sector competitiveness
- Little effective dialogue between and among public and private sector stakeholders, and
- Over-enthusiasm of the GoM in agreeing to EU/WTO demands without commensurate preparation for efficient compliance while also preparing the private sector for the associated benefits and burdens.

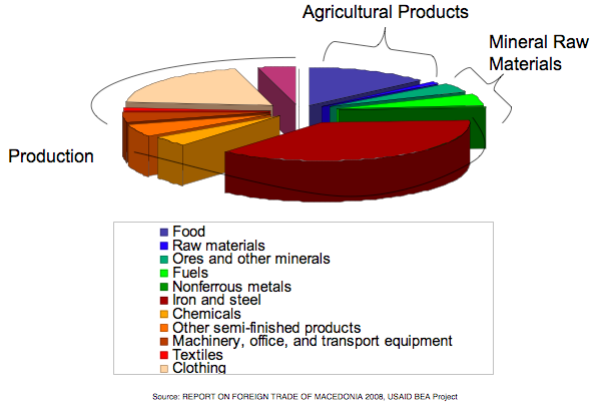
Macedonia cannot thrive as an economically self-sustainable island. Though the Government of Macedonia and most donors support *some* self-sustainability through import substitution as a high priority near-term goal, few doubt that cross-border trade is key to Macedonia's medium and long term prosperity. Aside from émigré remittances, international assistance, and foreign direct investment, exports of goods and services can

Figure 13: Macedonia Imports & Exports



provide the only source of currency income. In other words, Macedonia needs to dramatically develop its ability to export in order to pay for increased imports and to motivate growth in GDP. Trade comes in two varieties: Trade in goods, a familiar concept for most, and trade in services, which is a less understood and, at the international level, far more complex concept. Macedonia is in the early, precarious, stages of cross-border trade in goods. International trade in services is almost non-existent. 2007 exports consisted predominantly of food, industrial and textile products, and raw materials. Very little diversity and very little value added is indicated (See figure 14). Furthermore, the country saw virtually no exports of services.

Figure 14: 2007 Exports by Type of Product



A significant portion of Macedonia's trade in goods is regional (especially Serbia/Kosovo, Albania, Bulgaria and Greece), and remains import-heavy. Many of Macedonia's needs for consumer goods and construction materials are imports, often purchased under highly unfavorable conditions set by trading partners who are more experienced, hail from more sophisticated and more predictable regulatory environments, and who often possess greater bargaining power. That Macedonia lacks a coherent policy and framework for leveling the playing field, and for implementing its own role in international commerce, worsens the problem.

The logic is simple: no state can thrive without international trade, and no state can effectively facilitate and support trade without integrating itself into the global trading community. Until Macedonia moves beyond policy that focuses on compliance-at-any-price with the rules the EU and WTO have mandated, and begins to focus on the regional and global competitiveness of its manufacturing and service sectors, any efforts by the business community and investors (especially foreign investors) to engage in cross-border entrepreneurship will experience much higher risk and transaction costs than necessary.

Legal Framework

Macedonia is very import friendly. So much so, that when certain mandated import tariff liberalizations occur in January 2011, the threat to Macedonian business resulting from more competitive foreign products could be overwhelming. All industries, even those encompassed by the import substitution plan, are suffering from the lack of a realistic trade policy that recognizes the strengths and weaknesses of the private sector, the immaturity of the trade-related regulatory framework, and the maladministration and non-enforcement of the few components of trade-related framework that do exist.

Nonetheless, a sincere effort to establish a modern legal trade framework that operates upon the foundations of EU integration and Macedonia's recent World Trade Association accession is fairly obvious. New laws on trade related issues have sprung up with astonishing speed and efficiency in recent years. In theory, the country's legal framework is sophisticated and reasonably comprehensive. **From a legal framework point of view, Macedonia is ready to do business.** In practicality, however, the legal framework still exists more on paper than in the real world of implementation and enforcement.

Almost all required legislation for WTO compliance has been enacted, and commitments in specific areas are on schedule. Customs law is aligned well with EU and other international standards, and Customs continues to work towards efficient electronic clearance methods and best practices. Investment laws are liberal and provide flexibility, licensing regimes for import and export activities are gradually being stripped away, and standards, while still lagging, are slowly beginning to get attention.

WTO Compliance. Compliance with the principles and basic rules of the World Trade Organization acts as a catalyst for economic reform through policy change, good economic governance, and the establishment of a solid regulatory foundation. Most importantly, it results in economic development through cross-border trade. The WTO begins with the simple principle that all countries are in a position to create wealth by identifying and taking advantage of their resources and productive advantages by cultivating

international markets. All countries have production advantages, either in absolute terms, or in comparative terms.[1] But, since countries naturally tend towards inefficiencies associated with protection of *all* industry, the principle only works if the global playing field is level, transparent, and predictable.

Macedonia's accession to the WTO was one of the fastest in history, and without significant debate either within the GoM, or between the government and private sector. Most member demands were met with reasonable ease. For example, of 150 WTO-recognized service sectors, Macedonia made commitments to liberalize 115. This means Macedonia must change the law for each of these, and then implement those changes. Though this ensures access to the Macedonian Market by other WTO members, it doesn't necessarily mean reciprocal access to other markets by Macedonian companies unless and until those companies are able to compete on their own merits in those markets. In other words, no one abroad will hold the hand of Macedonian business until it can walk on its own.

Participation typically promotes the right mix of top-down policy development and bottom-up community practicality resulting in a solid foundation for comprehensive legal reform and trade development.

The benefits of WTO membership are the gradual but aggressive establishment of a transparent, predictable, and fair economic legal and institutional regime, fair access to markets for foreign investors, fair access to foreign markets for domestic investors, and the growth of domestic industry through competitiveness rather than protection.

A practical issue facing Macedonia related to its compliance with WTO and EU integration is the lack of WTO compliant legislation in the areas of trade remedies. Much effort has been expended on liberalizing the legislative and administration regimes for European and WTO Member Countries, with little concurrent effort in creating an environment that protects domestic industry to the extent permissible under WTO rules. These include laws on antidumping and countervailing duties, which exist, but lack implementing regulations.

Macedonia has yet to create and implement WTO aligned amended legislation protecting domestic industry (as well as foreign industry operating legitimately in Macedonia) from foreign products dumped on the Macedonian Market, and from foreign subsidies and other incentives on products imported into Macedonia.

When looking at economic development through the lens of international trade, barriers to growth are always complicated, and will require a sea change in the way the GoM and donors look at the legal/regulatory framework.

First, the GoM needs to develop a more coherent policy on its economic relationship with the region and the rest of the world. Questions concerning policies on protective treatment of particular industries, state trading issues, treatment of regional partners as compared with others, whether the GoM desires a free trade in services, goals concerning protection of intellectual property, and a host others need to be answered *concurrently* with the development of domestic growth and expenditure policies. Not afterwards.

Second, The GoM must draft and implement a legislative and institutional reform agenda, or roadmap, that declares specific goals and a realistic timeline for *meaningful* compliance with established international norms for trade and provides benefit to both foreign businesses and domestic businesses. These norms are embodied in the World Trade Organization (WTO) agreements. It is important to note that they are embodied in these agreements *because* they are norms rather than because they advantage one group of trading nations over another. The norms facilitate trade for all but need to be implemented appropriately.

