March 2002

Commercial Legal and Institutional Reform (CLIR) Diagnostic Assessment Report for the Republic of Bulgaria

A USAID Initiative in Developing Countries

DIAGNOSTIC ASSESSMENT FOR BULGARIA

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I. EXECUTIVE SUMMARY

Booz Allen Hamilton conducted a diagnostic assessment of the commercial legal and institutional environment of Bulgaria in December 2001. The purpose of the assessment was to provide an overview of the reform needs in the commercial sector to assist the USAID/Sofia Mission in strategic planning for future programs and activities.

Assessment methodology uses a four-dimensional analysis of eight areas of commercial law and a separate review of the court system. The eight areas of law are bankruptcy, collateral, company, competition, contract, foreign direct investment (FDI), real property, and trade. The four dimensions for each area are legal framework (laws and regulations), implementing institutions, supporting institutions, and the market for reform.

In discussions with the Mission, it became apparent that the purpose of the assessment would best be served by departing from the standard analytical methodology to present the findings as Strategic Objectives and Intermediate Results. Consequently, this Executive Summary sets forth conclusions based on the USAID/Sofia Results Framework. We have also provided a summary of recommendations based on the Results Framework (See page 81). The bulk of the report, however, follows the standard methodology, setting forth our analysis by area of law according to the four dimensions studied.

Overview

Bulgaria, like many transition countries, is at different points upon the pathway to becoming a market-oriented, democratic society. Most commercial laws are generally adequate, having been adopted in the last ten years with outside assistance or internal awareness of the need to conform to European standards for future accession to the European Community. Indeed, this membership goal drives much of today's reform in trade and other areas.

Although the laws may be adequate for most current needs (with serious exceptions in bankruptcy), implementation is not adequate. The gulf between adoption and implementation is widest where the courts are involved. Moreover, the courts' ability to function is beset by low respect. This lack of respect is in part a legacy of the courts in the popular mind as an instrument of the former regimes for compelling compliance with state mandates and not deciding issues on the basis of commercial justice and equity. The courts must earn this respect over the long term, but assistance in the near term to restructure court functions in accordance with their new role will go a long way in establishing that future confidence.

Other implementing institutions reflect a broad range of development. Recent assistance in the establishment of a modern pledge law and registry has been quite successful, resulting in a functioning pledge registry that receives high marks for user satisfaction and usefulness, reflected most forcefully in the private sector's ever-increasing use of the registry. The Commission for the Protection of Competition, likewise, is generally well

respected by the commercial sector to the extent that it is often used as an alternative to the courts in claims between private parties involving competition matters. The land registry is adequate for current needs. The company registry, which is administered by the courts, functions but is slow and cumbersome and does not have a centralized database for the various registries around the country. In addition, it needs reengineering to free judges from involvement in company registration to spend their time more fruitfully in deciding cases.

Findings on supporting institutions were generally positive. A number of sufficiently funded, well-organized, and effective associations are actively engaged in lobbying the government for change in the commercial legal environment. These associations lack a formal mechanism for ensuring feedback and input on the laws, and current involvement remains ad hoc and dependent on the good will of government drafters. On the other hand, supporting institutions in legal education are weak. Law schools exist and host some important legal reformers, but the level of legal education is low. Lacking is an established system for continuing legal education (CLE) or ongoing training of lawyers and judges in new areas of law as these areas emerge. A program of Fulbright scholars has brought some useful input to the law schools, but this is insufficient to address the systemic problems in the legal education system. Likewise, American Bar Association's Central and East European Law Initiative (CEELI) programs for the bar associations provide some needed program support but are hindered in their overall effectiveness by turnover of liaisons; their role might be stronger as a support to long-term programs than as a standalone implementer. One notable exception is the Magistrate Training Center (MTC), a non-government organization that provides training for new and sitting judges.

The market for reform is also mixed. Substantial demand for change exists in some areas of law. This change is constrained primarily by the lack of an input mechanism to capture private-sector concerns and needs in the legislative process. In some areas, the desire for integration with the European Union drives a sense of urgency. On the other hand, some areas have low or mixed demand for change, which may act as a deterrent to needed reforms. For example, enforcement of judgments through attachment of property is weak. Although banks and other creditors want to see change, repossession and dispossession are unpopular on a wider level. There is a dichotomy in attitudes that is based on urban and rural divides, with most of the demand for change (and supply of input) coming from Sofia.

The supply side is also mixed. On the one hand, Bulgaria clearly has the human resource base to provide drafting expertise for most areas of law, with assistance needed more to ensure compliance with European Union directives and international best practices. Several indigenous groups have taken the initiative to draft laws and amendments in some areas without donor assistance or outside direction. On the other hand, the Bulgarian government has not been able to supply the mechanisms and systemic reform to address the serious problems in enforcement of commercial obligations, from courts to bailiffs to auctions. Outside assistance continues to be needed to address issues of implementation and enforcement of laws.

Summary by Intermediate Objectives

In addressing the USAID/Sofia Results Framework, we have identified the intermediate results that are relevant to the various subject matter areas.

I.R. 1.3.1 — Streamlined Business Laws and Regulations in Place

Company Law. The procedure for establishing companies is cumbersome and often lengthy, especially compared to other transition countries. As is common for some civil law traditions, registration is handled by commercial courts, with far too much involvement of judges in this essentially ministerial act. As a result of the antiquated processes, approximately half of the commercial court judges are tied up with registration and unable to allocate their time for commercial dispute settlement. The system would benefit greatly from substantial simplification and reform.

Corporate governance provisions are adequate for publicly traded companies but inadequate for those not publicly traded. The business community has a poor understanding of principles of corporate governance. This problem must be addressed to improve shareholder rights and the ability of companies to obtain commercial financing by establishing themselves as creditworthy based on application appropriate to corporate governance principles. At least one NGO has identified business ethics as a serious deficiency in the business community, and many individuals from banks, businesses, and business associations have concurred.

Bankruptcy. While the law appears workable, problems hinder effective application and enforcement. For example, too many issues can be litigated, too many opportunities are available for appeal, and the levels of appeal are excessive. As a result, the process becomes bogged down, increasing delays and expense, and reducing the overall effectiveness of the system. In addition, the law is continually updated, without an adequate system of public notice and comment to give the business community a sense of direction, causing substantial uncertainty. The law also assumes the involvement of competent players, such as trustees, but currently the level of practice and expertise is insufficient.

Competition. The legal framework is weak. Moreover, the implementing institution, the Commission on Protection of Competition (CPC), needs reengineering and institutional strengthening. The CPC has the will to enforce the law and seeks to do so. Even so, under the current structure, much of its resources are used in hearing complaints between private parties regarding accusations of "unfair practices," cases that might be brought in commercial courts if the court system were healthier. The CPC would benefit greatly by creating separate divisions and splitting its staff and resources between the unfair practice cases and the more traditional enforcement actions.

Foreign Direct Investment. The FDI law is more a declaration that foreign investment is welcome than an actual body of useful law. This is not necessarily negative. A healthy investment climate does not require a separate body of law for foreign investors as long

as their principal legal concerns are addressed elsewhere, for example, through tax, foreign exchange, and immigration laws that can otherwise pose the most significant barriers. One significant disincentive was noted with respect to the lack of enforcement of foreign judgments. Many foreign investors use forum selection clauses that permit litigation outside Bulgaria, only to find that judgments from those for are not effectively enforced inside Bulgaria.

Trade. Bulgaria has been a member of the World Trade Organization (WTO) since December 1, 1996. It has been signatory to other significant agreements with Europe, even prior to WTO accession. In March 1993, the government of Bulgaria (GOB) signed the Europe Agreement of Association (entered into force in 1995), and in December 1993, it signed the Interim Agreement on Trade and Trade Related Matters. Bulgaria has been a member of the European Free Trade Association (EFTA) since 1993 and is also a member of the Central European Free Trade Agreement (CEFTA). Under these regimes, many import and export licenses have been removed, but business licensing and bureaucracy are still excessive.

IR. 1.3.2 — Strengthened Business and Professional Association Advocacy

Access to the System. Business and professional associations are increasingly active in advocating reforms in the law and legal environment, but are hindered by the lack of any formal mechanism for permitting private sector input into the policy agenda and legislative reform system. With little experience in business or understanding of market economics among government representatives, input on the need for effective and efficient commercial laws and regulations to support economic growth and stability is crucial. However, it is being thwarted by the ad hoc nature of the dialogue between the public and private sectors. A formal system for proposing amendments and for public comment on proposed legal reforms would go a long way in bolstering the private sector's advocacy efforts.

Bar Associations. The Bulgarian Bar Association is not effectively training or mentoring lawyers on the standards required by modern commercial practices or on methods to effect commercial and legal reforms. No institutional system exists for CLE for lawyers, although a number of excellent lawyers and some professors could provide the courses needed. As a result, each new law passed tends to result in a weaker system, because lawyers do not have the sufficient expertise and understanding to apply the new laws.

Judicial Training. To its credit, Bulgaria has a magistrates training center, the MTC, but the MTC remains inadequate for the task. Funding and resources are inadequate, training in specialized areas of commercial law is insufficient, and legal education is required to inform judges of changes in the law and system. Despite the necessity, the government is not providing the financial support needed for the MTC to fulfill its mandate. In November 2001, the Ministry of Justice (MOJ) published a 5-year strategy for judicial reform, calling for mandatory training for new and sitting judges. In its follow-on action plan, the MOJ declared its intent to establish a judicial training center as a public

institution; the current understanding is that the current MTC would be subsumed into such an institution. While the Bulgarian government certainly has demonstrated its will to develop a more wide-ranging, on-going educational learning program for magistrates, it will require significant financial and technical support from international donors to compensate for its lack of resources if this program is to be a success.

IR. 1.3.3 — Improved Government Capacity to Analyze Policy, Options, and Related Laws and Regulations

In general, technical capacity is significantly lacking within the government to analyze, understand, and select policy options based on economic impact and the functioning of the commercial sector. Although excellent private sector professionals and institutions have this capacity, they are unable to convey this understanding to policy makers, in part because there is no effective system for doing so. In addition, lack of compensation and recognition for professionals in government leads to a "brain drain" of competent analysts from government to the private sector.

Law schools and other institutions of higher learning are not equipping students with modern concepts of the market economy and commercial law. As noted, efforts are ongoing to expose at least a few students to better legal education through Fulbright scholars, but this exchange program cannot meet the need for systemic reform. The old system of schooling does not meet Bulgaria's needs for functioning under a new system of laws.

IR. 1.3.5 — Enhanced Enforcement of Contracts

Enforcement of commercial obligations — contracts — is a serious problem affecting the health of the Bulgarian economy. The system has completely broken down at three levels: the law, the courts, and the enforcement agents. On the legal side, even if the courts were functioning properly, the Civil Procedure creates unnecessarily lengthy enforcement processes, with numerous opportunities for delay and blocking of the process, even for trivial reasons, and numerous avenues for appeal. This is unnecessary and results in disputes that would otherwise be settled within a year dragging on for two to five years. In the case of simple contract disputes (nonpayment on a note, for example), processes should be accelerated for rapid disposition. An independent working group has been formed among judges, lawyers, and professors to address this problem through proposed amendments, but this effort is likely to need additional support.

Even with changes in procedure, however, the courts lack technical capacity and expertise. Specialization and education among judges are insufficient for an understanding and proper adjudication of modern commercial disputes. This gap is multiplied by the lack of understanding among lawyers of international commercial legal norms and conventions, especially as they apply to the Bulgarian context. Moreover, the commercial courts are unnecessarily preoccupied with and distracted by ministerial matters such as the registration of companies. Almost half of commercial court judges

work on company registration, although this work is handled by clerks in most modern civil law systems and even in some transition countries.

Even if an enforcement action finally makes it through the courts, the actual enforcement can break down badly once it is handed over to the bailiff. At least in Sofia, which handles the vast bulk of commercial disputes, the bailiff's office is understaffed and under funded. The head bailiff is well meaning and hard working but does not possess the power to enforce in the face of resistance by the judgment creditor. (Indeed, physical assault on this bailiff in the past resulted in her hospitalization.) Police or other state enforcement powers are needed to support this function.

Arbitration is often used in other countries as an alternative to the court system. In Bulgaria, arbitration decisions are binding and final and could provide a useful alternative system for dispute resolution. Unfortunately, enforcement is no better, because it must rely on the court and bailiff system. The more efficient arbitration approach is thus undercut because decisions are rendered meaningless in practice.

Finally, it should be noted that the business culture still retains a high tolerance for breach of contract, a legacy of the soviet system that disavowed individual property rights at all levels. This problem will take longer to attack, but improvements in enforcement will go a long way to influence the culture and educate the participants on the importance of commercial contracts and their enforcement.

IR. 1.3.6. — Transparent, Effective Legal Policies to Prevent Corruption

Although it was beyond the scope of our work to verify the existence of corruption, our team did confront among users of the system a high perception of corruption. Whether real or imagined, the problem is exacerbated by systems that engender doubts and the possibility for abuse of power.

In the courts, the many delays and poor quality of decisions are perceived to be influenced by corruption. Judicial decisions are not sufficiently public, except at the level of the Supreme Court, making it difficult to challenge or even understand the basis for decisions. Moreover, the quality of opinion writing is generally low. As a consequence, the judicial thought process is often not transparent, leading the losers in litigation to assume — rightly or wrongly — that the winning side bribed the judge.

In the area of company law, excessive licensing requirements are seen as providing a haven for corrupt practices. This type of situation has been cited worldwide as an area that supports and incentives rent-seeking behavior, and Bulgaria is no exception. Significant streamlining of licensing requirements would not only attack corruption but also improve the overall environment by lowering the cost of doing business.

The constant changes to laws in the past few years have created a high degree of uncertainty and lack of transparency in the application of commercial legislation, whether in courts or in licensing bureaus. Again, this has implications for the legislative system.

Part of the problem lies in the absence of stakeholder participation in the legislative process, leaving stakeholders unaware of and uninvolved in the changes taking place.

PRINCIPAL OPPORTUNITIES FOR USAID OR DONOR ASSISTANCE

Although Bulgaria is moving in the right direction in many areas, a great need still exists for outside assistance in some areas. This report and the recommendation chart following identify significant possibilities for initiatives, including:

Registration and Licensing. It is necessary to simplify registration and licensing requirements, both to lower unnecessary costs and also to reduce opportunities for corruption. This will require improved processes, but also improved skills among the providers of these processes. One of the most significant possible changes is removing the ministerial tasks of company registration from judges and allowing judges to return to the more important function of deciding cases.

Company Law. The company registration process must be streamlined. This can be achieved in the short and medium term. Over the long term, it is essential that the legal culture begin to change with respect to corporate governance and corporate ethics. This will require an ongoing investment in training and public awareness and working closely with business associations, educational institutions, the courts, and the general public.

Legal Education. Legal education to properly support a market-oriented economic system is sorely lacking. Course materials on new laws are not only insufficient, but fundamental misunderstandings are prevalent concerning the roles of judges, lawyers, and the private sector in the legal system. Judges are handicapped by lack of understanding of the impact of poor decisions on the overall commercial and investment environment. Of course, the basics of the new legal system also need to be addressed, with establishment of CLE systems and improvements in the quality and quantity of education offered through the law schools and the Magistrates Training Center.

Bankruptcy. Bankruptcy legislation has been reintroduced and revised numerous times over the last few years. As a result, the bankruptcy bar, the receivers, and the judiciary are largely inexperienced. The bar and judiciary need education on proper implementation of bankruptcy laws.

Commercial Courts and Commercial Dispute Resolution. One reform with high immediate impact is removing ministerial tasks from judges (company registration) so judges can adjudicate cases. This would almost double the number of adjudicating judges and address the backlog in the courts. In addition, ongoing support for improvements in court administration and case management is still needed, including the eventual computerization of the system, along with Internet-based publication of all judicial decisions. Special emphasis should be given to enforcement issues, as no improvements to the courts' or judges' skills level will have an impact if a judgment cannot be enforced effectively against a recalcitrant judgment debtor. Attention should be also focused on increased use of arbitration, which can reduce the burden on courts while the courts are being improved to handle more cases effectively.