Cross-border e-commerce is a relatively small, but important area in which the GoM has inhibited growth by clinging to impractical and archaic rules in two ways. First, because foreign bank accounts are not permitted, and credit card merchant banks still lack trust in Macedonia, Macedonian companies cannot accept credit card payments online; and, second, because there is a flat fee for an export license whether someone is exporting one item or one hundred, the transaction costs for participating in cross border retail sales are prohibitively high.

[1] Comparative advantages are apparent in those sectors where a country's absolute disadvantages are minor enough that it can take over production in sectors that are on the lower end of relative efficiency for others.

Implementing Institutions

Key Implementing Institutions

- Ministry of Economy, Department of Foreign Trade Politics and WTO
- Ministry of Economy, Department of International Trade Cooperation
- Ministry of Economy, Department of Tourism and Catering
- Ministry of Economy, Department of European Integration
- Customs Administration
- Ministry of Agriculture
- Ministry of Foreign Affairs
- Secretariat for European Affairs

The Ministry of Economy (MoE) is the principal implementing body for trade across borders, but Customs and other ministries are critical to the success of the private sector's ability to engage meaningfully in cross-border commerce.

The MoE has achieved much in aligning Macedonian law with European Union and WTO requirements. And, the MoE has also done its share to assist in the rapid growth in the economy on the whole. **The Department of Tourism and Catering** is an excellent example of progress made, having been granted significant new GoM funding to promote tourism, and can in some ways become a model for best practices for other departments. On the other hand, two major obstacles continue to plague the MoE: aggressive compliance with EU and WTO standards that is too often at the expense of pragmatism in the domestic private sector, and a lack of communication, or trust for that matter, between the MoE, civil society and the private sector, or even between the MoE and other ministries (such as the Ministry of Agriculture).

The Customs Authority has also been at the forefront of reform, and is in the process of bringing customs procedures into the 21st century with new technologies designed to make the process more efficient for importers and exporters, thus lowering transaction costs significantly.

Three issues here, however, highlight some of the problems that burden Macedonia generally:
First, Customs, like many of Macedonia's Euro-focused bureaucracies, has implemented many process improvements that are geared to EU integration, but which have little to do with Macedonia's trade with the non-EU region and with the world at large. Though this is important for Macedonia's economic future, it is just as important to concentrate on globalization generally and not just Europeanization specifically.

Second, with all the new EU and CEFTA compliance procedures, as well as a desire to tighten up enforcement at the borders more generally, Customs' ability to expedite goods across Macedonia's borders is severely hampered by other enforcement agencies' ability to quickly and efficiently inspect goods. Veterinary Services, for example, has committed to 100 percent inspection of dairy products leaving Macedonia for other countries. The problem is, however, that Veterinary Services inspectors do not work on weekends, so by Sunday afternoon there may be as many as 300 trucks lingering north of Skopje, waiting to cross the border to Kosovo.

Third, though there seems to be a recognition in the Customs Authority higher administration that Customs serves the dual purpose of protecting the country from fraudulent trade and accounting practices *and facilitating* trade for the private sector, this idea seems not to have caught on at the operational and enforcement levels, where the old socialist norm of the customer is most definitely *not* king, still holds sway.

In spite of the legal framework advancements, Macedonia's domestic industry is adversely affected in ways that can be difficult to account for in policy that is domestically oriented and does not

Planned and in-Progress Donor Assistance to the Customs Authority

- USAID –
  - Single Window Project
  - Software facilitating temporary import of textiles
- World Bank –
  - Infrastructure development at the border with Kosovo
  - IT software interconnectivity between the railroad and Customs
- EC –
  - Border Controls
  - Computerized transit system
  - Alignment with EU legislation
  - Interconnectivity between Customs and Brussels
  - EU Tariff Environment

adequately consider the implementation of a complementary trade policy that includes active and pragmatic communication with major trading partners. For example:

- Domestic export production cannot compete in foreign markets because they have either blocked Macedonia's access (as with Greece) or because they make cross-border prerequisites so difficult (as with Serbia requiring 100% chemical analysis for dairy products);
- Domestic industries, such as construction materials, suffer from a lack of implementation of legitimate trade remedies measures meant to protect against unfair trade practices from abroad; and,
- Lack of enforcement of simple Sanitary-Phytosanitary rules means that agriculture may be under threat from invasive species.

These and other implementation problems serve to undermine the private sector more than to help it. New globalized rules require dramatically new implementation methods.

Supporting Institutions

Macedonia's private sector support institutions should be universally dedicated to increasing the country's exports. This is not happening, and, indeed, the supporting institutions are the weakest links in the chain.

Key Supporting Institutions

- Business Membership Organizations
- Macedonia Economic Chamber National (chamber of Commerce)

Consider, for example, the relationship between two related tourism associations, the **Hotel Association of Macedonia** (HOTAM) and the **Association of Travel Agencies of Macedonia** (ATAM). Both attended a Serbian trade fair, with HOTAM intending to promote Macedonian hotels, and ATAM intending to promote its tour packages, which included hotel stays. Instead of cooperating, HOTAM offered discounted hotel prices to agents who would cancel contracts with ATAM. This is a rather stark example of the poor communication and cooperation within the private sector, and the dangerously competitive behavior that can easily undermine the best efforts *within* sectors to create growth. As pointed out in the wine case study below, there is so much animosity between the vintners and the grape growers, that it now threatens the whole industry. And, even across sectors such as dairy, there is so much mistrust that producers are not even discussing concerted efforts to affect reform in the government that would clearly benefit all.

Finally, as described in greater detail elsewhere in this report, the development of capacity in the legal profession and entrepreneurial private sector is critical. Though some of the benefits of the above recommendations can accrue by default, most will accrue only if the business and legal communities take advantage of them.

Social Dynamics

Old ways of doing business don't work anymore. No longer is state control over commerce the norm; so why should government and private sector alike continue to operate as though this is the case? Modern business practice demands a bottom-up structure in which private sector competitiveness and demand drives government action.

This should be especially true in a country like Macedonia, which is about to embark on a policy of almost complete openness with the EU and all the rest of the members of the WTO. Macedonia has two choices in the coming few years: allow the trend of poor competitiveness to continue, which will almost assuredly result in the demise of many, if not most, Macedonian-owned businesses, but will allow foreign business to thrive and create employment; or, Macedonia can take a middle approach and expend significant effort in increasing dialogue with and among the private sector, by listening to its needs and, where appropriate, creating targeted assistance programming to contribute to its success. At the very least, the government, donors, and associations must give Macedonian business a fighting chance at survival by teaching it how to stand on its own and to *prosper* on its own.

Recommendations

To raise the Doing Business scores . . .

- Continue to decrease the time it takes to get goods across the border

- Increase the capacity of Customs and other agencies to complete their required checks efficiently and expeditiously

- Train Customs officers to be both vigilant *and* customer oriented instead of focused only on enforcement

- Revisit the CEFTA agreement and become more focused on regional as well as global trade*

To strengthen the environment for trading across borders overall…

- Provide demand-driven sector-specific global competitiveness support

- Engage all segments of GoM in the economic growth dialogue*

- Develop a multi-agency approach to reduce the numbers of checks required for export

- Revise the rules on electronic commerce and foreign bank accounts

Donor involvement in, and guidance of, Macedonia's integration/compliance process is critical, and achieving these objectives will require a substantial commitment on the part of the GoM. It will also demand investment in a team of local and international experts that answers directly to one minister, but cooperates fully across all ministries, civil society, and the private sector.