Trade Liberalization and WTO Compliance. Trade liberalization is not sufficiently institutionalized in Bulgaria. This is manifested in the lack of adequate institutional mechanism to design and implement trade policies and comply with WTO obligations. This institutional deficiency is compounded by the lack of expertise and knowledgeable staff that can make the day-to day decision necessary to support Bulgaria international trade policy development, coordination and execution. Bulgaria would benefit from an institutional development and capacity building program that focuses on trade policy development and implementation.

II. INTRODUCTION

At the request of the USAID Mission in Sofia (USAID/Sofia), Booz Allen Hamilton (BAH) has undertaken a Commercial Legal and Institutional Reform Assessment of the Republic of Bulgaria. The purpose of the assessment was to assist the USAID/Sofia in its 2002–2007 strategic planning, to focus programmatic resources on high-priority reform needs, and plan additional legal and institutional reform work in Bulgaria.

A team of five expatriate lawyers carried out the assessment with assistance from one local lawyer. The BAH team visited Bulgaria from November 26 through December 7, 2001, working closely with USAID/Sofia, whose assistance was invaluable. During this visit, the BAH team met with numerous government officials, NGOs, multilateral and bilateral donor agencies, judges, lawyers, and investors to properly assess Bulgaria's commercial legal environment. (See List of Interviews, attached as Appendix C.) All those interviewed, including government authorities, were generous with their time and lent full support to this endeavor.

This assessment is the ninth in a series of assessments carried out since 1998 in a program created by USAID in which Booz Allen Hamilton was retained to assist in the development of indicators and methodologies for assessing the status of commercial legal and institutional reform in a developing or transition country.

The first four assessments — of Kazakhstan, Poland, Romania, and Ukraine — were used to devise, refine, and field-test the methodology. Approximately 50 legal development professionals at a workshop in Prague then subjected the methodology and results to peer review during December 1999. On the whole, the participants verified and affirmed both the methodology and results through a "reality check" based on their professional experience in the European and Eurasian regions. Moreover, they provided important input on the indicators used for scoring the countries. Based on this feedback, the indicators were revised during the winter of 2000.

The new indicators (CLIR 2.0) have been used to conduct diagnostic assessments for Albania, Croatia, Macedonia, and Serbia. A tenth assessment was conducted in Armenia simultaneously with the Bulgarian assessment.

III. NOTES ON SCOPE AND METHODOLOGY

The diagnostic assessment was designed to help achieve the following objectives:

Broad Indicator	*Albania*	*Croatia*	*Kazakhstan*	*Macedonia*	*Bulgaria*	*Poland*	*Romania*	*Ukraine*
Population (millions)[1]	*3.49*	*4.28*	*16.73*	*2.04*	*7.70*	*38.65*	*22.41*	*49.15*
Area (km2)	*28,748*	*56,538*	*2,717,300*	*25,333*	*110,910*	*312,685*	*237,500*	*603,700*
1999 GDP Per Capita[2]	*$1,650*	*$5,100*	*$3,200*	*$3,800*	*$6,200*	*$7,200*	*$3,900*	*$2,200*
% GDP Ave. Annual Growth (1990 – 1999)[3]	*2.3*	*-0.4*	*-5.9*	*1.9*	*-2.7*	*4.7*	*-1.2*	*-10.8*
% GDP – Agriculture	*54*	*9*	*10*	*11*	*18*	*4*	*16*	*14*
% GDP – Industry	*25*	*32*	*30*	*28*	*27*	*33*	*40*	*34*
% GDP – Manufacturing	*--*	*21*	*23*	*--*	*20*	*20*	*30*	*29*
% GDP – Services	*21*	*59*	*60*	*60*	*55*	*63*	*44*	*51*
Foreign Aid Per Capita[4]	*$72.50*	*$ 8.70*	*$13.30*	*$45.80*	*--*	*$23.30*	*$15.80*	*$7.60*
Corruption Perception Index[5]	*N/A*	*3.9*	*2.7*	*N/A*	*3.9*	*4.1*	*2.8*	*2.1*
Economic Freedom Index[6]	*3.70*	*3.50*	*3.70*	*N/A*	*3.30*	*2.80*	*3.30*	*3.60*
Government Effectiveness Rating[7]	*-0.653*	*0.150*	*-0.824*	*-0.576*	*-0.814*	*0.674*	*-0.570*	*-0.893*
Regulatory Framework Rating	*-0.700*	*0.236*	*-0.405*	*-0.312*	*0.16*	*0.565*	*0.199*	*-0.721*
Rule of Law Rating	*-0.918*	*0.146*	*-0.590*	*-0.256*	*-0.149*	*0.538*	*-0.088*	*-0.707*

1. A factual basis for characterizing the degree of development and the status of commercial law reforms in Bulgaria

[1] *CIA World Factbook,* July 2000 estimate.
[2] *CIA World Factbook,* 1999 estimate.
[3] *World Development Report 2000/2001*, published by The World Bank. Applies to GDP Growth and the agriculture, services, manufacturing, and industry composites of GDP.
[4] The World Bank: http://devdata.worldbank.org/query. Figures are from 1998 and are in current US$. As a point of comparison, foreign aid per capita in all developing countries is $8.40.
[5] Transparency International 2001. Scale = 1 to 10. Higher scores indicate less corruption.
[6] *2000 Index of Economic Freedom Rankings,* The Heritage Foundation (www.heritage.org). Scale: 1 to 1.95, free; 2 to 2.95, mostly free; 3 to 3.95, mostly not free; 4 to 5, repressed.
[7] Worldwide Governance Research Indicators Dataset, The World Bank. Governance indicators reflect the statistical compilation of perceptions of the quality of governance of a large number of survey respondents in industrial and developing countries, as well as NGOs, commercial risk-rating agencies, and think tanks during 1997 and 1998. Governance indicators are measured in units ranging from about -2.5 to 2.5, with higher values corresponding to better governance outcomes. This footnote applies to the Government Effectiveness Rating, Regulatory Framework Rating, and Rule of Law Rating. Available at http://www.worldbank.org/wbi/governance/datasets.htm#dataset.

2. A methodologically consistent foundation for identifying and describing the root causes of the implementation/enforcement gap
3. Analytical and planning tools and metrics that will help USAID design new approaches to sustainable, cost-effective CLIR interventions in Bulgaria.

For the purposes of most assessments, commercial law is defined to include the following substantive legal areas:

- ***Bankruptcy.*** Mechanisms intended to facilitate orderly market exit, liquidation of outstanding financial claims on assets, and rehabilitation of insolvent debtors

- ***Collateral.*** Laws, procedures, and institutions designed to facilitate commerce by promoting transparency, predictability, and simplicity in creating, identifying, and extinguishing security interests in assets

- ***Companies.*** Legal regime(s) for market entry and operation that define norms for organization of formal commercial activities conducted by two or more individuals

- ***Competition.*** Rules, policies, and supporting institutions intended to help promote and protect open, fair, and economically efficient competition in the market and for the market

- ***Contract.*** The legal regime and institutional framework for the creation, interpretation, and enforcement of commercial obligations between one or more parties

- ***Foreign Direct Investment.*** The laws, procedures, and institutions that regulate the treatment of foreign direct investment (FDI)

- ***Trade.*** The laws, procedures, and institutions governing the cross-border sale of goods and services.

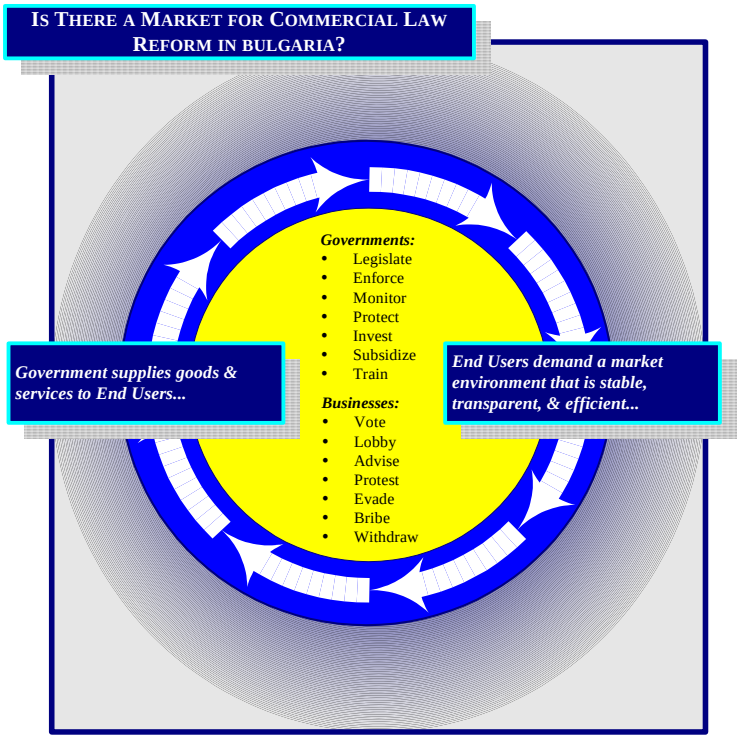
Within each of these substantive areas, four dimensions of CLIR were examined as a conceptual framework for comparison:

- ***Framework Law(s).*** Basic legal documents that define and regulate the substantive rights, duties, and obligations of affected parties and provide the organizational mandate for implementing institutions (e.g., Law on Bankruptcy, Law on Pledge of Moveable Property)

- ***Implementing Institution(s).*** Governmental, quasi-governmental, or private institutions in which the primary legal mandate to implement, administer, interpret, or enforce framework law(s) is vested (e.g., bankruptcy court, collateral registry)

- ***Supporting Institution(s).*** Governmental, quasi-governmental, or private institutions that either support or facilitate the implementation, administration, interpretation, or enforcement of framework law(s) (e.g., bankruptcy trustees, notaries)

- ***Market For CLIR.*** The interplay of stakeholder interests within a given society, jurisdiction, or group that, in aggregate, exerts an influence over the substance, pace, or direction of commercial law reform.



IV. FINDINGS

A. BANKRUPTCY LAW

OVERVIEW

Generally, Eastern Europe has come to recognize that insolvency is not a means to tear down an economy, but a means to redistribute assets to build or rebuild a section of the economy in need. This insight underlies the adoption of the insolvency reform laws in 1994 in Bulgaria. Bulgaria first enacted insolvency legislation in 1897, but the legislation was abandoned during the communist period. When an insolvency package was first introduced in the early 1990s, it was aborted because of the perception that it was too radical. However, the Bulgarians introduced in 1994 the Law Concerning the Amendment and Amplification of the Commercial Law. The reform law focuses on reorganization of the debtor with emphasis on equal treatment for all creditors. See Article 607(1) ("Bankruptcy proceedings shall be aimed at providing fair satisfaction of creditors and opportunities for reorganization of the debtor's enterprises.") and Article 607(2) ("Bankruptcy proceedings shall take into consideration the interests of the creditors, the debtor and his employees.").

Admirable in its objectives, the Bulgarian insolvency legislation bends over backward to include every possible opportunity for creditor participation. However, this attempt at ultimate fairness undermines the system's effectiveness, generating lengthy, unnecessary litigation, numerous delays due to excessive exercise of appeal rights, and inconsistent legal standards for major issues such as valuation. The practical aspects of the system are further hampered by involvement of incompetent officials, improper compensation to receivers, inability to abide by legal time triggers within the Code, and overburdening of judges with largely administrative matters.

LEGAL FRAMEWORK

Insolvency proceedings are preceded by an examination into the insolvency of the debtor. Insolvent means "merchants who are unable to perform a money obligation under the commercial transaction, due and established on certain grounds at the stage of considering the petition into insolvency. . ." (Article 606). The petition may be brought by the debtor, creditors, or by a liquidator (Article 625). The court is to consider petitions brought by the debtor or liquidator "immediately" *in camera* (Article 629(1)) and within 14 days if submitted by creditors (Article 629(2)). Furthermore, the legislation imposes a duty upon any debtor who becomes insolvent or excessively indebted to request a bankruptcy proceeding (Article 625(1)).

Once insolvency is determined, pursuant to Articles 629 and 630, that ruling is held to be "effective in respect of all" (Article 630(3)). However, the ruling is immediately appealable. See Article 633 (providing for seven days to appeal a ruling under Article 630) and Article 613a(1) ("Rulings and judgments issued by district courts in connection with bankruptcy proceedings shall be subject to appeal before the relevant appellate court

under the terms and conditions laid down in Articles 196-211 and 213-218 of the Code of Civil Procedure.").

If the debtor is found to be insolvent and the matter proceeds without appeal, the court sets the date for the meeting of creditors (an in-court proceeding before the judge) and appoints a temporary receiver (Article 630(1)(3)). The receiver's compensation is determined at the meeting of creditors but consists of a monthly allotment and a percentage upon final distribution in the case (Article 661). The receiver has personal liability, limited to the amount of his monthly pay, for failure to properly perform duties as required (Article 663). The receiver is also liable for damages inflicted in the course of exercising his powers (Article 663(3)). The duties of a receiver include, but are not limited to, representation of the debtor, management of current affairs, supervision of ongoing enterprises, receipt of inventory, maintenance of the books and records, identification of the debtor's property, collection of the receivables, and cashing in of the property of the bankruptcy estate (Article 658).

After the insolvency determination and appointment of a temporary receiver, the focus shifts to claims litigation. Creditors shall "claim their receivables" in writing within one month of the publication of the bankruptcy (Article 685). Each creditor is required, in essence, to prove its claim (Article 685(2)). The receiver then decides by "an announcement in the *State Gazette*" which claims are to be allowed (Article 689). Creditors are permitted to challenge the allowance or disallowance of their claims, thereby involving the courts. After a prescribed waiting period, the receiver then submits the list of allowed and disallowed claims to the court. Any remaining objections are noted by the receiver in the report to the court (Article 690).

Upon objections, the court, in a public session within 14 days of submission of the list, considers all objections. The court is supposed to rule within 14 days on all objections (Article 692). Again, rulings on the allowance or disallowance of claims are appealable immediately.

After the resolution of the claims process, the meeting of creditors can commence (article 673). ("the meeting of creditors shall be convened after the approval of the list under article 692 by the court.") The meeting of creditors is presided over by the judge and requires at least two creditors in attendance to render the meeting "legitimate" (article 670). Only creditors with accepted receivables are allowed voting rights (article 673(2)). At the meeting of creditors, the receiver reports on its activities; the creditors' committee, if one has been appointed, reports; a receiver is voted upon; the creditors may propose the amount of the receiver's remuneration; the creditors may propose the amount of subsistence for the debtor and his/her family; and the proper manner of "evaluation" of the debtor's assets and the amount of remuneration of the evaluators are determined (article 677).

Within one month of the approval of the list, the debtor, receiver, creditors holding at least one-third of the secured receivables, creditors holding at least one-third of unsecured receivables, partners or shareholders who hold at least one-third of the capital

of the debtor, an unlimited liability partner, or 20 percent of the debtor's employees can file a plan of reorganization (Article 697). The plan can provide for deferment, rescheduling, or remission in full or in part on the debts (Article 696). The plan can propose the partial sale of assets or sale of the entire business as a going concern (Article 700). Once the plan(s) are submitted, the court will rule to admit the plans (Article 701). If the court denies admittance to any particular plan, such a ruling is appealable within seven days (Article 701(3)).

The court sets the date of the creditors' meeting for adoption of the plan (Article 702). Creditors holding allowed receivables are permitted to vote, and the creditors vote with like claimholders as laid out in the Code (see Article 703). If more than one plan is approved, the court is to approve the plan for which creditors with more than half of the total size of the accepted receivables voted. If that plan cannot be approved, then the court is directed to approve the plan that has been accepted by the creditor class whose interests have been most injured (Article 704). If the court approves a plan, the bankruptcy proceedings are terminated (Article 707). However, a ruling on plan disapproval is appealable within seven days of the ruling (Article 708).

If the debtor does not fulfill obligations under the plan, the creditors or receiver may request that the bankruptcy proceedings be resumed, and no further insolvency determination is required (Article 709). If resumed, no reorganization efforts are made, and the estate is immediately liquidated. Again, the ruling on resumption is immediately appealable under Article 713.

The Code then sets forth the precise procedures for liquidation of an estate. Article 716 directs that assets of the estate are to be converted to money insofar as it is required to pay the creditors. Article 717 instructs the receiver to sell the chattel and property rights of the bankruptcy estate in accordance with the Code of Civil Procedure and gives the receiver the same powers as the bailiff in the Civil Code (Article 717(1)). The receiver must propose all sales to the court, and the court is required to rule on such proposals on the same or next day that the request is made (Article 717(2)). Finally, the Code sets forth the manner of distribution for liquidated assets converted to money (see Articles 720 to 722).

IMPLEMENTING INSTITUTIONS

Implementing institutions include those government bodies legally mandated to implement or oversee implementation of a given framework law. For contracts and bankruptcy, the courts are the implementing institution. Moreover, the courts have an impact on all areas of commercial law, including those overseen by other agencies. They are the foundation of the rule of law within the commercial law framework. Because of the courts' importance as an institution and their cross-cutting importance for all areas of commercial law, the following section on Bulgarian courts has been expanded to cover issues pertaining to all commercial law courts and not only those dealing with bankruptcy law.

1. Scope of Review. This section will address: (1) the Bulgarian judiciary generally, (2) the status and structure of the courts, (3) areas of strength and weaknesses, and (4) review of the needs of the courts and local organizations, associations, and institutions.

2. Background. The court system of Bulgaria is based on a tradition dating back to the end of the Ottoman rule over Bulgaria in 1878. At that time, a court system was introduced based on the Western European experience that, with some amendments, continued to exist until the end of World War II. That system was then adapted to the soviet model, which basically continued until 1989.

Under the 1991 constitution, as subsequently amended by statute, Bulgaria has a three-tiered court system, consisting of first-instance, intermediate appellate, and supreme courts. The court system comprises not only the courts but also prosecution and investigation offices located at each court. This factor complicates the existence of the civil courts and their judges.

3. The Structure of the Bulgarian Judicial System.

1. The Supreme Judicial Council. The court system is under the supervision of the Supreme Judicial Council (SJC), a body of 25 members who are elected by Parliament and by the organs of judicial power. The chairmen of the Supreme Court of Cassation and the Supreme Administrative Court, along with the prosecutor general, are members of the SJC, ex officio. The SJC is chaired by the minister of justice (MOJ), who has no voting rights.

2. General Courts. Courts fall into two categories: general and specialized. General courts hear cases of any origin (private, commercial, criminal, and administrative). Specialized courts are the Supreme Administrative Court, the Military Courts, and the Constitutional Court. For the purposes of this study, only the General Courts are reviewed.

> ***a. Regional Courts.*** Regional Courts are trial courts of general jurisdiction for all cases in Bulgaria except for those assigned by law to another court. Bulgaria currently has 112 Regional Courts. After three years of service, Regional Court judges are granted life tenure subject to removal by the SJC for statutorily defined reasons. Judges must have at least two years of legal or judicial experience.
>
> A chairman appointed by the SJC manages regional Courts. The chairman, in addition to maintaining the caseload, is responsible for the court's organization, administrative affairs, and case assignments. Each Regional Court has its own executing judge (bailiff's office). Attached to the Regional Courts are the land registries.
>
> ***b. District Courts.*** The District Courts hear appeals from Regional Courts' decisions. They have original jurisdiction in civil cases, where the award sought is 10,000 leva or more (roughly US$5,000). Bulgaria has 29 District Courts

corresponding to the 28 administrative regions into which the country is divided and the Sofia City Court, which functions as a District Court (the Sofia region has its own District Court). Attached to the District Courts is the company register.

District Courts may be divided into departments depending on caseload and the number of judges assigned to the court (e.g., civil, criminal, commercial, administrative, and family law). Most cases are heard by a panel of three judges, one of whom may be a junior judge.

Other than junior judges, District Court judges are appointed for life by the SJC, with limited removal ability, and must have at least have five years of legal or judicial experience. The SJC appoints the chairmen of the District Courts who have responsibility similar to Regional Court chairmen. The District Court in Sofia, which is known as the City Court of Sofia, must perform all the tasks attributed to a District Court and other functions, such as registration of political parties, accreditation of foreign judgments executed in Bulgaria, appeal of arbitration decisions, and issuing of execution orders for arbitration decisions.

c. Courts of Appeal. This court became operational early in 1998. The Courts of Appeal hear appeals in three-judge panels from District Courts within their jurisdictional territory. Bulgaria has five Courts of Appeal. As a rule, they are second-instance and review appeals on first-instance decisions of the District Courts on civil and commercial issues.

The judges for the Courts of Appeal are appointed by the SJC and must have at least ten years of legal/judicial experience. Appointments are for life, subject to removal for statutorily defined reasons. The courts are divided into civil, commercial, and criminal departments and are presided over by a chairman appointed by the SJC.

d. The Supreme Court of Cassation. Located in Sofia, this court is the highest instance of the general court system and is therefore the highest appellate court for civil cases. Its decisions are binding on all judicial and executive authorities.

The SJC appoints Cassation judges for life, subject to removal for statutorily defined reasons. Cassation judges must have at least 14 years of experience in the law or judiciary. A chairman is also appointed by the SJC and serves a nonremovable seven-year term.

4. The Bulgarian Judiciary. The problems with the Bulgarian judiciary begin with its confusing oversight and financing. The SJC is charged with the responsibility of preparing and submitting to the National Assembly the annual budget for the judicial branch. The SJC also appoints, elects, demotes, reassigns, and dismisses judges. The SJC is dysfunctional; it is composed of judges who have heavy caseloads and administrative responsibilities within their own judicial branch offices; it meets weekly in Sofia; it keeps

scant information on its deliberations; it wastes time during its meetings on petty issues; and it lacks transparency to effectively undertake its duties and promote its goals.

The SJC submits its general budget to the National Assembly, but without advocates to obtain funding, the budget is often decreased to the detriment of the judiciary. The SJC budgetary process is further impeded by the discretionary power of the MOJ to edit and counter the SJC's budget request to the Parliament. The inadequate monies that are budgeted are then divided by the SJC between the chairmen of the two court systems, who then make independent decisions on use of the funds aside from fixed expenses, such as salaries, which are 80 percent of the amount. This is all done without expert budgetary staff or adequate information from the courts below as to needed expenses. The chairmen of those courts then send these monies to the various districts for disbursement.

The MOJ has no direct supervisory or administrative authority over the judicial branch but nonetheless plays a critical role in the administration of justice to the detriment of the courts. In addition to influencing the budgetary affairs of the SJC, the MOJ chairs the SJC meeting and therefore can control the agenda. The MOJ is also responsible for the upkeep and repair of court facilities, the training of judges and court personnel, the inspection of the courts, and the tracking of civil cases through the lower courts. Unfortunately, this data is manually collected in an unreliable system. It is limited with little follow-through on the reports. Given these inadequacies, the MOJ does not assist the courts in providing a picture of the functioning of the courts that could be useful to the SJC in fulfilling its mandate of requesting a budget and allocating monies to the courts.

5. Judges. The law and legal institutions in Bulgaria command little respect and judges even less. Regardless of whether the concerns are real or perceived, this attitude pervades the thinking of ordinary Bulgarians, the business community, and even the government. Much of this belief is reinforced by the incredible slowness and innumerable delays in the system (most cases take six to eight years to complete) and the fact that some cases move more quickly than others, resulting in a widespread notion that the judiciary is corrupt.

All judges the team interviewed in Sofia were dedicated and extremely hardworking. This is not surprising since they were, by reason of selection, the best judges and presided only in Sofia. It is also accepted that Bulgaria has two judicial systems, one for Sofia and a few other large cities, and the other for the rest of Bulgaria.

Cases move slowly through the courts for a variety of reasons, a condition that must be addressed before an efficient judicial system comes into being that can command respect for the judiciary and before a legal system and commercial rule of law are in place that can promote and sustain economic success.

All judges must spend a considerable amount of time on administrative duties that deplete time they could otherwise devote to cases. As many as two or more working

days a week are spent on administrative or clerical functions that in Western Europe or America are done by court personnel.

Further, judges do not have adequate support personnel, such as secretaries or courtroom deputies; they must answer their own phones, receive visitors, type their decisions (often on a typewriter rather than a computer), schedule their own cases, make provisions for witnesses, and track cases. One judge, who had no computer at the courthouse, used his home computer at night in his small apartment to write his opinions, while his wife and young children competed for his attention and the computer.

The administrative burden on court chairmen is even more onerous. They have responsibility for the court's administrative functions in addition to conducting their own cases and the administrative tasks that accompany those cases. While attempting to keep his/her own dockets current, the chairman, often the most senior judge in court experience, also must supervise personnel functions, building maintenance, supply ordering, statistical report preparation, budget preparation, and case assignments.

The judges perform their work in an abysmal environment where they usually share an office with one or two other judges. They not only live with the disruption of their own additional activities, but also those of their colleagues.

Additional delays in issuing opinions or organizing dockets occur because of the lack of a judicial assistant. American judges, for example, depend considerably on their judicial assistants in performing many functions.

Because of budget constraints, court staff is extremely overburdened. This creates delays in cases, lost or misplaced papers, delays in sending out notice and other papers, and improper serving of summonses. Staff receives little training, and the pay is not adequate to keep staff on the job for an extended period of time.

Other delays in the court system are caused by the collection of evidence and lack of exchange of information prior to a first hearing. Witnesses often fail to appear, and judges are hesitant to impose fines. Fines levied in civil cases are minimal. Procedures are also delayed by the failure of judicial experts to appear at hearings due to lack of time or scheduling conflicts.

Another delay in the system, especially in bankruptcy proceedings, is caused by the lack of a specialized court prepared to deal with sophisticated issues expeditiously. Although some courts have separate commercial divisions, all judges interviewed would like to see a specialized bankruptcy court in the system.

A major cause for delays in the court system is the workload placed on the District Courts by the company registry. In the Sofia City Court, nine judges are assigned to commercial and bankruptcy matters, while eight are assigned to registration work. Not only must initial registrations be filed, but any further activity involving a company and its shareholders, capitalization, bylaws, and the like must be filed with the court and is

subject to hearings if a dissatisfied shareholder appeals. The belief exists that judges do not want to hand over a function that is considered completely clerical in the United States because judges and court staff alike gain income from expediting registrations.

It must be reiterated that, in spite of all of these hindrances, many judges are excellent, hardworking, and dedicated to the administration of justice. However, they are held in almost universal disrepute. This reflects their status in Bulgarian society — a legacy from the communist era when judges were rubber stamps for the state. Unfortunately judges' plight will continue until their status is improved to include appropriate salaries. Improved compensation for the judges might help avoid their need to seek additional sources of income from teaching, handling arbitration cases (possibly illegally), and/or taking payoffs.

SUPPORTING INSTITUTIONS

1. Nongovernmental Organizations (NGOs). In 1999, a Magistrate Training Center (MTC) was formed as an NGO. Its governing body is composed of senior magistrates and representatives of the Ministry of Justice, the Association of Judges in Bulgaria, and the Legal Interaction Alliance. The MTC board is chaired by the chief justice of the Supreme Court of Cassation. The MTC is funded largely by USAID. As an NGO, the MTC lacks GOB investment, but it has filled a major gap by creating a training program for judges. The MTC is doing as good a job as could be expected with little or no staff, small quarters in Sofia, and responsibility to serve the entire country. Unfortunately, the MTC does not have the personnel or resources to properly train newly appointed judges, provide continuous training of judges in all levels on current commercial and economic issues, and train the court chairmen in administration and planning.

2. Lawyers and Bar Associations. The law schools in Bulgaria are inadequate, and the professors have not moved to the interactive Western-style curriculum that includes commercial courses, legal clinic training, or ethics trainings. Many students do not attend class, since only rote lectures are given. For example, one professor at Sofia University has not changed his lectures in 20 years and still teaches the laws of the communist era. Graduating lawyers must pass a bar exam, but it is of minimal consequence, and failure is rare. As a result, many untrained and mediocre lawyers are entering the profession.

The bar associations, which attorneys are required to join, realize the need for continuing legal education (CLE), but do not possess the resources and faculty to offer broad-based and continuous programs. Both lawyers and bar associations lament the lack of commercial law programs, ethics training, and mentoring of young lawyers by older lawyers.

The most competent and best-paid lawyers are those who were trained in the West, trained by Western-trained lawyers, or have an intuitive sense of the requirements for resolving legal and commercial problems.

3. Bailiffs and Notaries. Bulgarian society holds bailiffs in low esteem, and one lawyer described them as "endless nothingness." As a result, litigants and the business community have no reliable agency for serving executions and collecting judgments once a decision is finally entered. Decisions are also subject to further court action and appeals.

One bright spot in the judiciary is the notaries, who have an active association and are undertaking more tasks formerly performed by lawyers, such as document preparation. Notaries are lawyers by training and seem to relish the idea of taking a more active office role. It appears the notary function is developing into a role similar to that of solicitors in Great Britain, although Bulgarian lawyers tend to reject this analogy.

4. Accountants. The accountants have organized and created standards for liquidation in bankruptcies and valuation. They feel confident that they can play a larger role in assisting judges and lawyers who are uneducated in accounting, valuation, and economic matters and require accountants' expertise. The Bulgarian accounting profession in general, however, appears in need of modernization and updating on international accounting standards. Numbers of interviewed lawyers and businesses complained of the inadequacy of Bulgarian accounting standards.

5. Bankruptcy Trustees. The MOJ maintains a list of trustees consisting of competent persons and others who are "friends" of the list makers. The courts and lawyers find their performance exceptionally spotty. They voice concern that trustees receive a salary determined by the court at the beginning of a bankruptcy and a percentage fee at the conclusion of the case. This gives the trustees no real incentive to reorganize and liquidate cases promptly for the benefit of the creditors.

6. Business Associations. The Bulgarian Chamber of Commerce and Industry, the Bulgarian Industrial Association, the Association of Commercial Banks, and other similar groups all recognize the poor state of the judiciary and the quagmire of commercial dispute resolution in the country. However, little evidence could be found that they are promoting improvements in the system or enhancing the judiciary's status and independence.

THE MARKET FOR REFORM IN BANKRUPTCY LAW

Demand is high for bankruptcy reform among judges and in the financial sector, although this demand is not yet sufficiently focused to lead to strong lobbying efforts. Judges interviewed said they felt that treatment of bankruptcy by existing courts was inadequate, and that new specialized courts were needed. The idea of revising laws to remove burdensome and complicated procedures, as described in the Legal Framework section, received general support.

DIFFICULTIES PLAGUING THE SYSTEM

Several important factors hinder the system of insolvency in Bulgaria: (1) the determination of solvency, (2) verification of claims, (3) inadequately trained officials and unwise remuneration policies for receivers, (4) inability to abide by legal time triggers within the Code, (5) lack of uniformity and accountability, (6) lack of uniform, nationally accepted forms, (7) lack of a uniform case tracking system, and most importantly (8) the overabundance of appeals. While insolvency legislation as a whole seems to provide a workable framework, the particulars and practicalities require further re-evaluation.