An international trade team/office would analyze the regulatory and institutional framework through the lens of international trade, and would be responsible for gathering the information necessary for the GoM to make appropriate decisions. For a country to effectively develop its trade regime, it must make *all* legal, regulatory and institutional decisions in lockstep with its trade policy and roadmap.

CASE STUDY: Macedonia's Wine Industry – Waiting for Zero.

Wine enjoys a long tradition in Macedonia, and some of the varietals and vineyards are widely praised around the region and Western Europe. So, it is natural to expect, even in an industry that is characterized by pretty tough global competition, that Macedonia would seek to promote domestic growth in the sector, especially due to the multiplier effect wine has on the growth of other sectors such as tourism. With substantial donor assistance, the industry *has* grown significantly in the past few years, but now faces a painful future.

At a glance:

- About 940 thousand hectoliters were produced in 2005, only about 11% of which was bottled wine. The rest was sold domestically and abroad as bulk wine, a product with low added value.
- The sector saw growth from 28 wineries in 2003 to 45 in early 2007; and, after many years of slow decline in wine production, growth by approximately 15% per year between 2004 and 2006.
- Three companies control more than 80% of production.
- Approximately 70% of total production is exported, but the largest profit percentages, by far, come from the high quality, domestically sold bottled wines. This is the segment that has the most potential and receives the most attention from donors.

On January 1, 2011, tariffs on wines imported to Macedonia from the European Union will be set to zero. The direct effects of this, combined with the indirect effects of other peculiarities in Macedonia, will almost certainly result in severe decreases in wine sales, if not the complete destruction of the domestic industry.

The following are some of the problems that make wine a good showcase for Macedonian private sector problems generally:

- Lack of communication between relevant government authorities
    - The Ministry of Agriculture oversees the industry from farm to winery, and the Ministry of Economy takes over after bottling/barreling. Though the industry demands continuity in government treatment through the entire value chain, the two relevant ministries communicate only minimally.
- Lack of communication between GoM and the industry
    - Public private dialogue has actually decreased recently, with both sides blaming the other for the breakdown, and with the Competitiveness Council collapsing.
- Poor communication, and misunderstanding of cooperation, within the sector and with related sectors
    - Though efforts were made to develop a Macedonian wine cluster, communication between wineries has been more infighting that cooperation. The concept of private sector led demands for reform is almost unknown. Even then, only 11 wineries out of 45 are members.
    - Wineries and grape growers have been at such odds over price that the relationships have occasionally completely broken down. One winery went two years without producing its award winning Vranec because it was unable or unwilling to purchase enough grapes.
- Low capacity in trade and contract matters
    - Interviews suggested that the wine industry is little different from other sectors in Macedonia. Management and legal staff, where there are legal staff, have poor understanding of international standards and contractual methods for the efficient allocation of risk.

CASE STUDY: Macedonia's Wine Industry – Waiting for Zero. (contd.)

- High transport costs
  - The poor quality of some of Macedonia's roads and the unfair bargaining positions of foreign shipping companies have led to burdensome costs for transporting wine in and out of Macedonia.
  - The cost to ship a full container from Skopje to Thessaloniki is approximately the same as the cost to ship a container from Ho Chi Minh City, Vietnam to Thessaloniki.
- Slow, burdensome export procedures
  - Trucks bound for the EU can be delayed for as much as 3 days.

ENFORCING CONTRACTS

Introduction

The World Bank's Doing Business Project views enforcing contracts through the classical lens of the time and cost burdens associated with resolving a commercial dispute in the national judicial system. Renovation in the legal framework and development of more efficient court procedures over the past several years have led to significant improvement in Macedonia's Enforcement of Contracts ranking – from 81st in 2008, to 70th (of 181 countries) in 2009. This result puts Macedonia in the average range among 25 Eastern European and Central Asian countries. Moreover, Macedonia was a World Bank "Top 10 Reformer" in 2006-07.[1]

Nonetheless, Macedonian growth rates have not achieved increases in recent years similar to those of the region,[2] and do not seem to reflect the increases we might expect to see from the Doing Business results. Furthermore, in the highly competitive Southeastern European market during times of global economic stagnation, the mood of Macedonian business is somewhat gloomy about the future.

For this analysis, we have looked beyond judicial dispute resolution as the only aspect of Enforcing Contracts. For most of Macedonia's present and future commercial partners around the region, Europe, and the rest of the world, enforcement of contracts is as much, if not more, about *avoiding* disputes and the availability of reasonable *alternative* dispute settlement mechanisms, as it is about going to court.

This is the environment that Macedonia has enthusiastically agreed to participate in.

Macedonia's real economic growth over the coming few years will depend on its ability to adapt to a rapidly changing commercial environment. The reality is that Macedonia's improvements have resulted largely from the business community's improved ability to cope with the realities of business in an economy that has held on to a somewhat archaic, inwardly focused, and slightly isolated structure. And, while the economy has stagnated to some degree due to shortsighted implementation policy and lack of dialogue with and among the private sector, the political Macedonia that is outward looking has made promises to the region, the continent, and the rest of the world that Macedonia will be ready to participate according to international standards in very short order.

Enforcing Contracts

Doing Business Ranking 2009	70
Doing Business Ranking 2008	81
Procedures	38
Duration (days)	385
Cost (% of claim)	33.1

So, while the government and donors have hurried the development of a sound legal framework, it is one that will leave the private sector behind unless huge efforts are undertaken both to develop adequate implementation mechanisms, and to build the capacity of the private sector to compete within the new outward-looking framework.

The bottom line is that the business community is grossly unaware of its need to change the way it operates, and any comprehensive analysis of enforcement of contracts needs to consider this.

Success in the area of enforcing contracts will result from the development of a *culture of contract* in the legal and business communities, rather than from rapid and efficient resolution of disputes.

[1] See generally,http://www.doingbusiness.org/ExploreEconomies/?economyid=116

[2] See, e.g., http://econ.worldbank.org

Legal Framework

The 2005 Macedonia CLIR update[3] described a framework that was basically solid, and only lacking a few areas that needed work, particularly with the notary law and the recommended adoption of the United Nations Convention on Contracts for the International Sale of Goods (CISG).[4] A practical notarial system has now been adopted that will, presumably, lead to more efficiency in both contract adoption and enforcement (after a judgment is given in a dispute), and the CISG has been adopted and ratified.

Ratification, in 2006, of the **United Nations Convention on Contracts for the International Sale of Goods (UNCISG),** is one of the final steps in the process of modernizing the legal framework for the efficient enforcement of contracts. The story behind its adoption, however, tells of the considerable difficulty the GoM has had in keeping up with the demand, and its own desire, for reform. The CISG could have been adopted by Succession when Macedonia became independent in 1993, but when Macedonia notified the United Nations of all the conventions in which it intended to retain membership, the CISG was inadvertently omitted. The situation was only incidentally noticed and rectified by the Government of Macedonia in 2006.

Alternative Dispute Resolution legislation has been given only superficial attention. A Law on Arbitration is in force, but is considered by many to be weak, and has resulted in an abysmally low number of arbitrations.