1. The Insolvency Determination. Before a bankruptcy proceeding can commence, a determination of solvency is required. This is a waste of the legal resources expended to litigate this issue. To require a finding of insolvency before a bankruptcy proceeding even commences spawns unnecessary litigation over an issue that might not otherwise arise within a case. For example, if an enterprise wishes to avoid complete disaster and file bankruptcy before it becomes unable to pay it debts regularly, a lengthy hearing on insolvency is irrelevant. Reorganization of an enterprise to provide a stronger infrastructure benefits the entire economic sector when those debts are being regularly paid. The issue of insolvency is irrelevant. The system also seems to ignore the potential strategic reasons to seek bankruptcy reorganization, focusing only on whether an enterprise is insolvent under the Code definition of insolvency.

Therefore, the simple commencement of a bankruptcy proceeding should be allowed to occur without the unnecessary preliminary inquiry into solvency. This change would avert needless delay and unnecessary litigation.

2. Verification of Claims. One cause for unnecessary delay in the system is the claims process. The law seems to require that claims litigation precede the meeting of creditors. The creditors are required to prove their claim to the receiver. If the receiver accepts their claim and no objections are raised, then the court will accept the claim. However, if the claim is contested, as many claims are, the allowance or disallowance of the claim is required immediately. This process appears to be premature and time consuming.

Most troublesome about claim verification is the right to immediately appeal the denial of the claim. If exercised, this right can delay the bankruptcy, as all claim appeals must be exhausted before a plan can even be proposed. This process is designed to cause litigation of claims, which may not be necessary. It is one of numerous situations in the entire legislation that invite litigation, slowing the process while these issues are resolved.

3. Politics and Payments. Adding to system disruption is the “list of receivers” from which the judge must choose to serve in a bankruptcy case. By later amendment to the bankruptcy legislation, the list of receivers is furnished for the judges by the MOJ and European Integration. See the Amendment and Supplement to the Commerce Act, Section 58.(1). The list of receivers is subject to politics, cronyism, and in some cases merit. This leaves control of the bankruptcy estate to a potentially inexperienced,

unqualified, and/or unknowledgeable appointed official. The receiver corps should instead be chosen solely on merit and expertise. This would increase the system's efficiency.

Also disquieting is the system of compensation for receivers. Receivers are allowed a monthly "salary" for their service in the case, which provides no incentive to conclude a case quickly and efficiently. Compensation based strictly upon performance (a percentage of distributed assets) would motivate receivers to streamline their roles in the bankruptcy process and resolve cases more quickly.

Further incentive to receivers would be to limit their personal liability while they are performing in their receiver capacity. As the law is written, the trustee is not required to provide a "bond" to insure performance. Instead, the trustee remains personally responsible. This might dissuade otherwise qualified receivers from serving in a particularly contentious case for fear of being sued. By bonding the receiver, the creditors are protected from any misdeeds, and the receiver is free to operate without fear of personal reprisal.

4. Timeliness. Although the Code provides numerous triggers to encourage quick resolution of matters, those triggers often go unnoticed. For example, the insolvency laws set fairly short triggers for ruling on such issues as insolvency, claims verification, admittance of plans, and a receiver's proposed sale of assets in liquidation. In actual practice under the law, however, these deadlines often pass unobserved.

5. Uniformity and Accountability. The Bulgarian system urgently requires an oversight program such as the U.S. trustee program. An oversight watchdog would provide accountability for the receivers and more importantly relieve the judiciary of burdens that are more administrative than judicial. Accountability would lead to more uniform procedures, increase safeguards for a meeting of creditors that was not presided over judicially, and result in increased organization by the practicing attorneys.

Currently, bankruptcy crimes are rarely prosecuted. The institution of a trustee program would provide the policing of debtors and receivers to ensure the system operates truthfully for all parties. For example, in the reporting of a debtor's assets, debtors may seek to transfer or otherwise conceal assets that could be liquidated for the benefit of creditors because there is no policing of the debtor's conduct currently in place.

A Bulgarian trustee program could also develop uniform "forms" to smooth the claims verification process and extend uniformity across the different bankruptcy courts. The program would also function as a watchdog of sorts for the judiciary itself. It appears that the judiciary is also largely unaccountable and could benefit from self-reporting requirements and accountability measures.

6. Immediate Appeal Rights. The most significant factor in the slowdown of the insolvency process is the nearly unfettered right to immediate appeal of almost any bankruptcy court ruling. For example, the question of the debtor's solvency must be

determined before a case can even commence. A ruling on the debtor's solvency can be immediately appealed, thus slowing down the case. Likewise appeal rights are given in the claims allowance process, upon denial of the admittance of a plan and upon rejection of an admitted plan.

The levels and rights of appeal are too numerous for a bankruptcy process that will benefit creditors. A judge interviewed opined that the issue of insolvency has an appeal rate of close to 100 percent. Such statistics demonstrate the impossibility of an orderly administration of an estate.

CONCLUSIONS

Because bankruptcy legislation has essentially been reintroduced to Bulgarian society, the bankruptcy bar, the receivers, and the judiciary are largely inexperienced. The 1994 legislation is constantly being amended with stopgap measures that lead to only temporary solutions. The basic framework of the Bulgarian insolvency law is sound, but the bar and judiciary need education on proper implementation of the laws. Furthermore, provisions that promote unnecessary litigation and create unwelcome delays paralyze the system. The process should be streamlined to provide for the commencement of a case without prior determination of insolvency, and claims should not be litigated and resolved as a prerequisite for the case to go forward. Often a disputed claim is resolved in the plan negotiations, and litigation is thereby avoided.

Of course, the number of cases or successful reorganizations cannot determine the system's effectiveness. It is instead measured by how well it promotes the reallocation of assets within an economic sector in need of reorganization or redistribution of wealth. While the overall concepts behind the Bulgarian process are reasonable, continued reform is still needed.

PRIVATE COURTS (ARBITRATION COURTS)

Earlier it was indicated that the business associations were not acting to enhance the judiciary and the commercial law system. However, these associations are actively and successfully creating a way to bypass the courts. Both the Bulgarian Chamber of Commerce and Industry and Bulgarian Industrial Association have created arbitration courts that are efficiently dealing with an ever-increasing number of business disputes, some of great complexity. To entice clients to their programs, the associations offer panels of the best lawyers, experts, law professors, and even judges (though these judges are serving improperly through a loophole in the law). The decisions of these arbitration courts have the same force and effect of a judgment of the third-instance Supreme Court of Cassation. Nonetheless, parties can face the same problems with executions as they face with state judgments because of the incompetence of bailiffs. To enter into arbitration requires that agreement to arbitration be written into the contract or that both sides agree to resolve their dispute through the arbitration courts.

Growth in the arbitration courts could further eviscerate the state courts as a meaningful dispute resolution forum, if the ineptitude and delays of the court system are not remedied. This shift would be similar to the leapfrog in technology from the state telephone systems of the developing countries to cell phones, without the intervening modern telephone systems that Western Europe and America have had for years.

B. COLLATERAL LAW

OVERVIEW

A healthy system of secured lending depends upon three elements: an appropriate legal regime, an effective registry, and reliable enforcement. Only two of these elements are present in Bulgaria. Weaknesses in the system of enforcement are producing serious negative consequences for the growth of the credit industry and the cost and availability of credit. Addressing the problem will require a broad-based approach focused on both legal and institutional weaknesses.

The legal regime for collateral law in Bulgaria is essentially sound. The basic law is modern and sophisticated and theoretically permits most types of secured transactions. Although some refinements are needed, the existing laws provide the necessary foundation for the growth of secured credit. Likewise, the Special Pledge Registry is effectively meeting most needs of users at this time. The registry is computerized, functions rapidly, and enjoys excellent reviews from users. The only significant shortcoming of the registry is the lack of a centralized database via Internet or intranet to permit simultaneous computerized searches of all records, but this can be remedied easily at relatively low cost. In short, no significant changes are required in the principal framework laws or registry in the near term.

Despite these positive findings, development of collateral lending continues to be adversely affected by the lack of efficient and predictable enforcement mechanisms. Users, banks, and practitioners complained unanimously about the costs, delays, and lack of predictability in the enforcement system. Some changes are under way, with proposals for changes in the civil code being developed by industry groups and legal professionals. Even these changes, if adopted, will be stymied by the dysfunctional bailiff system. Self-help is improving as an option but is not viable overall. Thus repossession is difficult, costly, and uncertain.

In short, secured lending has the right framework in place, but the breakdown in enforcement is constraining the availability of credit while driving up costs.

LEGAL FRAMEWORK

The principal legislative framework for secured lending is set forth in the Law on Special Pledges, adopted in 1996, and entered into force on April 1st, 1997. The law establishes a modern, well-conceived foundation for the development and implementation of a secured lending regime with well-defined priorities and protections based on public notice through registration. Although refinements are needed in some areas, no major reforms are required.

The Law on Special Pledges provides for ample forms of possessory, retained title, and nonpossessory pledges. These include special pledges on accounts receivable, shares, warehouse receipts, livestock, and an enterprise as a going concern. The overall framework does not yet adequately provide, however, for securitization or

collateralization of chattel paper (such as mortgages and receivables). This will likely be addressed through projects on securities and is not a major concern from the perspective of collateral law.

Although the various forms are accounted for, some types of collateral are, in practice, very difficult to use. Receivables financing is unnecessarily complicated by the requirement that all payors be notified of pledges. This complicates the process and raises costs without corresponding benefits. Pledge of receivables is not the valid concern of the payor; notification requirements should be driven by market (lender) demand, so that any decision on notifying payors is left to the lender to protect the lender's interests. Given the importance of this financing in a healthy credit system, this weakness deserves attention in the short term.

Similarly, the system for pledging an enterprise as a going concern has been succinctly described as a "mess" by practitioners. The paperwork and other requirements are enormous and costly, including itemization of all assets, unnecessarily detailed valuations, and restrictions on separating company obligations from assets. This final point is related to definitions of a company under the company law that require including all assets and liabilities in the pledge or sale of a company to prohibit the severing of debts to give priority to the lender. These complications have severely limited the use of this particular pledge instrument.

Another deficiency noted is that the law does not adequately provide for the pledge of intellectual property rights, which has an impact on foreign as well as local investment. Amendments to existing law should address this need. In addition, the law needs to be updated and harmonized with the recently adopted electronic signature law to ensure recognition of contracts via electronic means.

The framework law properly defines requirements for setting priorities and the role of registration in the process, although overall understanding of priorities is perceived as low and in need of clarification through regulations or better legal definitions. Possessory pledges and transactions involving the retention of title are adequately addressed (with one serious limitation), and it has been possible for some lenders and financiers to establish a nascent leasing industry. The legal weakness in this part of the regime concerns repossession for retained title transactions. The law does not adequately provide for repossession of leased property based on ownership by the lessor, but instead equates the transaction with a nonpossessory pledge, subject to the same safeguards and protections. A specific enforcement exception is needed.

The legal framework solidly defines the role, responsibilities, and functions of the implementing institution through a separate law establishing the pledge registry. This law requires that adverse registration decisions be based on published laws and regulations, be set forth in writing, and be subject to appeal.

A broader analysis of the legal regime, however, quickly reveals a serious deficiency for the effective implementation of the collateral law system. The Code of Civil Procedure is

generally perceived to create a debtor-biased system of enforcement. Criticism of the enforcement provisions — especially the lack of effective provisions for expedited enforcement and repossession — was universal among judges, lawyers, lenders, and users. Procedures are cumbersome, too slow, and too expensive for the simple nonpayment claims arising from pledge contracts. The law requires inappropriate proofs by the lender before repossession is allowed, rather than permitting a lender to repossess while providing for sanctions if the debtor can prove that repossession was inappropriate. While other issues are involved in the breakdown of the enforcement proceedings from an institutional side, the legal framework urgently needs upgrading. A multistakeholder group is already proposing revisions to the law, which are expected to be sufficient. Passage of these amendments is crucial and should be a part of any legal reform program.

Several stakeholders noted one provision as a serious impediment in the credit industry. Article 348 of the Code effectively permits debtors to reschedule their obligations without the agreement of the lender. The provision provides that if a debtor is in arrears but pays 20 percent of the amount in arrears before a lender's enforcement action, then the entire debt becomes due and payable over 18 months in equal installments. As a result of this generous gift to debtors, many debtors deliberately default on loans, pay the requisite 20 percent within the 18 months, and thus reschedule their payment plan. While this may have an impact on future loans by the same lender, such defaults do not negatively affect the debtor because little credit information is available. It does have a significant impact on lenders by increasing their risks, decreasing their liquidity, and raising their costs.

Taking an even broader view of the legal regime affecting collateral lending, a number of respondents noted the negative impact of Central Bank regulations and the tax code. The Central Bank mandates 100 percent collateral for secured loans to avoid higher reserve requirements. (In practice, banks generally take more than 100 percent for most loans.) As a result, collateral pledges do not adequately lower the cost of capital. This requirement is in part due to the high risk associated with enforcement against collateral, but also stems from an overly conservative regulatory approach that until recently held bankers criminally responsible for insufficiently secured loans. While this stringent approach can be understood as a reaction against lending abuses in the immediate post-soviet period, it does not provide the flexibility needed for the growth of the credit industry. Abuses should be addressed through banking regulations, corporate governance, fraud laws, and allowing greater freedom for financial institutions.

With respect to taxes, various stakeholders noted deficiencies affecting the profitability (and thus viability) of the lending and leasing industry. Complaints focused on two main areas. First, respondents noted insufficient allowance under the tax code for depreciation or deduction of costs for various equipment and vehicle purchases or leases, including the cost of maintenance and repair. The tax code thus increases the cost of investment by failing to recognize legitimate expenses. This has affected leasing companies. Second, leasing companies and financial institutions noted that the treatment of VAT on lease payments is a constraint. First, VAT is due based on the payment schedule, not on the actual payment, thus requiring lessors to make VAT payments even when the debtor is in

arrears. Second, only large companies are given tax credits for VAT payments, but the credit system is subject to serious delays. Worse, small companies receive no credits, putting them at a competitive disadvantage with larger companies as well as limiting their potential profitability. (Additional concerns were raised regarding taxes, which are addressed below.)

IMPLEMENTING INSTITUTIONS

1. The Special Pledge Registry. The Special Pledge Registry was recently established in the Ministry of Justice with headquarters in Sofia and six regional offices. Users had high praise for the registry, both with respect to its organization and operations. Stakeholders understand the role, purpose, and function of the registry, although additional awareness is needed among lawyers and lending institutions on the impact of registration on priorities and claims in the event of nonpayment or bankruptcy.

The registry is computerized and allows rapid registration of security interests. The law properly requires registration of only the claimed interest, with no supporting documentation required, but in practice many registrar personnel prefer registering the underlying pledge contract. This practice is expected to change over time as users and registrars become more familiar with the pledge notice regime.

The registry is sufficiently staffed and funded for current operations, although officials expressed concern that funding levels are insufficient for growth and even future maintenance. Current receipts from filings exceed costs, producing net revenue, but this will not necessarily translate into increased financing for this institution. In fact, developing the computerized system involved budget issues. Some respondents explained that the original plan included an Internet-based system to link the regional offices, but this option was cut for budget reasons despite its low cost.

Staff is trained on the job, and this training is considered by all involved to meet training needs. Staff are given handbooks and materials regarding the laws, procedures, and software system, and no sense was expressed that any additional materials are needed at this time. Users and staff agree that the registry has a customer-oriented approach, with staff helping to explain processes and solve problems.

Forms for registration are reasonably available, as is information on registration procedures. The registry is currently developing a Web site to disseminate information on procedures, laws, hours of operations, required documents, the fee schedule, and downloadable or printable forms. Even without this additional service, users are satisfied with the access to the information they need and the speed and cost of the process. In general, registration takes less than an hour and consists of a review of required forms and documents, which, once verified, are scanned into a computer and registered.

The registry produces statistics on filings, but not regularly and usually only upon request by a government ministry. These reports are not generally made available to the public or even the lending community, but should become accessible as the registry develops. Production of statistics is not yet well developed. The registry cannot provide statistics

based on type of registered collateral or otherwise disaggregate the information into more useful categories. It was unclear whether this is a problem of software design or of user understanding. In either case, the software and its usage should be upgraded to ensure the availability and production of better statistical information.

The only significant change needed in the short term is data centralization. Currently, the seven different registries maintain separate computerized databases, so no system for a centralized, computerized records search exists. As a result, lenders must simultaneously check each location physically to ensure no intervening claims might defeat their priorities. While such a "race notice" system made sense before the advent of Internet-based systems, it should now be upgraded to a centralized system. The cost of such an upgrade is low, especially because Bulgaria has sufficient local experts to implement the changes. Overall cost savings to the credit industry immediately justify the cost of the change, which could be accomplished within a few months.

2. Courts. Although the Special Pledge Registry is a success story, the same cannot be said for the enforcement regime. Respondents were unanimous in their assessment that the enforcement system is broken and needs urgent fixing.

First, as noted above, the legal framework for enforcement is deficient. The laws and procedures favor the debtor and entail unnecessary delays and costs. Some lawyers claimed that simple decisions can take years, and one top-tier law firm stated that it had given up litigation practice because of the risks and costs.

Even assuming the laws are amended, stakeholders voiced little confidence in the courts. Many complained of ineptness of judges, and some complained of corruption. Those who cited corruption as a problem varied in their assessments depending on the size of the clients they represented. Representatives of large firms (whether local or foreign) described bribery issues as a nuisance, suggesting they have no major financial impact. Representatives of smaller firms see these issues as a more serious constraint with significant economic consequences. As discussed in the section on courts, perceptions of corruption reflect a general distrust of the judiciary that may arise more from the judiciary's institutional and training inadequacies than judges' misuse of office.

Finally, a number of stakeholders noted that even if the courts provide enforceable judgments, the judgments couldn't be enforced because of the bailiff system. The bailiff system is understaffed and under trained, with no proper government support. Stories were told of bailiffs being threatened or even beaten when trying to execute against property, with little or no recourse to assistance from the police to carry out their duties. As noted elsewhere in this report, reform of the bailiff system is crucial not only to the health of the secured lending sector, but to the entire system of commercial rights and obligations.

Many countries permit lenders to bypass or supplement the court system through legal self-help mechanisms that enable them to repossess property for nonpayment. In Bulgaria, self-help mechanisms emerged during the mid-1990s due to the ineffectiveness

of the court system. The industry began through employment of "wrestlers" — out-of-work athletes or other forceful individuals — who often enforced contracts through illegal means. The wrestlers were organized under so-called insurance companies. Some of these companies were connected with organized crime, and most functioned as extortion and illegal enforcement companies. Interestingly, the government chose to regulate these companies instead of eliminate them, and many have now become legitimate service providers operating within the law. They thus provide at least a partial foundation for building self-help services as long as the government continues to combat illegal use of force. Additional legal changes will be needed as part of the overall reform package to ensure development of an appropriate self-help regime.

SUPPORTING INSTITUTIONS

1. Trade and Special Interest Groups. The most important supporting institutions in the realm of collateral law are the banks. In Bulgaria, the banks' effectiveness in supporting development of secured lending is mixed.

The banking industry worldwide is highly conservative and risk averse, and risk aversion has led banks and other financial institutions to develop modern systems of collateral law and registries. Most of the Bulgarian banks, however, are not yet involved in this development.

The assessment heard numerous complaints about the banking sector from the legal and business communities. It was noted that most Bulgarian banks have no more than 30 percent to 40 percent of their assets in loans, with the rest of their deposits invested either in government bonds or European money markets instead of the local economy. A number of historical reasons were offered for this tendency. First, Bulgarian banks did not develop within a market economy. Although recently privatized, they historically served small elites with relationships or political connections who were able to borrow. Higher collateral requirements and guarantees are a recent development due to failed loans from the old system, but these do not expand the availability of credit from the old-line banks. Most loans are still extended to a small group of well-known, established clients, and outsiders perceive little banking interest in changing this. The Bulgarian Bankers Association has been compared to a "retired-persons' club" due to a perceived lack of initiative and interest in reforming the banking system.

While it was not possible to confirm the basis for these impressions, a number of economic and business issues were identified that are depressing the development of asset-based lending. Stakeholders described the impact of tax avoidance on the apparent creditworthiness of potential borrowers. Due to the extensive use of double or triple bookkeeping to avoid taxes, many borrowers apply for loans — secured or otherwise — based on records that have been cooked to show no profits, poor cash flow, or other low-tax positions. Because good banking practices look for the ability to pay as the principal basis for a loan (rather than the ability to repossess pledged property), borrowers using falsified books do not qualify. At least one bank has a practice of reviewing and assessing additional books or indices of profitability, but most take the borrowers' statements at face value, which is a reasonable practice.

Addressing this tax avoidance problem in a legal reform program focused on collateral law is complicated, and its resolution requires a larger reform agenda. The problem implies a number of other issues, including the tax rate. While assessments of the fiscal system were beyond the scope of this task, the level of tax avoidance and the relatively large informal economy suggest that the tax rate is too high for current economic conditions. Analysis of the cost of tax avoidance is required to determine whether lowering taxes will lead to increased compliance and higher overall revenues.[8]

Another business issue affecting bank lending is that a great percentage of those seeking loans are startups and new companies with no established credit history to support lending without high levels of collateral and guarantees. Coupled with the fact that pledges are difficult to enforce and thus do not necessarily provide adequate security, many banks are not interested in extending loans.

This problem is further compounded by the lack of proper loan evaluation skills in the banking community and the lack of credit-seeking expertise among potential borrowers. Bankers interviewed from all banks noted that few loan officers are capable of properly reviewing loan applications (including business plans, balance sheets, tax statements, and other documentation of financial viability) and making a sound, market-based determination of creditworthiness. Little credit information is available, unless provided by the borrower, so the risk of fraud is perceived as high.[9] Risk evaluators are in short supply. Moreover, the inexperienced private sector lacks expertise in preparing loan applications and demonstrating cash flow, profitability, or other indices of potential success. These factors combine to depress new lending, especially when banks have the option of safe investments in government bonds and foreign money markets.

Despite these negatives, there are strong positives. First, trade associations other than the Bankers Association are actively pursuing reform. The Bulgarian Investors Association is assisting members in obtaining financing by supplying historical financial and corporate information on its members through an Internet Web site, including balance sheets for at least five years on the older companies. It also provides letters of recommendation for its qualified members to banks, and negotiates with banks to offer better rates to members. The association regularly publishes information on banking and financing and even posts current deposit and loan interest rates on its Web site for public comparison. It has the capacity to assist in or lead the development of computerized

[8] During the 1980s, Brazil faced similar problems. High taxes, plus poor enforcement mechanisms, led to high rates of avoidance. Companies that complied with the law were at a severe competitive disadvantage to the majority of their noncompliant competitors. Brazil lowered the rates from 30 percent to 50 percent down to 10 percent, which was approximately the cost of multiple bookkeeping and other noncompliance mechanisms, so that there was no longer an economic advantage to avoidance, especially when factoring in the risk of audit. The result was the largest collection of revenues in Brazilian history, despite a 60 percent to 80 percent reduction in the tax rate.

[9] One interviewee opined that the lack of credit information available is in part a deliberate policy of the older banks. The theory (unconfirmed) is that banks have actually opposed publicly available credit information because they preferred to use the lack of information to pawn off their bad customers on other banks, evidently by letting them obtain loans elsewhere to pay off existing bad debts without competitors finding out about the credit risks.

credit information services. The association understands the importance of lobbying the government for changes in law and policy to benefit its members, approximately 19,000 companies. It also assists members in preparing business plans and credit applications.

Other groups, such as the Bulgarian International Business Association (BIBA) and the American Chamber of Commerce, are also pursuing changes in the secured lending environment, providing a public education function and representing the needs of their members. A stronger bankers' association is still needed, but these types of newer, more vibrant organizations can fill the gap until one emerges.

2. Government Entities. Most stakeholders interviewed with respect to the secured lending issues perceived notaries, addressed more fully in the Contract section of this report, as adequate. One respondent noted that the recent privatization of notary services under a fixed pricing system has led to competition for clients through the quality of service provided. No respondents felt that notaries were too expensive. Questions were raised, however, regarding business ethics in the profession (as well as in the business community generally), and several involved in real estate noted a problem of notaries involved in the forgery of title documents. This problem can be addressed through civil and criminal penalties when discovered, but general training in business ethics would be profitable for this group.

3. Professional Associations. Respondents gave mixed reports on the level of accountants and accounting practices. Some felt that accounting standards are too low, but this was counterbalanced by the awareness that the problem is being addressed through adoption of International Accounting Standards, now programmed for 2003 to 2005. The larger issue raised was multiple bookkeeping for tax avoidance purposes, addressed above.

The bar associations also have mixed reviews, as covered elsewhere in this report. No separate committees exist on collateral law issues, but some interviewed lawyers are actively involved with law professors, judges, and other attorneys to propose amendments. Some lawyers provide input through trade groups (such as BIA), so the lack of formal organization at the bar association is not necessarily impeding development, though such organization would add impetus to reform. The bar lacks a self-sustaining formal mechanism for continuing legal education (CLE) in the many legal changes taking place in Bulgaria, including in collateral law. Likewise, law schools have no system to ensure legal education is updated for new entrants. Although some professors are committed to ongoing upgrades, without formal mechanisms, the result is limited to unpredictable ad hoc changes in curriculum. Local experts are sufficient for CLE in most cases, but programmatic assistance might be appropriate to establish ongoing, self-sustaining CLE.

4. Specialized Services. At this point in the establishment of a system of registered pledges, specialized services, other than development of standardized forms, are not needed. The level of filings can be handled cost-effectively by the banks, leasing companies, notaries, and others involved in the process. If registration goes online, this

will reduce the costs and obviate the need for specialized filing services in the near future.

Specialized publishing needs are, for the most part, being provided through the registry itself. Forms are currently available for registration and soon will be put online. Standardized agreements should be developed over time. Already a professor is working with lawyers and judges to create standardized forms and agreements in the commercial contract area, and this group could help develop similar forms for pledges. In the end, however, development of such forms should be driven by the banks, leasing companies, and other financial institutions that will rely on them for their own profitability and security.

THE MARKET FOR COLLATERAL LAW REFORM

In a market economy, three groups normally lead demand for development of a collateral lending system: lenders and lessors, vendors of movable property, and purchasers of movable property. Banks generally take the lead, but the system is supported by an inherent demand for credit to obtain capital and equipment for investment in commercial activity and consumer products. The lack of a developed credit market is generally an indication of a defect in supply, although it can also indicate unfocused demand due to lack of understanding of the link between secured transactions and the availability of credit.[10]

1. Legislative Reform. Demand for reform of the Law on Special Pledges is not high. The new law will need to be refined, as noted, and those groups most interested in those reforms can be expected to lead the effort and engage appropriate government ministries and agencies in the change. The active supporting institutions are already involved in lobbying efforts, in what appears to be a comparatively healthy system of public involvement in the legislative process.

On the supply side, most of the expertise needed for legal reforms is available locally. Expatriate assistance might be useful in some cases to ensure harmonization with international best practices and European Union requirements, but most problems were noted by stakeholders who are already involved in supplying solutions. More sophisticated areas, such as commercial paper based on collateralized loans, may need expatriate technical assistance, but a substantial layer of well-developed, internationally trained local resources can address most needs.

The major area requiring legislative reform is enforcement as set forth in the Code of Civil Procedure. As previously noted, the law is highly deficient. A task force led by a respected commercial court judge, a reformist professor, and other legal professionals is

[10] Secured financing and collateral law are not generally well understood even by legal professionals, especially with respect to their impact upon economic growth. Farmers who complain that they cannot obtain financing will seldom also understand that this may be due to the lack of an enforceable system of secured credit, in which lenders can hedge the risk of non-payment through a number of secured financing tools. Public education, therefore, is essential in any program to improve or reform the collateral lending regime.

examining this issue and proposing legislative reforms to the new Minister of Justice, who is a respected reformer. Technical assistance is likely not needed at the drafting phase, but will probably be helpful in restructuring processes and training judges, lawyers, and enforcement agents in applying any new law. Demand for such training is high, but supply is low.

One odd "wrinkle" in the overall demand for reform of the contract enforcement regime is the resistance led by a fictional character that represents strong popular resistance to the entire concept of execution and repossession. A famous short story has been taught in public school literature courses since the 1950s, when it was written by Elin Pelin (pen name of Dmitrov Ivanov). The story describes the peasant Andreshko, who picks up a pedestrian traveler headed to Andreshko's village. As the horse cart heads home, Andreshko discovers that his passenger is an execution judge with orders to seize the grain of a village neighbor for satisfaction of a tax lien. Andreshko is tormented by his unwitting role in the impoverishment of his friend, and rather than aid the judge, he cleverly leads his horse into a swamp. When the cart becomes mired, he unhitches the horse and rides away, leaving the execution judge alone in the swamp. Andreshko, to most Bulgarians, is a hero.

While it may seem odd to recount this story in the context of commercial law reform, the power of a popular hero such as Andreshko cannot be underestimated, especially in the face of vague legal theories and principles. Andreshko is the patron saint of the high levels of popular resistance to the concept of repossession and execution against movable property. Unfortunately, understanding is lacking of the damaging economic impact when courts and other enforcement agents fail to uphold the rule of law in enforcing a pledge agreement. As risks of nonenforcement rise, credit either disappears or becomes prohibitively expensive. Unless public education distinguishes Andreshko as a resister to an oppressive state and not to the sanctity of the contract, popular resistance to improved enforcement is likely to delay and hinder reforms for years, especially in agricultural communities.

2. Reform of Implementing Institutions. As previously noted, demand is low for any significant reform for the Special Pledge Registry other than expansion of the computer system to include networking for centralized searches and eventual Internet access. Local expertise is available for both the software and legal changes needed, but program assistance may be needed to fund it. From a USAID perspective, such assistance could provide a "quick success," if needed to bolster other reform efforts or complete the process in the pledge registry.

Demand exists among many users and members of the financial community to see an information registry outside the courts to centralize information from company, collateral, land, automobile, and other registries. Technical capacity for this system is probably available locally (and certainly regionally through Serbia and elsewhere), but the political will has not yet emerged for this move. While this change would not be difficult to effect, it may be more expedient in the short term to focus on a credit information system involving banks, the pledge and real estate registries, and even

private sector databases such as the company member directory of BIA. Demand is strong for this type of information in the lending community. By enabling lenders and lessors to assess credit risks more effectively, this information will be essential to lowering the cost of credit. Spurred by privacy rights and fears of abuse of shared information, opposition to this centralization will be strong and will require public education to inform the borrower population that improved information can increase the ability to obtain credit at reasonable prices. The process can be started without public education, however, by including contract clauses in pledge and leasing agreements that permit information sharing in the financial community.

Demand is high in the legal and financial community for reform of the court enforcement system, including the bailiff department, judges, and courts. Institutional resistance may be a problem in the courts, but the number of reform-minded judges is sufficient to lead the process, especially as judges learn that reforms will increase respect for the judiciary and reduce the court's burden of excessive procedures. At the bailiff level, help is also strongly desired. Bailiffs are well aware of their inadequacies and frustrated with their inability to execute on property. They must battle the folk hero Andreshko, who in some ways is their cultural nemesis. Public education, as noted above, will be necessary to support the changes.

3. Reform of Supporting Institutions. A nascent demand is emerging for continuing legal education (CLE) in the legal community, especially for those involved in commercial law. Potential intellectual and institutional leadership is coming from reformist professors who recognize that the lack of CLE has caused a serious gap in the legal culture. The supply, however, is unlikely to come solely from local resources at the outset.