The **2006 Arbitration Law**, based upon the UNCITRAL Model Law on Arbitration, has been given several country-specific provisions modeled after the Croatian experience:

- The New York Convention on Recognition and Enforcement of Foreign Arbitral Awards is applied without a reciprocity requirement;
- Awards are enforceable immediately by an enforcement agency rather than by the court; and,
- A complaint for annulment under very limited circumstances can be submitted.

The first two country-specific provisions were added to make arbitration in Macedonia an attractive option for foreign parties, a move that indicates the government's interest in promoting Macedonia as a center for arbitration.

A complaint for annulment can be submitted only on the following grounds:

- There was lack of capability of the party involved to be party in arbitration agreement
- the arbitration clause (or agreement) was never actually concluded
- the plaintiff was not duly informed of the nomination of the arbitrators or of the start of the arbitration procedure
- the arbitration decision is based on grounds not covered under the arbitration clause/agreement), and,
- the composition of the arbitration court and arbitration procedure are not in accordance with the arbitration clause/agreement.

In the words of an interviewee:

"We are a very legalistic people. If something is not expressly permitted by the law, we tend to assume it is forbidden."

The real problem is not, however, with the arbitration law, but with the public perception of the Law on the Economic Chamber of Macedonia (2004) and the Law on Chambers of Commerce (2002). The law establishing the Economic Chamber of Macedonia specifically allows the establishment of an institutional arbitration tribunal. The law allowing the establishment of other trade/commercial associations and chambers of commerce does not include such a provision. The Law on Arbitration specifically requires arbitration to be conducted via *institutional arbitration*. It is assumed by many that the interaction of these laws means no other arbitration tribunals may be established, and that they must rely on the "official" tribunal at the Macedonian chamber. The Macedonian Chamber tribunal has been largely ineffective, having heard only 50 disputes – none of them wholly domestic – in its entire existence.

Macedonia is also party to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, but there appears to be very little understanding of the law or the benefits it provides in the legal and business communities.

[3] See http://www.bizlawreform.com

[4] See generally www.uncitral.org

Most other recommended legislation was put into place between 2005 and 2007, and the resulting improved efficiency clearly brings Macedonia's scores up, at least, as discussed above, with regard to judicial resolution of disputes. Significant additional issues, however, face the courts as implementers of the legal framework.

Implementing Institutions

Key Implementing Institutions

- Courts
- The Commercial Bar

The 2005 CLIR Update referred to a coming revolution in **the courts** that would result in dramatic improvement with the implementation of the new **Law on Litigation Procedure** in late 2005. The new law was designed to reduce the time spent on individual cases by judges by minimizing the "investigative" role of the judge so that the judge may act more as a referee, by requiring parties to submit evidence quickly and efficiently, by placing deadlines for submissions earlier in the process, and by removing many of the former possibilities for appeal. In other words, the new law puts much more of the burden for efficiency on the parties and their lawyers than on judges and court personnel.

In spite of the significant improvement promised by the new law, however, little has changed in the way cases are actually handled. A specialized commercial court or commercial division of the existing court structure has still not been established; the approximately 600 judges in Macedonia are dealt cases arbitrarily, without consideration of a judge's particular skills and experience, and without regard for the type of case or the amount of money in dispute. Cases of high value (indicating that they should be resolved quickly) must compete on an even footing with nuisance cases and unpaid utility bills. Judges' skills remain generally low, but more importantly, the skills of the lawyers representing clients in court are typically described as, at best, deficient, and, at worst, abysmal.

Further, the legal community, especially **the commercial bar**, has been trending strongly towards oligarchic behavior, with fewer and fewer firms controlling dramatically disproportionate shares of the legal business. As the oligarchies become more powerful, the need to be competitive diminishes.

Supporting Institutions

Key Supporting Institutions

- Lawyers
- The Law Faculty
- Bar Associations
- Arbitration Centers

If economic growth cannot survive without many of the accepted components of the rule of law, and the rule of law cannot exist without **lawyers**, then logic dictates that economic growth demands lawyers.

Though Macedonia's high **law faculty** enrollment – among the seven law faculties servicing a population of approximately two million -- would suggest saturation of the market, because demand for commercial legal services remains artificially low and very few graduates actually pursue careers in law, the number of lawyers entering the market remains low. And, those who do enter the market remain ill-equipped to provide adequate counsel.

The recently adopted **Bologna Process** has the potential to improve the education of lawyers, but only if it is implemented appropriately and law students are given the individual attention and innovative curriculum they need.

The concept that education does not end with graduation from a university, and should instead continue in professional life, is beginning to gain some credence in Macedonia, and is particularly noticeable in the legal profession. There are a number of lawyers - many educated abroad - who are treating law much more like a business than ever before. These lawyers recognize the need for proper management, continuing legal education, professional responsibility, client development, and, most of all, a change in professional thinking from the notion of lawyers as problem solvers to the notion that lawyers can keep problems from arising in the first place. Prevention of problems has the potential to reduce transaction costs for business and can even contribute to economic growth. The risk here, however, is that these lawyers tend to be a part of a growing legal oligarchy and are increasing their professional capacities only insofar as it helps them strengthen their place in the oligarchy – in other words, they are not competing against all the lawyers in Macedonia, only the handful that present a threat. If and when the oligarchy solidifies, there may be little incentive to grow capacity.

The Government, civil society, and the donors could do significantly more to help create the necessary market demand for lawyers. There is still a strong tendency in Macedonia, as is common in formerly socialist countries, to think of the legal profession as one which exists only to serve others, rather than one which exists in part to make money and facilitate business. Therefore, though existing regulations make the law practice much simpler to operate efficiently than it was in the past, firms of two or more lawyers are still fairly rare, there remains little perceived demand for their services in the business community, and there is a fairly high degree of complacency on the part of lawyers. This could be due to the perception that there is no one out there to help them build capacity, and/or a vestige of the socialist notion that lawyers should never promote themselves as entrepreneurs. It also remains that advertising – even informational websites – is not permitted; and, client development is frowned upon if not prohibited.

The lack of useful **bar associations** presents another significant issue. The most recent Law on Advocacy requires all lawyers to join a chamber of lawyers. In order to form a new chamber of lawyers, at least 851 members are required, which would amount to around half the licensed lawyers in the entire country. Therefore, lawyers must, de facto, become members of the National Chamber of Advocates, an institution widely accused of being lax, and run by elites who care little about the needs of small lawyers, especially those who practice in far-away towns like Bitola and Stip.

The development of sector-specific **arbitration centers** is an obvious next step in the creation of a culture of contract; yet, none exist outside the "official" center associated with the Economic Chamber of Macedonia. Though demand remains relatively low for arbitration in Macedonia, the establishment of programming should increase the demand, and at least begin to open the market for foreign clients willing to enter into arbitration agreements calling for dispute resolution in Macedonia.

Thus far, the reasons for the complete lack of arbitration at the domestic level seem to be focused on the lack of capacity in the private sector rather than reluctance to allow or support it by the public sector.

The Bologna System of Education:

The Bologna Declaration on Higher Education, which is a part of the *Aqui Communitaire* process for integrating into the European Union, was adopted by Macedonia in 2005. The process requires that students who wish to become licensed lawyers, making them eligible to go before a judge, obtain a 3-year undergraduate degree and follow that with a 2-year masters degree. The old system provided for a 4-year undergraduate program with no mandatory masters level study. The process also requires certain basic curriculum changes. 2008 will be the first year for enrollments into the second stage – the 2-year masters – and, predictions about whether large numbers of students will opt for the study were highly mixed. The outcome thought most likely, that since so few lawyers presently earn well, many students would make the economic decision to end their studies after three years and take their chances in the blue collar or business communities, was not borne out. In fact, some 90% of students enrolled in the second stage, perhaps indicating new faith in their ability to become productive professionals.

Some reasons cited include:

- Deals are typically done without lawyers, since lawyers are thought of as fixers rather than preventers
- Lawyers have an incentive to ask for foreign arbitration – foreign arbitration amounts to a holiday abroad
- Lawyers believe it is better to have layers of control in court than to have the flexibility of arbitration
- Creditors once liked long procedures because of high interest rates – old habits die hard
- The business community lacks the knowledge of, and capacity to, take advantage of the benefits of arbitration
- Companies do have lawyers, but they lack sufficient skills, and they spend much of their time in regulatory compliance procedures, and,
- Firms, except for a very few elite establishments, rarely specialize in commercial law because demand remains low.

Social Dynamics

Poorly drafted contracts should be an obvious barrier to enforcement. Contract problems arise in two places. First, many domestic businesses do not see the utility of using lawyers to draft contracts or other commercial documents. Second, many lawyers are not aware of all of the changed laws and circumstances present in Macedonia and, therefore, their contracts do not reflect current legal realities. For example, there should be reference to the ability to arbitrate disputes in current commercial contracts and it is highly doubtful that a number of contracts in Macedonia contain this type of provision. Without a properly drafted contract, certain remedies may not be available to the injured party or the issue of damages may not be clear-cut.

A lawyer may not be needed for every commercial transaction, but legal professionals should be involved at the very least in designing standardized legal forms needed to conduct business. In countries that have older, established commercial laws, many contracts have been standardized and are readily available through various outlets. These include standard powers of attorney, residential lease contracts, bills of exchange and other commercial instruments, and bills of sale. Standardized forms are not readily available in Macedonia and both business owners and legal professionals expressed a desire to have such forms.

Recommendations

To raise the Doing Business scores . . .

- Very little has changed from 2008 to 2009 in this area. Improvement in the ranking will still come only from continuing to clear the courts of unnecessary claims, and by changing the case distribution system

- To strengthen the environment for enforcing contracts overall…

- Efforts should be undertaken to improve contract drafting skills. This is an immediate issue since the notary system will soon be introduced in Macedonia.

- Law students should be exposed to contract drafting either through the existing research and writing course or through the introduction of a new commercial drafting course, something not presently required by the Bologna Process. This new course could require students to draft a variety of different transactional (i.e., non-litigation) documents such as contracts, bills of sale, and commercial leases. Students would draft several contracts of varied length and subject matter.

- Additionally, practical skills training should be available to transactional lawyers and notaries through the Chamber of Advocates or another specialized bar association. Even if a separate training course on commercial legal drafting cannot be developed, it would be useful to think about adding in some practical skills elements into existing training modules. For example, the current trainings for advocates on alternate dispute resolution (ADR) could include a segment on how to draft contracts with appropriate ADR provisions. Also, work could be done through professional associations to develop standardized commercial transaction forms.

- In addition to improving the quality of contract drafting, it would be useful to have businesses recognize the utility of using lawyers for legal issues, and that it may be cost-effective to use a lawyer before there is a contract dispute. This could be accomplished by having the Bar Association make presentations to business associations such as the various chambers of commerce on the importance of legal services

Legal profession capacity building, aside from the legal/regulatory reform measures discussed above, should consist of:

- A post-graduate clinical program. In the present circumstances of low capacity and a paucity of law firms able to hire young lawyers, few law graduates can achieve the skills necessary to adequately counsel clients. One novel way of resolving this problem is through the establishment of a commercial legal aid program that pays law graduates a nominal wage to work with an established local lawyer, obtain intensive training through existing capacity building programming, such as the BEA Project, and, provide gratis legal advice to qualifying entrepreneurs in return. The program would benefit each participant in the following ways: the law graduate by providing a salary, a place to work, training, and a built-in client base for the future; the host lawyer by helping to train a future partner and by helping to establish a

client base for the future; and, the entrepreneur through the provision of free advice. This could be an excellent way of motivating the development of a culture of contract in the business community

- Substantial training in contract drafting and alternative dispute resolution, and,
- Training in law practice management. The law firms the team visited still clearly lack basic skills in running a business.

CLOSING A BUSINESS

Introduction

In the 2003 CLIR report, the bankruptcy system of Macedonia was described as under "imminent threat" from pending legislative proposals that would have marked a definitive step backward. By the time of the 2005 CLIR report, the threat had lessened and a new law, closer to international norms, was under consideration by the Parliament. Soon thereafter, the goal was achieved and a new bankruptcy law was approved with the passage of Law 34/2006 the next year. This law is similar to the one outlined in the 2005 report and completely revamps its predecessor, the 1997 law. It now provides an excellent platform for the improvement of bankruptcy practice in Macedonia.

However, much remains substandard in the bankruptcy system of Macedonia. There is an inadequate data base from which meaningful conclusions may be drawn concerning the processing of cases. This lack is recognized by the Bankruptcy Department of the Ministry of Economy and a project is underway to develop a source of more reliable data. The caliber and training of trustees continues to need improvement. The Chamber of Trustees has been in existence for about a year but is still in its infancy. However, there are committed professionals involved in the Chamber who are dedicated to implementing its mission. Adequate compensation for trustees remains a serious problem.

The courts continue to act as a bottleneck in the resolution of cases and are generally more focused on procedural issues than on the urgency of solving the problems of the insolvent company. There is widespread support among stakeholders—judges, lawyers, trustees, government officials, creditors, lawyers—for the implementation and development of a specialized commercial court in Macedonia.

Primary jurisdiction over the administration of bankruptcy cases now lies with the Ministry of Economy. The Ministry is taking this responsibility seriously. As is more completely explained below, it has established a department of bankruptcy, has promulgated numerous standards for trustees, and has created at least two other advisory groups on monitoring and improving bankruptcy procedures.

Closing A Business

Doing Business Ranking 2009	129
Doing Business Ranking 2008	130
Time (years)	3.7
Cost (% of estimate)	28
Recover Rate (cents on the dollar)	16.7

Few cases have been brought under the new law and it is not well understood. The resistance to embracing the new law is illustrated by some stakeholders who expressed the sentiment that both the 1997 law and the 2006 law are "too big and complicated" and that it would be best if the 1989 law that predated both were still in effect. Although the law contains reorganization procedures that largely conform to international standards, there have been only a handful of such cases. Much of the time of the courts is consumed by finishing out cases filed under the 1997 law and, in several cases, those filed under the pre-1997 law.

Bankruptcy as an effective tool to maximize value for the benefit of creditors, to return underutilized assets to productive use, and to provide a transparent and fair process for resolution of claims has yet to take hold in Macedonia in a meaningful way. The focus in the future must be on creating adequate institutions to implement the law, education all stakeholders on how the law works and its benefits to the economy, and providing professional training to the key players—trustees and judges—as well as meaningful education to the larger constituencies affected by the law.