Bulgaria needs an institutionalized CLE system. This can be provided by the private sector, such as bar associations, or piecemeal through specialized groups, such as bankers or investors associations. Structured, ongoing response to dynamic legal changes will probably be best accepted, however, if attached to a respected institution such as a ministry or law school.

While demand exists from lawyers who would voluntarily attend courses on new subjects, the critical mass of these lawyers is probably insufficient to sustain an institution. Several lawyers interviewed favored the imposition of mandatory CLE requirements for all lawyers, which would immediately create demand for courses from all those who want to maintain their legal credentials. Although mandatory requirements generate resistance, the level of changes in the Bulgarian legal environment in the past ten years would justify mandatory measures.

On the whole, the supply of supporting institutions in Sofia is sufficient. Although the Banking Association appears to be a disappointment to many stakeholders, other associations are responding to demand for changes in law and practice, and the pressure of competition will either pressure the Bankers Association to change or it will face marginalization.

Other associations will need development to better carry asset-based lending into the rural community, where such financing is desperately needed. Farmers groups, agro industrial associations, and other organizations must be brought into the reform agenda, to better understand what opportunities are available and lobby for their interests in removing constraints.

C. COMPANY LAW

LEGAL FRAMEWORK

The Company Law is part of the Commerce Act and was enacted in 1991. It generally regulates "merchants," which are defined as any natural or legal person engaged by occupation in any one of 15 different transactions, as follows (Commerce Act, Article 1):

1. Purchasing goods or other chattels for the purpose of reselling them in their original, processed or finished form
2. Sale of one's own manufactured goods
3. Purchasing securities for the purpose of reselling them
4. Commercial agency and brokerage
5. Commission, forwarding, and transportation transactions
6. Insurance transactions
7. Banking and foreign-exchange transactions
8. Bills of exchange, promissory notes and checks
9. Warehousing transactions
10. License transactions
11. Supervision of goods
12. Transactions in intellectual property
13. Hotel operation, tourist, advertising, entertainment, impresario, and other services
14. Purchase, construction, or furnishing of real property for the purpose of sale
15. Leasing.

The following forms of business organization are provided for under Bulgarian law:[11]

- Holding company (Article 277)
- Representative office (Law on Foreign Investment)
- General partnership (Article 64(1)1)
- Limited partnership (Article 64(1)2)
- Limited liability company (Article 64(1)3)
- Joint-stock company (Article 64(1)4)
- Partnership limited by shares (Article 64(1)5)
- Public company (Article 110 of the Law on Public Offering of Securities)
- Sole proprietor (Article 56)
- Consortium (Article 275)
- Branch (Article 17).

Although numerous types of business organization are listed above, only five types of companies are spelled out in the law. They are general partnership, limited partnership, limited liability company, joint-stock company, and partnership limited by shares. The limited liability company is a favored form of business and requires minimum capital of

[11] References are to the Commerce Act unless otherwise specifically noted. See also generally *Bulgaria 2001 Business Guide* (August 2001), published by the Bulgarian Foreign Investment Agency and the Bulgarian International Business Association.

only 5,000 leva (approximately US$2,500). The joint-stock company is the form of business for larger entities, and the minimum capital is generally 50,000 leva (approximately US$25,000). For certain types of regulated companies, such as banks, insurance companies, and investment companies, the minimum capital is considerably higher. The other forms of business organization are variations on a theme. For example, a public company is a joint-stock company traded on the Bulgarian Stock Exchange. A joint venture may be considered in Bulgaria as an organizational form, although in Western business and legal thought it is a contractual arrangement that may provide for the formation or use of a company to implement the contractual arrangement.

Merchants include companies and cooperatives (except housing cooperatives) (Article 12). Excepted from the definition of merchant are natural persons engaged in farming, and artisans and persons providing services through their own labor or members of the professions (Article 2).

The law is similar to other laws in Eastern Europe in its detail. Types of transactions are listed above that require that the person conducting them be deemed a merchant. However, that 15 specific transactions are mentioned means that many others are not covered. For example, sale of one's own manufactured goods is a covered transaction; however, no transaction covers a contract manufacturer, i.e., a manufacturer or assembler of goods for another party which owns the goods, unless the word service in transaction 13 is intended as a catch-all. Fortunately, a provision in the law requires that persons not otherwise within the above definitions are nonetheless merchants, i.e., persons who establish a business whose purposes or volume require that the activities be carried out on a commercial basis.

Adhering to the tradition in Eastern Europe, the law requires that to register, the courts (i.e., the judges) must approve the registration. This is in contrast to the U.S. system, where registration is accomplished and business may commence without prior court review and approval. The adherence to tradition often results in a lengthy registration period for companies in Bulgaria. On the other hand, the relatively easy registration requirement for sole proprietorships allows for relatively quick and cheap registration for this type of business.

The company forms recognized in Bulgaria are similar to those in other Eastern European countries. Abbreviations in the name indicate the form of business, e.g., o.o.d. for a limited liability company, a.d. for a joint stock company, or k.d. plus the name of at least one of the general partners for a limited partnership.

A partner or shareholder may make nonmonetary contributions to the company. The articles or the bylaws must state the name of the contributor, a full description of the contribution, its monetary value, and the grounds for the contributor's rights. The contributor to a limited liability company, a joint-stock company, or a partnership limited by shares may request the registering court to appoint three experts to value the contribution, and the valuation is included in the registration in the register after its acceptance by the court.

The powers of representation of the enterprise, including the powers of directors, are also similar to traditional European forms. Bulgarian law provides for representation of the company, such as by the *procurator (*manager) (Articles 21 to 31) and sales representative (Articles 32 to 47).

Bulgarian law does not depart from the German model of a two-tier management structure comprising a supervisory board and a management board (in addition to the general meeting of shareholders). In an interesting attempt to satisfy those who are more familiar with or who prefer the common law form of a board of directors, Bulgarian law (Article 219(1) 2) also provides that a one-tier board of directors may be chosen in place of the two-tier supervisory board/management board. Although this option is unlikely by itself to induce an investor to invest in a Bulgarian company, it does provide flexibility and make investing in a Bulgarian company more familiar to a party not accustomed to the two-tier German model.

The law provides for public access of information contained in the court registry, although some parties interviewed contended that this might not always be followed in practice.

Rights of shareholders in joint-stock companies are fairly well protected by the Bulgarian Commerce Act, but greater protection is provided for shareholders in public companies pursuant to the Law on Public Offering of Securities. Essentially, the Law on Public Offering of Securities is an overlay on the Commerce Act, but only with respect to public companies. Thus, Commerce Act Article 223 requires at least 30 days notice for the convening of a general meeting of shareholders and allows for publication of the notice in the *State Gazette*. This presents a problem to a shareholder who does not subscribe to or have issues of the *State Gazette*. The Law on Public Offering of Securities provides for the same 30 days' notice, but requires that notice be published in two central daily newspapers (Article 115), making it more likely that the ordinary shareholder will receive notice of the meeting.

The Law on Public Offering of Securities affords other protections to shareholders. For example, Article 118 of that law allows persons holding jointly or separately at least 5 percent of the capital of a public company to petition the court with respect to the company's claims against third parties in the event that the company management's inaction jeopardizes its interests, and the company can be summoned as a party to the proceedings. This is *in addition* to the rights granted by Article 230a of the Commerce Act, which allows shareholders owning 5 percent of the stock to bring a court action *against* members of management.

As mentioned, the Law on Public Offering of Securities applies only to publicly traded companies (which must be joint-stock companies). More than 10,000 joint-stock companies are registered in Bulgaria, with several hundred companies listed on the Bulgarian Stock Exchange, but only about 50 are actively traded. As a result, many listed companies are attempting to delist or disqualify themselves from being listed, thus

freeing themselves of the more burdensome corporate governance provisions of the Law on Public Offering of Securities. Amendments have been proposed to the Law on Public Offering of Securities, so that companies that should not be listed can delist easily if they choose, while those that should be listed will continue to be subject to the Law on Offering of Public Securities. However, the legislative outcome is unclear.

Unfortunately, the enhanced corporate governance provisions applicable to publicly traded companies are not applicable to other types of companies (even to joint-stock companies that are not publicly traded). Some respondents thought it unlikely that the Parliament would pass amendments at this time to strengthen the Commerce Act's corporate governance provisions. Instead, the respondents hope that experience with the Law on Public Offering of Securities will set the groundwork for future changes to the Commerce Act.

The provisions relating to companies in the Commerce Act are generally adequate. Bulgaria is moving quickly to comply with relevant European Union (EU) standards in a wide range of matters, including company law. Some EU directives are being complied with, while others remain to be harmonized with (e.g., mergers and divisions). Whether required by the EU or not, Bulgarian law and practice should be amended or revised in a number of respects. Registration procedures should be streamlined and made more rapid. Proposals exist to transfer the registration function from the courts to lawyers, notaries, and/or chambers of commerce. These proposals should be reviewed carefully, since taking this ministerial function from the courts would free judges to handle more litigation (see fuller discussion below).

Enhanced protection of shareholder rights and more detailed obligations and duties of officers and directors should be part of the Commerce Act. Although the Law on Public Offering of Public Securities contains better "corporate governance," these rules apply only to publicly traded companies and must be broadened in their application.

IMPLEMENTING INSTITUTIONS

The main implementing institution in the company law area is the company registry. As in many Eastern European countries, the registry is housed in the courts, and the procedures require major involvement by the Judiciary.

In Sofia, the company registry is housed in the Sofia City Court[12] and is managed by the court's Commercial Division. The heavy involvement of the judiciary in the company registry is evidenced by the fact that eight of the seventeen judges in the Commercial Division of the Sofia City Court, or almost 50 percent of judges, are involved in various matters relating to company registration.[13] (See further discussion of this point in other parts of the Report, e.g. [Bankruptcy Section].)

[12] Outside of Sofia, the commercial registry is housed in the District Courts.
[13] The other nine judges deal with bankruptcy and commercial disputes.

Under current procedures, a judge reviews almost every facet of a company registration. This stems from the tradition that registration signifies compliance with all requirements. While registration of a corporation in the United States, for example, requires the filing of a Certificate of Incorporation with certain prescribed information, many other corporate documents need not be filed, such as the bylaws. In Bulgaria, as in countries with similar legal traditions, the judge examines the content of a myriad of corporate documents that must be filed. This requires the judge to, in effect, review the work of the lawyer who drafted the registration documents and to reject a registration the judge feels is deficient. While this is justifiable (although time-consuming) under Bulgaria's legal tradition, the judge should not also have to calculate the proper registration fee.[14]

The workload of the commercial registry is also overwhelming. Approximately 15,000 to 20,000 new registrations are filed each year in Sofia alone, although this may include amendments to existing registrations. Each filing becomes a case for the judge. As a result, parties often use the registration procedure to impede the work of companies.[15]

While most registration matters are straightforward and can be handled by judges easily (although because of the heavy load, the process may be prolonged), complaints were heard by some practitioners that judges were not always equipped to deal with unusual or more complex matters. In some cases, according to the practitioners, this led to the judges not taking any action.

Judges have also complained that some lawyers clog the system by filing incomplete or incorrect registration applications. This, they contend, causes their workload to expand, leading to difficulties in court registrations and dockets.

Both judges and lawyers recognized that their lack of experience in commercial law generally, in part a result of the relatively short time the commercial law provisions have been in effect, has hindered their competence in dealing with commercial law matters. One result has been to contribute to the serious delay in handling commercial law disputes.

The law provides that information from the registry be available for inspection. The fee is not high, but some commented that this right is honored in the breach and that the

[14] A judge reported to the Assessment Team that a request to enforce an arbitration award had to be returned by the judge to the petitioner because the filing fee was about 5 leva more than what had been paid. Although a clerk could clearly have checked the amount of the award and calculated the correct fee, the clerk merely checked to see that the minimum filing fee had in fact been paid. The judge agreed that this was a "ministerial" matter that could have been handled by a clerk, but the judge was resigned to the fact that the law and regulations required judges to handle even these *minute* matters.

[15] For example, it was reported by a lawyer representing a company that minority shareholders can "paralyze" the work of the company by challenging every registration amendment by the company, of which there may be many, especially if amendments to charter documents are required. Minority shareholders should definitely receive all the protections that the law can offer them, and should have redress in court, if necessary. However, the system used in Bulgaria (and elsewhere), allows for abuses *by minority shareholders* under certain circumstances.

ordinary citizen is often denied the right to inspection. It is possible to obtain a computer printout of some information in the registry; however, this is not furnished by the registry but by a company, Information Services. This company has an effective "monopoly" on this type of service, by providing services to the court. For example, judges' opinions on registrations in the Sofia City Court are produced by a computer with a program supplied by Information Services. Most parties viewed the cost of obtaining the abstract from Information Services as not burdensome, but the abstract may not always be up to date. Other services also provide registration information online, although subscriptions for these services are expensive by Bulgarian standards, making them inaccessible to most people.[16]

An overhaul of the registration system is needed, both in the role of the judges and in procedures and methodology. All work is now done manually, with a company's registration history spread out over many volumes. Forms are not standardized to ease compliance in the registration process. A judge on the Sofia City Court reported that many donors have seen the need to address the procedural and methodological aspects of the problems, but have not carried through on their concerns. More than technical assistance is required; heavy investment in computers and software is also needed.

The role of the judges is being actively discussed. No consensus has emerged on removing the company registry from the courts or on that should assume responsibility for the registry. Judges are split on the question; some want relief from this function to be able to concentrate on other judicial matters, while others want to retain the responsibility. Any changes will require major changes in the law and in institutions and necessitate training for all participants in the registration process — judges, court personnel, lawyers, notaries, the business community, and the public. The time may be right to move the discussion along to effect improvements in the system.

NOTES

After the interview phase of the assessment was completed, a well-known business advocacy group issued a white paper. This study substantiated and supported many of the concerns, issues, and recommendations stated above. The study stated in part as follows:

> "To our opinion this [registration] system proved to be ineffective to such a point that it has now and (sic) become a serious obstacle for the normal businesses. The reasons for such conclusion are as follows:
>
> a. The number of active companies and sole traders are more than 300,000. Hundreds of highly qualified magistrates in the District Courts are working only on company files issuing decisions for registrations and signing official certificates on request by the traders for the everyday business needs. The court system is heavily burdened with this procedure, which is administrative in its

[16] Registrations must be published in the *State Gazette,* and thus the information is available to parties to gather and disseminate.

core. The delays in court registration and issue of certificates have become a rule rather than an exception.

b. The court practice developed during the last 10 years turned "safeguard procedures" into an administrative claim procedure, where absurd cases of petitioners readily disputing with the court are constantly observed. We also see that due to the territorial registration requirements, there now exist 28 different non-harmonized standards/procedures, one for each of the 28 district courts in respect to documentation, formalities, terms for issue of decisions and certificates, etc. This leads frequent rejections for registration petitions, followed by appeals in the Appellate Courts and in the Supreme Court of Cassation where it may take years before the petitioner receives a final registration (of a new director for instance).

c. Court practice has developed a highly formalistic and bureaucratic activity. Refusals/rejections are often based on inconsistency with the practice of this district court of how a document should look like (or missing "key/code" words/sentence in a board decision or protocol). We even note in some cases "odd situations", an example of which would be a case where the magistrate physically tallies the shares of 3000 shareholders represented at a general assembly, where the majority shareholder is present with 90% of the votes at hand. In the latter case, the magistrate "found" 2 shares missing during a vote, and refused to register the decision, delaying the entire process at untold cost.

d. As a consequence of the inconsistencies noted above, the environment in and around courts has become highly susceptible to corruption practices. It is a "public" secret that a whole industry geared around "facilitation" of registrations exists.

7.1.4. Our understanding is that the whole system of company registration has to be seriously reconsidered and simplified. There is no doubt that the court should be relieved from these duties and registration is transformed into a pure administrative procedure held in a centralized agency - Commercial Registrar (at the Ministry of Justice). This Agency may have only limited competencies as administrative authority for the purposes of registration of traders and issue of official certificates for incorporation, governing bodies of companies, registered capital, and partners. Pre-approved forms for registration must be also introduced. In such case there is no need for all the personnel in this Agency to have legal background.