Legal Framework

Key changes from 1997 Bankruptcy law. The 2005 CLIR Report identifies thirteen areas where significant changes were contemplated. Generally speaking, each of these areas was addressed in the law as it was passed. Additional comments are as follows:

Board and Assembly of Creditors. The authority of each of these bodies is more definitely spelled out. As noted in the 2005 Report, the law contains a significant shift of control away from the court and to the creditors. Two provisions illustrate this

point. First, a creditor who commences a case may nominate a trustee from the list of licensed trustees. The Court is obligated to appoint that trustee in the case (Article 31(1)), so long as the trustee is otherwise qualified. If the debtor commences the case, the bankruptcy judge appoints the trustee. In either case, the trustee may be changed by vote of the first Assembly of Creditors. Importantly, all votes in the Assembly are determined by a majority of claims voting, not a majority of all claims.
Removal of almost all priorities. Unsecured priority claims are limited to wages, pension and disability payments to employees during the three months preceding bankruptcy, plus occupational diseases and current unpaid vacation payments. There is no priority for unpaid general fund taxes or amounts due to other specialized types of creditors.

Secured creditors are subject to the automatic stay. In the past, secured creditors have been exempted from the reach of the stay. Now, they may request to be exempted and the trustee may prevent exemption by providing adequate protection.

Notice. As noted in the 2005 report, notice provisions have been improved. A key point is that the burden is shifted from the court to the creditor; in previous practice, the court had an affirmative duty to confirm that a party was notified; now, notice is presumed adequate if the posting procedures are followed. In those circumstances where specific notice is required, it is sufficient if made to the address in the Central Register.

Streamlined preliminary procedures. Previous laws have had cumbersome issues of proof concerning insolvency and the basis for opening a procedure. The law now eliminates the need for a preliminary procedure when a debtor commences a case and simplifies the proof necessary for a creditor-commenced case.

Remaining problems. Some problems remain that may need legislative attention. Among these are:

Avoidance actions. The law contains a comprehensive set of avoidance actions that allow a trustee to set aside pre-bankruptcy transactions harmful to the estate or unfair to other creditors. However, they are complicated and not well understood. Some stakeholders have suggested that a more simplified regime would be more appropriate for Macedonia.

The Open/Close problem. A large number of cases are known as "Open/Close". While some are legitimate "no asset" cases, the anecdotal evidence is that many of these cases are brought by debtors after assets have been stripped through pre-bankruptcy fraudulent transfers to related entities newly created by the debtor's founder. Usually, the court appoints a forensic expert, but not a trustee, to review the financial condition of the debtor. The scope of this review routinely includes only the debtor's current financial condition, not transactions that may have caused its stripped down appearance. Upon receiving a report that there are insufficient assets to proceed, the case is closed and the debtor is stricken from the register, in effect "discharging" the legal entity and allowing the founder to continue in business in his new enterprise. But the open/close problem can be controlled if effectively used. The current avoidance procedures are legally adequate to address this problem but the law does not provide an adequate funding source to pay for an investigation and does not mandate that either a trustee be appointed to make such an investigation or that the forensic expert's task be expanded to include it.

Limitation on number of cases for trustees. The law limits each trustee to three active cases. This was included in the law over the strong opposition of the World Bank. This restriction unduly limits a trustee from building an adequate practice and is particularly illogical because trustees may be licensed as legal entities employing many individual trustees and supporting experts.

Implementing Institutions

Key Implementing Institutions

- Ministry of Economy
- Courts
- Cadastre
- Trustees
- Board of Creditors
- Assembly of Creditors

The Ministry of Economy. Primary responsibility for bankruptcy now lies with the Ministry of Economy, not the Ministry of Justice. Whether this dichotomy will continue in the future is unknown and there are some stakeholders within the Ministry of Justice who believe supervision of bankruptcy properly should be the job of the courts.

The Ministry of Economy has established a bankruptcy department to fulfill these duties. It has many projects on its plate and could use additional resources to fulfill its ambitious mission.
It has overseen the creation of numerous standards and rule books governing the activities of trustees and the administration of cases. These include a Code of Ethics, rule books on examinations and licensing of trustees, and standards for the performance of trustee duties (see box *"Rule Books for Trustees"*). Though not perfect, these are very helpful and provide an important baseline of information for trustees in doing their jobs.

The standards for the fees, or "rewards", for trustees are controversial. Some believe the amounts set are too low, others too high. Some judges remain resistant to approving fees consistent with the published schedule if the result is a reward higher than the judge's salary.

Fees are paid in two ways; first, there is a monthly amount calculated against the projected fee plus an allowance for out of pocket costs; second, the remainder of the fee is to be distributed upon accomplishment of specified tasks. While it is a distinct improvement to have a published guide for the award of fees, additional training and education is needed, both at the trustee and judge level, for the system to work in a way that will appropriately incentivize trustees to administer cases quickly, effectively and in a manner to maximize return to creditors.

The Bankruptcy department is also charged with addressing two of the key World Bank Doing Business criteria and EU accession requirements—duration of proceedings and amount of payments to creditors. As of September, 2007 there was no adequate database from which to report meaningful numbers on these two points. Courts keep records but as cases, not as bankruptcy proceedings; return to creditors is not one of the items tracked. The Central Registry has some data but only how many cases opened and how many closed—not when the case opened and closed, data from which the duration of the proceeding could be derived. One study shows that as of December 31, 2007, there were 222 pending bankruptcy cases in the country: 9 under the 1989 law, 139 under the 1997 law, and 74 under the 2006 law. The Ministry is doing a survey of 200 pending cases to obtain data on duration of the case, settlement of creditors and whether state owned capital is involved.

Rule Books for Trustees.

- Code of Ethics
- Certification and examination
- Licensing
- Identity card
- Reward of fees and cost
- Procedures (including the following standards)
    - Inventory of assets, list of creditors and initial balance
    - Report to the assembly of creditors
    - Sales
    - Reorganization plan
    - Supervision of approved reorganization plan
    - Final report
    - Archive of information

Other priorities of Ministry of Economy include cadastre reform, improvements in bankruptcy trial procedure, ongoing trustee education after licensure, the education of company managers of companies on signs of insolvency, education of large state creditors (including the state pension, health and revenue funds) on the impact of bankruptcy on their collections. On the last point, the Ministry believes that the effectiveness of the board of creditors requires knowledge by these constituencies.

The Courts. There is little evidence to suggest that the operation of the courts in bankruptcy cases has improved significantly since the CLIR 2005 report. Among the continuing problems are the lack of specialization for commercial cases, lack of continuity of the same judges handling commercial cases, inadequate supervision of trustees, and a perceived lack of independence from direct and indirect political and social pressure.

Anecdotal evidence continues to surface that judges are transferred from commercial assignments to unrelated dockets too frequently, leading to a lack of continuity and inadequate experience among those judges handling bankruptcy cases. The new law is complex and further training is necessary for the judges to understand its details. Some resistance continues to exist on certain of the provisions, such as the shift of authority from the judge on the one hand to the trustee and creditors on the other, as well as the new standard for financial reward of trustees. The breadth and scope of the law's avoidance action provisions is not widely understood. Some judges expressed the opinion that only suspect actions within three months of

commencement of the procedure could be subject to cancellation while the law itself provides time periods of up to ten years for certain deliberate acts intended to harm creditors.

Some of the court reform plan outlined in the 2005 CLIR report has had good results. In particular, The Academy for Judges and Prosecutors is up and running and has graduated its first class of newly trained judges. The Academy is tasked with training both new judges and providing continuing training for existing judges. Judges report that the Academy's training programs are of high quality.