7.1.5. The whole bookkeeping process should stay within the company. A possible solution could be for companies to hire "corporate" attorney for these purposes. For joint stock companies (especially public companies) the new regime could mandate an obligation to appoint a Secretary (in-house individual or a law firm) to maintain and/or check board decisions, protocols of general assembly of shareholders, book of shareholders, etc. The set of documents

certified by the Secretary may be considered as close as official documents and the Secretary may have personal liability for the content therein.

7.1.6. The courts must have control only in case of a legal dispute under the normal claim proceedings."[17]

[17] *White Paper on Foreign Investment in Bulgaria,* published by the Bulgarian International Business Association, Sofia, 2001, pp. 108-109.

D. COMPETITION LAW

OVERVIEW

Markets operate competitively when they offer the products and services consumers desire at prices that accurately reflect the costs of production, and when consumers have the information necessary to choose rationally from among the products and services offered. A comprehensive legal framework for competitive markets has three parts: classic antitrust/competition laws, consumer protection law, and free trade laws.

Although the three bodies of law follow different routes, they share the same objective of fostering consumer welfare — more and better goods at the best prices. Competition and trade laws ensure that products and services exist. Competition law prevents parties from limiting the quality, quantity, and price of goods or services available in the marketplace. State aid laws prevent governments from protecting enterprises from market forces with subsidies and other discriminatory benefits. Consumer protection laws ensure the availability of truthful information about products and the reliability of express or implied promises.

Bulgaria has a well-developed framework of antitrust/competition laws. It has only a general state aid law. Its consumer protection policy is weak. It is not clear if the weakness in consumer protection enforcement is because the framework law or the implementing institution is weak.

The Commission for the Protection of Competition (CPC), which implements the competition and state aid laws, has the will to apply the laws but needs institution building to retain a staff of experienced and expert lawyers, economists, and accountants and structures that will make efficient use of limited resources, focusing on matters of greatest impact on the Bulgarian market. The Commission for Trade and Consumer Protection has a weak framework law, seems to have little understanding of how to apply the law, and has delivered few results.

LEGAL FRAMEWORK

The Bulgarian Constitution guarantees, in principle, competitive markets. The 1991 Constitution of the Republic of Bulgaria says that the state "should create and guarantee to all citizens and legal persons equal legal conditions for economic activity by preventing the abuses of monopolies and unfair competition, and by protecting consumers."

The main legal instrument of competition policy in Bulgaria now is the Law for the Protection of Competition of 1998 (LPC). In addition, the CPC has promulgated regulations implementing the LPC called the *Methodology on Investigation and Definition of the Market Position of Undertakings in the Relevant Market* and *Rules for the Organization and Procedure of the Commission for the Protection of Competition,*

adopted in May 2000. The main instrument of consumer protection policy is the Law for the Protection and Rules for Trade (consumer law).

The LPC was adopted as part of the program for the harmonization of Bulgarian legislation with European Union (EU) laws. It is closely modeled on the basic competition provisions of the European Community (EC) competition law and its secondary legislation. The EC, in turn, has borrowed heavily from the U.S. Sherman, Clayton and Federal Trade Commission (FTC) Acts.

Like the EU and U.S. antitrust laws, the LPC focuses on three areas: anticompetitive agreements (e.g., cartels), abuse of dominance (use of monopoly power to maintain or enhance power), and merger controls. Unlike the U.S. and EC laws, the Bulgarian law also prohibits competitors from engaging in unfair practices that harm other competitors (e.g., copyright and trademark infringement and tortious interference with business relationships).

The LPC stands out as a good framework law in several respects.

1. Executive Branch of Government Subject to LPC. Article 2 expressly includes the actions of the executive branch of government and local governmental authorities within coverage of the law. With so many enterprises still wholly or partially owned or controlled by the government, this provision plugs a potentially huge gap in the law.

2. Agreements. Article 9 prohibits anticompetitive agreements. In keeping with the European civil law tradition of defining in detail what is prohibited, Article 9 lists a series of agreements that are prohibited, such as price fixing and customer allocations, and several other types of agreements. Significantly, the introductory language states that the enumerated agreements are prohibited only if they prevent, restrict, or distort competition. Thus, the law makes no absolute or per se prohibitions. Article 10 even accepts agreements among entities whose aggregate market share is less than 5 percent. This *de minimis* exception avoids many wasteful investigations. Article 13 also sanctions agreements, such as joint ventures, that may encourage the development of products or technologies that require competitor cooperation, provided that the net impact is procompetitive.

Unfortunately, Article 11 requires parties to all types of agreements enumerated in Article 9 to notify the CPC of the agreement and seek an exemption. Some agreements are almost always compatible with the LPC. To make the procedure for their exemption more efficient, the CPC adopted a group exemption for certain categories of vertical agreements. This decision generally follows the principles and logic of the EC block exemption 2790/1999 and uses the same methods and tests. Thus, if a particular agreement fulfills predetermined criteria, it will be granted an exemption automatically.

The Bulgaria law, however, creates unnecessary burdens for business. Bulgaria requires all parties to an agreement to notify the CPC. In the EU, notification is optional. In

practice, industry in Bulgaria ignores the notification requirement. The only notifications received by the CPC are those related to requests for exemptions.

With the exception of Article 11 notification requirements, the LPC strikes a balance between the need to protect markets from unreasonable restraints and the needs of enterprises to be free to configure and construct relationships that are most conducive to the production and distribution of goods and services.

3. Abuse of Dominance. Article 18 prohibits abuses of a dominant position in a market. Like Article 9, it lists practices that are abusive. The prohibition against abuses of dominance is critical in an economy emerging from a past in which the government created and maintained monopolies. Rather than address the issue by eliminating monopolies at the time of privatizations, however, the tendency appears to be to attack these monopolies after they are privatized. A common complaint is that the dominant firm is charging high prices. Subsection 1 of Article 18 lists unfair pricing as an abusive practice. While this prohibition also exists in EU law, it does not exist in U.S. antitrust law. In the United States, a firm with market power is expected to charge supracompetitive prices, and supracompetitive pricing is attacked by trying to prevent accumulation of market power in the first place. If a firm does gain market power by virtue of a superior product or superior business acumen, supracompetitive pricing is tolerated. Most monopolies in Bulgaria did not come about because of superior business acumen but were created by government fiat. Although its law is similar to the Bulgarian one, the EC has not aggressively enforced this prohibition but taken an approach similar to the U.S. tack. Unlike both the U.S. and the EC, the CPC has conducted numerous investigations into excessive pricing and found some parties liable for such practices.

Attacking high prices as abusive conduct is very problematic. It entangles the CPC in endless and impossible analyses to determine what is a fair price for an enterprise with a dominant position. This analysis is complicated by enterprises' poor accounting records. Without accurate cost figures, it is impossible to determine a fair price. Even if it were possible to determine a fair price for a monopolist, it would be necessary to adjust those prices regularly to reflect changes in input costs. The way to attack monopolies is to dismantle those that were created artificially by the state and to create a regulatory body to monitor prices when monopolies are natural, as in some utilities. Monopolists who achieve their dominance by superior business or technological advancements should be permitted to set their own prices.

Article 17 is also problematic. It sets 35 percent as a *prima facie* showing of dominance. While Article 17 also looks to more general economic issues to determine if dominance exists, it sets a presumption at a low 35 percent.

4. Merger Control. Bulgaria's merger control law requires that all concentrations involving parties with combined turnover of greater than 15 million leva or aggregate market share above 20 percent must be notified to the CPC. No notifiable deal can be legally formalized without CPC clearance. Parties to every acquisition that meets the size of company and market share tests, even if the acquisition does not lead to increased

concentration of market shares (e.g., when a foreign firm not yet present in the Bulgarian market buys a Bulgarian firm), must notify the CPC. If the transaction is subject to notification, then changes in the companies' legal status cannot be registered by the companies' registrar before the CPC grants clearance. If the CPC decides that a proposed merger can distort competition in the market, it can prohibit the deal or allow it subject to conditions. The CPC can enjoin certain provisions in the sale agreement and/or order restructuring of the deal to decrease the harm to competition.

To provide clarification and guidance for business, the CPC promulgated regulations called the *Methodology on Investigation and Definition of the Market Position of Undertakings in the Relevant Market.* These regulations closely track the 1992 Merger Guidelines of the U.S. Department of Justice and FTC. They are a sound framework for defining the parameters of product and geographic markets, computing market shares, and assessing the extent of an enterprise's power in the market(s) — all necessary predicates to determining if Articles 9 or 18 have been violated and if the CPC should authorize a merger or acquisition under Article 28.

5. State Aid Control. Currently, Bulgarian law addresses state aids only in passing. Article 20 of the LPC prohibits state aids. More comprehensive legislation is pending and necessary.

State aids (subsidies) are a form of public interference in free market forces. Overall, they aim at correcting via the use of public resources a naturally achieved market status quo. They lead to an inefficient allocation of resources. State aids direct economic resources to subsidized sectors and not to the best performers. This slows down the demise of inefficient companies and makes it more difficult for new companies to enter markets by placing them at a disadvantage compared to their subsidized competitors. State aids are also a form of protectionism. They protect domestic companies, thus decreasing the competitive pressure from outside and, in the long run, they limit the benefits of international commerce and decrease the competitiveness of a national economy.

In certain well-defined cases, Article 20 recognizes that state aids may be necessary. Subsidies to improve the environment or restructure a particular industry or region may be considered admissible, but must first be notified to the CPC. Individual social aids or aids in case of natural disasters need not be reported.

A significant revision of Bulgaria's state aid laws is under way. Expected to become effective in 2002, these revisions will empower the CPC to prohibit state aids. Currently, the CPC only has authority to order recipients of state aids to repay the amounts to the state.

6. Protection Against Unfair Competition. Articles 30 through 35 of the LPC prohibit unfair or deceptive sales tactics. As is clear from the title of the chapter introducing Articles 30 to 35, the purpose is to protect competitors from each other's unfair practices. The LPC lists some of the most recurrent forms of unfair competition: industrial espionage, damaging a competitors' reputation by disseminating incorrect information

about a competitor's products or services or by deceptive comparative advertising, imitating a competitor's products or trademarks, attracting clients with unfair commercial tactics such as coercion or misleading statements of sales conditions, promotional games that require the purchase of the advertised product as a condition for participation to distort rational market behavior, bundling the sale of goods with significant (and at first sight free) products, and below-cost pricing over an extended period of time.

These articles are not directly aimed at protecting consumers, although they may have that indirect effect. While laws that protect competitors from each other's unfair tactics are necessary in a well-developed commercial law framework, they are not usually included among competition laws. The role of a competition agency is to protect the competitive process, not to protect competitors from each other.

Including these laws to protect competitors from each other in the LPC creates two problems. It weakens the antitrust/competition analysis, because staff and the CPC sometimes confuse protecting the competitive process and protecting competitors from each other. It also weakens the CPC as an implementing institution.

7. Consumer Protection. The Law for the Protection of Consumers and Trade became effective on April 2, 1999. It is enforced by the Commission for the Protection of Consumers and Trade. Articles 3 to 8 require that general information be included on packaging and labeling along with safety warnings and disclosure of the terms and conditions of warranties. Articles 9 to 28 provide a right of action for defects, limit the time within which those actions may be brought, and assign and apportion liability for damages caused by defective products. Articles 29 to 34 provide for actions based on false, misleading, or deceptive advertising. Articles 35 to 37 prohibit unconscionable provisions in contracts and regulate door-to-door sales and unordered merchandise. The law also provides that consumer protection associations may bring actions on behalf of consumers; that the Minister of Commerce shall have a Council for the Protection of Consumers composed of several other government ministries; and that the Minister of Commerce may establish alternate dispute resolution mechanisms.

A comprehensive consumer protection law aimed at protecting the right of consumers to make rational and informed choices should address the following types of market failures:

- Some firms have no interest in building a reputation for honesty because they do not intend to stay in the market. Their strategy is to commit fraud and disappear. Examples of such fraud are the pyramid schemes. By the time consumers discover they have been tricked, the pyramid has collapsed and only those who entered at the beginning profit.

- It is too difficult for consumers to evaluate the accuracy of claims. Here, the goal is to ensure consumers have the information necessary to decide rationally if they want to purchase a product.

- Sometimes consumers need common standards or benchmarks for comparing the claims of sellers, particularly if the claims involve technical or highly complex subjects. For example, consumers want to buy refrigerators, air conditioners, and other electrical appliances that consume as little electricity as possible. Standard measurements are needed to make well-informed buying decisions. Therefore, laws that specify test conditions and a common method of disclosure are desirable. Such standardized information allows consumers to choose more intelligently and stimulates competition. Manufacturers have stronger incentives when rating systems allow the new models to stand out in comparison with the competition. Also desirable are laws that standardize the formula that financial institutions use to calculate and advertise interest rates charged on consumer loans and home mortgages.

- Consumers may not be able or willing to engage in extensive shopping. In those cases, sellers should volunteer disclosures and be prevented from taking advantage of emergency situations. Examples are when consumers must arrange funeral services for a deceased family member, seek emergency medical attention, or make purchases during a natural disaster like a flood, hurricane, or earthquake.

An effective consumer protection policy should address all these market failures. The consumer law appears to focus primarily on businesses that are not concerned with repeat business or their reputation and on disclosure of basic information such as volume, weight, and quantity of goods. It does not appear the law has been used to settle disputes other than small one-to-one billing disagreements between utilities and consumers.

IMPLEMENTING INSTITUTIONS

The CPC and the Supreme Administrative Court (SAC) enforce the competition, state aid, and unfair competition laws. The CPC enforces consumer protection laws. As an independent investigative and quasi-judicial agency, it enforces both competition and unfair practices law and is similar in function and role to the U.S. FTC. It has exclusive jurisdiction to enforce the LPC. No other agency and no private individuals may bring actions for violations of the LPC. After the CPC issues an order, it is appealable to an appeals panel of the SAC. Both the CPC and SAC have the power to enter cease and desist orders and to issue penalties, but they do not have the power to order restitution, rescission, or the disgorgement of unjust enrichment.

1. Human Capital at the CPC. The CPC has a chairman, two deputy chairmen, and eight commissioners. The parliament elects these 11 members for a five-year term. The current chairman and many members are distinguished lawyers, judges, and economists. Several teach at the university, and some are former Members of Parliament. The terms of all 11 CPC members expire in May 2003. Law guarantees their independence. They cannot be removed from office before completing their terms, except in narrowly defined cases such as being found guilty of gross malfeasance or a felony.

The protection from removal from office that the CPC members enjoy is important and commendable, and not universally guaranteed to other competition commissioners in southeastern Europe. The fact that the terms of all Commissioners expire simultaneously, however, presents a serious problem for continuity. Staggered terms are preferable because it enhances the ability of businesses to gauge the Commission's likely approach to mergers, acquisitions, and other strategic business decisions. In other countries in the region where the terms of all members expire simultaneously, institutional paralysis and indifference set in several months before the term expiration. Concern over reappointment distorts decision-making. Similar problems can be expected in the winter and spring of 2003 for the Bulgarian CPC. Much learning and experience could be lost at this time. Help will be needed to ensure the orderly transfer of expertise and experience during this period.