How land titling can affect the success of a bankruptcy case: an example from Stip.

- Debtor companies claimed ownership of land and buildings
- Debtors lacked proper ownership documents and cadastre did not establish ownership. Therefore, objections were raised by other claimants. Trustee was confident of title but without documents had to pursue litigation
- Separate litigation to establish ownership took four years, including at least one appeal
- Once issue was resolved in favor of trustee, property was sold in two months in an active auction for three times the appraised value

Entrance to the new judge training is quite stringent, requiring facility in either English or French, success on two exams and an oral interview. The question is whether there will be judicial positions available for the graduates. During a three year transition period, fifty percent of open spots in the first instance courts are to be reserved for Academy graduates; thereafter, one hundred percent of such spots are to be reserved. Some doubt exists whether this system will actually work in practice.

One dynamic that could have a major impact on the structure of the courts over the next few years is the transfer of work from courts to other institutions: for example, by the end of this year, all enforcement cases are to be transferred to the private enforcement agents (a number estimated upward of 600,000 matters). Likewise, in recent years notaries have taken over traditionally judicial functions and changes are underway to do the same with inheritance cases and certain misdemeanor cases. Some observers suggest that one interesting side effect of this could be the discovery that there are too many judges, not too few, and that the real work of judging, as opposed to administrative tasks, doesn't justify 700 basic court judges. One estimate is that 80% of a judge's daily activity is administrative, not judicial. Among the potential effects of this transition are that the number of judges will be reduced, administrative staff will be increased and judges will be provided with additional legal assistance.

Some stakeholders continue to express concern over partisanship in court appointments, and lack of experience and expertise. While most report that the majority of judges are good, few see improvement, noting for example that many judges remain afraid to make controversial decisions when government is involved.

The Cadastre. The inability of trustees to verify a title of immoveable property is the single largest factor delaying the timely adjudication of bankruptcy cases. The problems stem from prior ownership of property by the state, inaccurate or incomplete cadastre records, and poor record keeping by debtor companies (see box *"How land titling can affect the success of a bankruptcy case*"). Trustees and judges report that these problems lead to many years of litigation. The more streamlined and modern procedures in the new law are effective in speeding up many aspects of a bankruptcy case but are not able to resolve this problem. The situation has been improving steadily with the modernization and expansion of the cadastre system as part of the World Bank project. Most stakeholders predict that the duration of proceedings will be shortened dramatically once this problem has been adequately addressed.

Trustees. The introduction of new licensing procedures, bonding requirements, continuing education, and a code of ethics should materially improve the cadre of trustees over the short to mid-term. However, many stakeholders report that there has not been noticeable improvement yet. The problems of corruption and collusion remain to some extent, although recent prosecutions of trustees, and judges, should have a salutary effect. At this point, there are ninety-two licensed trustees, of whom ten currently have no cases and ten have only one case.

Board of Creditors. The duties and obligations of the Board of Creditors have been more clearly defined in the new law. Among other things, the Board is empowered to review and analyze the work of the trustee, examine the books of the debtor, suggest to the judge methods for liquidation of the assets, and suggest to the judge whether unfinished work should continue. However, most stakeholders report that the boards are not as active as they should be. The new law provides for the payment of a modest reward for service on the board.

Supporting Institutions

Key Supporting Institutions

- Chamber of Bankruptcy Trustees
- Academy for Judges and Prosecutors
- Macedonian Lawyers Association
- Faculty of Law

The **Chamber of Trustees** is an important new institution; membership is obligatory for all licensed trustees. However, as mentioned above, it is in its infancy and requires additional time and support to develop. The bulk of its income comes from a percentage of rewards received by trustees. As the new law is used more, and the rulebook on rewards is applied consistently, those fees should increase as the income of trustees generally rises. In the meantime, it is important for international donors to continue to support the chamber by sponsoring trainings and providing logistical support, such as the donation of computers by the World Bank.

Unfortunately, the Macedonia**n Bankruptcy Association** is not functional. The reasons are unclear but the reality is that it is no longer an institution supporting the development of bankruptcy law.

As mentioned above, the **Academy for Judges and Prosecutors** is generally well respected and has succeeded the Macedonian Judges Association as a primary provider of judicial education. The Faculty of Law is developing a new commercial law curriculum with assistance by EU experts, experts from other formerly socialist countries in the region, and local experts and faculty. The curriculum will be developed and taught in English as part of a graduate course. The Macedonia**n Lawyers Association**, now forty years in existence, is a primary source of business law education for lawyers and other professionals in the business arena.

Two other groups bear watching. The first is the "**Counseling Body to the Minister of Economy on Bankruptcy Law**," formed pursuant to Article 293(9) of the new law. This group consists of three professors, a representative of the World Bank and a representative of the Ministry of Economy. While no stakeholder mentioned either its existence or its purpose during the assessment, it could play a role in the future. Finally, there is an **inter-ministerial commission** which was recently formed to review and monitor how the bankruptcy law impacts various aspects of government activity.

Social Dynamics

The degree of understanding and acceptance of the bankruptcy law and its economic importance in society is not encouraging. There appears to be little knowledge or interest within society about bankruptcy. This stems from many factors, including the stigma of failure associated with the procedure, the overly long duration of many cases, the still existing lack of trust in the courts, the relatively poor recoveries obtained, and the sense that the procedure can be used as a means of escaping payment of legitimate debts. Banks participate in the process but have little faith that they will receive a meaningful recovery.

The "Open/Close" problem, described above, exemplifies the misuse of bankruptcy and underlies the public's lack of confidence. Another serious issue is the fact that some government entities, in particular the revenue service, either consciously disregard the law or are simply ignorant of it. Several stakeholders reported cases where the revenue continued with collection activities after a bankruptcy case was commenced, notwithstanding the moratorium imposed and the lack of any priority for revenue claims. As one trustee put it, the revenue service is a "state within a state" and does what it wants.

The bottom line is that nothing breeds success like success. As the system works better, it will be better accepted. As that occurs, broader awareness of the scope and impact of the bankruptcy law is needed to raise the profile of bankruptcy in the commercial community.

Recommendations

To raise the Doing Business scores…

- Strengthen the capacity of the Bankruptcy Department of the Ministry of Economy to supervise implementation of the bankruptcy law, including:
  - The creation of a more accurate and complete database of bankruptcy cases, including accurate measurement of procedure duration and distribution to creditors*
  - Supporting the Chamber of Bankruptcy Trustees in order to increase professionalism and skill of trustees*
  - Analysis of real cases in which good results were achieved to create a code of "best practices" based upon actual experience*

- More education in the business community to build support for use of the procedures, thereby creating motivation to shorten the duration of procedure

- Support completion of cadastre reform, the largest single factor causing the excessive duration of bankruptcy procedures

To strengthen the overall environment for Closing a Business…

- Creation of competent, well trained and well funded commercial bench within the existing court system

- Continuing and regular education and training for all stakeholders, including judges, trustees, creditors (especially SME's without in-house lawyers), managers, government agencies and journalists, with an emphasis on the scope of the law, the urgency of the procedure and the need for adequate compensation of trustees*

- Strengthen the role of trustees, experts and judges in investigating pre-bankruptcy fraudulent transfers as a means of addressing the problem of fraudulent "open/close" cases*.

APPENDIX:

Compilation of Recommendations

STARTING A BUSINESS		
No.	**BEA**	**Recommendation**
1.		Harmonization of electronic data from all institutions involved in the registration process – centralization of data in the CR and enhancement of communication among institutions
2.		Simplification of the procedures for registration of businesses that require special consent, license, or other authorization issued by a state body and shortening of the time period in which the state body must issue the required document
3.		Exchange of best practices with well performing countries and incorporation of technologically advanced solutions.
4.		Further improvement of the One-stop-shop system – finalization of the phase II implementation process
5.	▲	Regular review of legislation and intervention whenever needed to harmonize and improve the registration process
6.		Technical upgrade of the CR system on a regular basis and continuous education of the staff in order to maintain a current knowledge of the most recent technological developments.

EMPLOYING WORKERS		
No.	**BEA**	**Recommendation**
1.	▲	Improve of the institutional capacity of MTSP for creation and implementation of employment policies
2.	▲	Continue to strengthen the physical and human resources of the Employment Service Agency and its local offices in order to improve the quality and scope of the services provided by ESA.
3.	▲	Improve employee-employer relations and build the capacity of employers organizations and labor unions
4.		Modernize, reform and build the capacity of the State Labor Inspectorate in order to improve its efficiency in fighting the grey economy
5.		Move the responsibility for health insurance provisions for unemployed persons from ESA to the Health Fund
6.		Review the functionality of unemployment compensation to identify and address possible disincentives
7.		Promote programs to encourage vulnerable groups to join the labor market
8.		Develop functional social dialogue at the national and local level
9.		Adapt the education process to labor market demand
10.		Advocate for and adopt the flex security concept (lifelong learning, active labor market policies, flexible employment contracts, social security)
11.		Increase the scope of, and budget for, active interventions on the labor market

12.		Implement international standards regarding informal education and adult learning through certificated programs for professional development and appropriate learning platforms (i.e. revolving fund for employment, etc.)
13.		Promote entrepreneurship and programs for self employment
14.	▲	Establish a professional HR Association that will place emphasis on the importance of the workforce as a driving force for businesses

REGISTERING PROPERTY		
No.	**BEA**	**Recommendation**
1.		Complete the ongoing reform of the Cadastre
2.		Establish centralized electronic Cadastre, and provide up to date on-line access to all interested parties
3.		Simplify the procedure for registering ownership
4.		Provide conditions for conducting all real estate transactions through the Cadastre in electronic form
5.		Properly implement the new Law on REC
6.		Improve efficient and consistent enforcement of existing IP laws (establish better cooperation and coordination between competent authorities)
7.		Implement stronger penalties for IP offenses
8.	▲	Develop capacity of agencies and bodies involved in IPR protection (provide continuing training and education to officials, judges, prosecutors and police officials, inspectors)
9.		Introduce a better system (tools and reporting structure) to support collective rights control in Macedonia
10.	▲	Bolster public awareness about the importance of protection of intellectual property (organize massive public campaigns and trainings for the public, increased media coverage)
11.	▲	Develop a National Strategy on IPR
12.		Complete the process of denationalization
13.		Draft all by-laws stipulated by the New Law
14.		Draft clear procedures and policies for employees in the Real Estate Agency
15.		Speed up the procedure for privatization of state owned construction land

GETTING CREDIT		
No.	**BEA**	**Recommendation**
1.		Expedite the development of a private credit bureau (currently authorized by law) to expand the availability, relevance and detail of credit information more broadly
2.		Support the timely completion of the modernization of the real estate cadastre
3.	▲	Encourage lenders to broaden their lending practices to businesses, in particular inventory and account receivable financing, after acquired property financing and entire enterprise financing
4.		Support the electronic linkage among public registries and increase electronic access to all registries
5.	▲	Revise the regulation of savings houses to encourage more microfinance lending

PROTECTING INVESTORS		
No.	**BEA**	**Recommendation**
1.	▲	Decrease the lag between securities transactions and their announcement to the public
2.		Improve intermediate reporting of securities transactions
3.		Increase director liability in transactions detrimental to the shareholder or the company
4.	▲	Standardize rights of shareholders in suits with international best practices with respect to plaintiff document requests and proof requirements
5.		Increase transparency of Public tender process through automation of processes where possible
6.	▲	Improve institutional coordination and ensure accurate dissemination of information to investors
7.	▲	Introduce frequently recurring specialized commercial law training for judges and allow judges to remain in their positions long enough to gain significant experience in commercial cases
8.	▲	Increase funding to MSEC in order to allow for augmented staff and increased training
9.	▲	Increase available training for notaries public and bankruptcy trustees in the drafting of foreign investor contracts
10.	▲	Reverse amendment to Law on Trade Companies to reintroduce the right of first refusal back immediately instead of at the time of EU accession
11.		Increase focus on promoting investment outside of Skopje
12.		Increase the ratio of career civil servants to political appointees

TRADING ACROSS BORDERS		
No.	**BEA**	**Recommendation**
1.		Continue to decrease the time it takes to get goods across the border
2.		Increase the capacity of Customs and other agencies to complete their required checks efficiently and expeditiously
3.		Train Customs officers to be both vigilante *and* customer oriented instead of focused only on enforcement
4.	▲	Revisit the CEFTA agreement and become more focused on regional as well as global trade
5.		Provide demand-driven sector-specific global competitiveness support
6.	▲	Engage all segments of GoM in the economic growth dialogue
7.		Develop a multi-agency approach to reduce the numbers of checks required for export
8.		Revise the rules on electronic commerce and foreign bank accounts

ENFORCING CONTRACTS		
No.	**BEA**	**Recommendation**
1.		Continue to clear the courts of unnecessary claims, and improve the case distribution system
2.		Provide training in contract drafting and alternative dispute resolution
3.		Law students should be exposed to contract drafting either through the existing research and writing course or through the introduction of a new commercial drafting course

4.		Practical skills training should be available to transactional lawyers and notaries through the Chamber of Advocates or another specialized bar association
5.		Train businesses to recognize the utility of using lawyers for legal issues before there is a contract dispute
6.	▲	Establish a post-graduate clinical program for lawyers, including a commercial legal aid program
7.		Provide training in law practice management

CLOSING A BUSINESS		
No.	**BEA**	**Recommendation**
1.	▲ ▲ ▲	Strengthen the capacity of the Bankruptcy Department of the Ministry of Economy to supervise implementation of the bankruptcy law, including: • The creation of a more accurate and complete database of bankruptcy cases, including accurate measurement of procedure duration and distribution to creditors • Supporting the Chamber of Bankruptcy Trustees in order to increase professionalism and skill of trustees • Analysis of real cases in which good results were achieved to create a code of "best practices" based upon actual experience
2.		More education in the business community to build support for use of the procedures, thereby creating motivation to shorten the duration of procedure
3.		Support completion of cadastre reform, the largest single factor causing the excessive duration of bankruptcy procedures
4.		Creation of a competent, well trained and well funded commercial bench within the existing court system
5.	▲	Continuing and regular education and training for all stakeholders, including judges, trustees, creditors (especially SME's without in-house lawyers), managers, government agencies and journalists, with an emphasis on the scope of the law, the urgency of the procedure and the need for adequate compensation of trustees
6.	▲	Strengthen the role of trustees, experts and judges in investigating pre-bankruptcy fraudulent transfers as a means of addressing the problem of fraudulent "open/close" cases