The Commission is supported by an administrative staff of lawyers and economists organized into industry-specific directorates such as telecommunications, transportation, capital markets, etc. The Commission has older staff that was trained in the 1970s and 1980s and recently minted university graduates. Through years of seminars most of the staff can repeat the jargon of the competition world. The younger ones, however, seem to understand better that the purpose of competition law is to protect the competitive process, not to insulate competitors from other competitors trying to gain market share. Significant turnover among the young has cost the CPC some of the best and brightest. Salaries are the principal cause for this turnover. Among the staff, the vast majority are women, we are told, because men leave for better salaries. This lopsided gender distribution is bad both for the women and men who work at the Commission. The poor salaries and high turnover encourage the notion in the private sector that the staff and, therefore, their document requests and attempts at interviewing witnesses should not be taken seriously. The chairman recognizes this brain-drain problem, but does not know how to change the salary structure without upsetting the governmental bureaucracy. He hopes that the many departures from the CPC will result in many well-trained former CPC staff creating a culture of competition, acting as effective advocates before the CPC, and raising the quality of analysis done by the CPC.

Everyone with whom we spoke about the CPC has a generally favorable impression of the institution. Their principal criticism is that the CPC lacks the experience needed to focus its investigations on issues that are "outcome determinative." Frequently, firms and private practitioners must deal with recent college graduates who do not seem to understand the direction of their investigation. Because they lack experience, the staff appears to thinks that every fact and document is equally important. As a result, firms and private practitioners feel that they are asked to respond to wildly irrelevant and cumulative requests for information and documents. With a few exceptions, they do not believe that the staff is well educated in competition or economic analysis.

2. Case Selection Process at the CPC. The CPC must begin proceedings upon receiving a formal complaint from a private party and may begin proceedings upon receiving an informal complaint or at its own initiative. Anyone whose interests are affected by an alleged violation of the LPC can file a formal complaint. The CPC has no prosecutorial

discretion on such complaints. Upon determining that the complainant is an interested party and that the CPC has subject matter jurisdiction, it must open an investigation, as a U.S. court must begin a proceeding after a formal complaint is filed. The concept of "interested party" in a competitive case is still undeveloped.

Individuals may also submit signals to the CPC, an informal oral or written complaint drawing the CPC's attention to objectionable conduct. The CPC does not have to open an investigation based upon a signal. In the case of signal-initiated proceedings, the complaining party does not have to pay filing fees and will not be a party to the proceedings.

The CPC can start an investigation on its own initiative based on information that comes to its attention through any means.

A large portion of the CPC's limited resources is devoted to unfair competition, i.e., competitor vs. competitor disputes without regard to whether the matter has an impact on the public at large or on consumer welfare. It has no choice. By law, the CPC is obligated to investigate. This distracts the CPC from its other mission, the protection of competition. Some have, therefore, suggested that the CPC should not have jurisdiction over these kinds of disputes and that it is inappropriate for a governmental agency to be involved in private disputes. Nevertheless, these same individuals and others both outside and inside the government acknowledge that the CPC is a faster, less expensive, and more effective legal institution than the courts and that the public perceives it to have greater integrity. Some "unfairness" matters that it handles have obvious consumer protection ramifications.

It is not recommended that CPC jurisdiction over "unfair competition" matters be removed from the agency. Rather, the agency should separate its two roles into separate bureaus or divisions with authorized budgets and personnel resources, as the U.S. FTC has done with its Bureau of Competition and separate Bureau of Consumer Protection. This will prevent the enforcement of actions that are primarily private disputes from draining resources from the enforcement of competition law, which is in the general public interest. Private disputants should increase the filing fee for unfair competition matters again to prevent frivolous overuse of the CPC. Finally, the losing party in an unfair competition matter should be required to pay the CPC's costs of investigating and handling a private dispute between private parties, in the same way that many U.S. state attorneys general require the losing party to pay the state office's costs. This may require an amendment to the law.

3. Investigational Procedures and Decisions at the CPC. After initiation of proceedings, the case is assigned to a CPC member, who leads the investigation with staff. As a general rule, investigations must be conducted within two months. The chairman can grant a one-month extension. The CPC must complete review of a merger notification within one month. With serious concerns that the merger or acquisition may "significantly impede competition," the investigation can be extended for three more months.

After completing an investigation, the case-handling team transmits the file and a report to the commission. The parties to the case are summoned to a hearing before the full CPC. The parties may examine the evidence (with the exception of protected industrial or trade data). The CPC hears the arguments of the parties and questions them. It then conducts a deliberation *in camera* and reaches a decision. Immediately after the CPC makes its decision, an order is issued to the parties. At no point in these hearings, neither when the parties are present nor when the CPC deliberates as a body, is the staff that worked on the investigation present. Only the commissioner in charge of the staff is present acting as rapporteur. The staff that worked on a case should be present. An opinion explaining the basis for the order, i.e., the CPC's "motivation," is issued within 14 days of the hearing. The parties have 14 days after receiving official notice of the decision to file an appeal to the SAC.

The motivations the CPC writes are essential to building a competitive culture in Bulgaria. Currently, CPC opinions are short and inadequate explanations of the bases for decisions. This is, in part, because of the legal and regulatory culture of Bulgaria. These insufficient explanations derive from the staff's inadequate analyses and internal memoranda. Bulgaria does not have a history or legal culture in which powerful governmental agencies were compelled to explain their decisions publicly and justify their actions. Creating such a culture will take time and would benefit from assistance from credible and experienced U.S. and European institutions. Before such public explanations can be expected, young and inexperienced staff members need help as they progress through investigations and in preparing coherent memoranda that address all pertinent issues. Better-analyzed and justified published CPC opinions will emerge when the staff better understands the goals and purposes of the law. Likewise, better-written analyses will promote better public understanding of the purposes of the law and enhance confidence in CPC integrity.

The CPC already enjoys some degree of respect. The private bar appreciates the CPC because it processes complaints and makes decisions quickly and inexpensively. They can obtain decisions on the merits from the CPC and then take the judgment for liability to court where they can obtain large money judgments.

4. Remedies. The CPC can prohibit a merger, recommend the revocation of a state aid, issue a cease and desist order, and issue fines. It can fine a company from 5,000 to 300,000 leva for a first-time violation and up to 500,000 leva for repeat violations. It can fine natural persons from 500 to 20,000 leva. Fines are payable to the state, not to the injured parties or disgorged to the public through an indirect compensation mechanism. The CPC is not empowered to determine and award damages. It has the power only to determine if a violation has occurred and to impose fines. Interested parties who seek damages up to 10,000 levs must go to the District Court and for greater sums to the Regional Court.

5. Commission for Trade and Consumer Protection. It appears that this agency is in the earliest stages of development. It has a large staff around the country. The focus of its

enforcement actions appears to be on small individual disputes. The agency should be using its limited resources in a proactive way, seeking out large frauds, pyramids schemes, and health and safety hazards that have a broad impact on large numbers of consumers.

SUPPORTING INSTITUTIONS

1. Supreme Administrative Court (SAC). The SAC is the ultimate body for judicial review of the decisions of the CPC. The SAC is composed of approximately 50 of the most experienced and qualified magistrates in the republic and is organized into chambers. No special chamber hears exclusively competition cases. Usually, the court sits in panels composed of three or five judges and, rarely, in plenary session. The two forms for judicial review before the court are appeal and cassation.

On appeal, the case is heard by a panel of three judges who examine both points of law and fact. The panel can, for example, decide that the CPC incorrectly defined the relevant market and may reach a different determination. During the next stage of judicial review, cassation, cases are heard by a panel of five judges. In this phase, the court can only assess whether the decision conforms to the law. It may not remake factual determinations already established by the CPC or the appellate panel.

The SAC has recently decided to limit the number of judges who review CPC matters to a few panels in Sofia. This is a positive development, as over time a small body of judges will become experienced and specialized in competition and unfair competition law. This should advance an atmosphere of predictability in the law, which is important to induce investment.

2. Law Faculties. Basics of Competition Law is an optional course for second- or third-year students in the University of Sofia Law Faculty. The lecturer is Mr. Metody Markov, who specialized in the subject in Germany. Few of those who practice competition law either in the private bar or at the CPC have taken this or any other university courses in competition law. Some recent university graduates have studied microeconomics and industrial organization, basic courses for competition concepts. Professors of these courses need encouragement, and the presence of visiting professors with years of life experience in applying the theory to actual situations would also be beneficial.

3. Nongovernmental Organizations (NGOs). NGOs have emerged in the consumer protection field, but not in the competition field.

MARKET FOR REFORM IN COMPETITION LAW

While many companies in Bulgaria are privately owned, more than half of the economy is still in public hands. Major industries such as tobacco, telecommunications, and energy are still government-owned.

The CPC has thus far been cooperative with the Privatization Agency, approving every privatization that has come before it. The future may be different. The Privatization Agency, reacting to the public's perception of scandals, is determined to impose and enforce conditions on purchasers. Conditions that require purchasers to keep their workforces and their prices at current or close to current levels will seriously interfere with building a genuine market economy. Investors have not looked upon the CPC as an engine for reform, but may in the future be able to turn to it for support in limiting the conditions imposed on privatizations.

The privatizations the government plans during the next two years in the telecommunications and energy sectors will demand a high level of economic sophistication. The government recognizes the need for assistance in analyzing the implications for competition of transferring control of these potentially bottleneck resources into the private sector.

It is difficult to create a market for reform among consumers when allowing labor costs and prices to go to a competitive level results in short-run reduction in employment and price increases. A significant outreach and education effort will be needed to demonstrate the long-run benefits of such adjustments.

The CPC is regularly consulted by the Parliament, the government, and other public bodies over legislation drafts or policy documents. In these cases the CPC issues opinions.

The private bar has more confidence in the integrity and efficiency of the CPC than in the courts, but does not think that the CPC's remedial powers are adequate. Inadequate remedial powers are not uncommon at the outset in commissions. The U.S. FTC was also plagued with inadequate remedies until the late 1970s and early 1980s. As a result of statutory amendments and a gradual testing of its powers, the FTC expanded its remedial powers, making it an effective venue for redressing wrongs. The CPC is ripe for such changes. The commissioners have said they realize that their remedies are inadequate, but are uncertain how to build this part of the institution. They need guidance and support from experienced lawyers and economists to build effective remedies into the institution.

RECOMMENDATIONS

1. Promote the public's use of the CPC as an effective alternative to a slow court system in which the public has little confidence. This requires that the remedies the CPC may impose be expanded and that its ability to award restitution and rescission of contracts be enhanced.

2. Support the CPC's large number of new hires and inexperienced staff, with long-term senior advisors who can help focus investigative strategies, avoid dead-end alleys, prioritize matters, and concentrate resources on cases and investigations that are likely to have the greatest impact on the economy.

3. Support all institutions involved in privatizing electricity, gas, and telecommunications with training and short-term missions from specialists in the competition issues in these areas in the United States and other developed countries.

4. Train staff in drafting and negotiating document productions. Document requests must be more focused at the outset on facts essential to "outcome determinative" elements of a case. Staff must gain experience in negotiating document productions.

5. Promote a more active role for staff in the CPC hearings.

6. Promote and lobby for a separate pay scale, as in Croatia, to retain outstanding lawyers and economists that are hired away by foreign law, accounting, and consulting firms.

7. Promote the use of Conciliation Councils provided for in the consumer protection law and the organization of NGOs that will act as advocates for the public before privatized utilities and in other consumer matters.

8. Develop a public relations mechanism, including press office and a pool of speakers, to disseminate information about initiatives that have made products and services available or lowered the prices of goods and services by removing barriers to competition.

9. Support training the judges who hear CPC cases. Long-term CLE should be provided for these judges to become specialists.

10. Support training for law school faculty and the use of outside expert lecturers in competition law and economics at the law faculties.

E. CONTRACT LAW

LEGAL FRAMEWORK

Primarily the Law on Obligations and Contracts (LOC), which was promulgated in 1950 and has been in force since January 1, 1951, governs contractual relationships in Bulgaria. LOC is the fundamental law in contracts and is an original Bulgarian normative act created in line with the classical traditions of the continental (French-German) legal system. It has undergone two major amendments. The first, in 1993, was designed to bring the legal framework of contracts in conformity with the post-1989 changes in Bulgaria. The second, in 1996, transferred certain contracts — commission merchant contract, forwarding contract, contract of carriage, insurance contract, the bill of exchange, the promissory note, and the check, and their legal regulation — from the LOC to the Commerce Act, Part III.

Considered the cornerstone of Bulgarian civil law, the LOC is considered Code and the primary source for contract law in Bulgaria providing a comprehensive legal framework for general contracts as well as for more specialized agreements.[18]

Commercial contracts are governed by Part III of the Commerce Act, Commercial Transactions, enforced in 1996. According to Article 288, "The provisions of civil legislation shall apply to matters of commercial transactions not regulated by this Act, and where the first is also inadequate, the commercial customs shall apply. Where the commercial customs vary, the customs of the place of performance shall apply." Therefore, the primary and most important source of commercial contracts' legal regulation is Part III of the Commerce Act, while the LOC as a major civil law act, functions as a supplementary source. The third source is commercial customs.

The General Provisions of Part III give a legal definition of a commercial transaction, review the sources of legal regulation, and provide rules for the conclusion, performance, and nonperformance of a commercial transaction and for commercial security and transfer of rights.

Part III of the Commerce Act also provides rules on different types of commercial transactions: commercial sale, leasing, commission, forwarding, carriage, insurance, current account contract, banking transactions, bill of exchange, promissory note, check, deposit in public warehouse, license, and contract for commodity control. Rules on the applicable law in commercial transactions are also provided.

[1818] The LOC General Part covers the sources of obligations (contracts, torts, unjust enrichment, and managing other person's affairs without authorization). It also provides the legal regulation of contract performance and nonperformance, creditor's default, transfer of claims and obligations, lapse/acquittal of obligations, and specific types of obligations such as joint obligations, indivisible obligations, and obligations with right to choose. The LOC General Part finishes with the rules on security of claims — privilege, guarantee, pledge, and mortgage. The Special Part of the LOC contains rules on major civil contracts, such as sale, exchange, donation, lease of property, loan, loan for use, deposit, manufacture contract, mandate contract, partnership, and settlement.

International conventions are also sources of Bulgarian law. According to Article 5(4) of the Bulgarian Constitution, "Any international instrument, which has been ratified …, promulgated and entered into force with respect to … Bulgaria, shall be considered part of the domestic legislation…. It shall supersede any domestic legislation stipulating otherwise." An example is the United Nations Convention on International Sale of Goods (Vienna Convention) in force for Bulgaria since 1991.

Sources of Bulgarian obligation law are also the legal custom and the justice. According to Article 4 of the Civil Procedure Code, "The court shall be obliged to settle the cases according to the exact sense of the acting laws, and when they are incomplete, unclear or contradictory — according to their common sense. In case of absence of a law, the court shall ground its decisions on the custom and on the basic principles of law and justice."

The legal framework in Bulgaria distinguishes between commercial contracts and contracts involving nonmerchants. It recognizes freedom of contracts between all parties (natural and legal persons). The legislation guarantees equal contract enforcement rights to individuals, private entities, and nonprivate enterprises and enforcement of any contract that is not contrary to law, even if not explicitly permitted or otherwise regulated by law.

Article 20 of the LOC stipulates that "contracts shall have the force of a law for the parties that have concluded them." The parties are free to determine the content of their contract insofar as it does not contravene the mandatory provisions of the law and the good morals (Article 9 LOC). A written contract or other form is required for the validity of commercial transactions only when this is explicitly provided for by law (Article 293, Paragraph 1, Commerce Act).

Lastly, governing contract law is Article 19 of the constitution, which states that "the economy of Bulgaria shall be based on free economic initiative."

All those interviewed on contract law issues were in agreement that the legal framework of commercial contracts is adequate and needs no further amendment. Rich experience in contracts was accumulated during the 50 years of LOC application. The amendments to LOC in 1993 and in 1996 and the adoption of Part III of the Commerce Act in 1996 completed the necessary legal changes in the area of commercial contracts and provide a modern and sufficient legal framework for the proper functioning of a market economy.

IMPLEMENTING INSTITUTIONS

The courts are the main implementing institutions for contract law in Bulgaria. Judicial, institutional, and organizational reforms have been instituted in an attempt to create an effective national court system. The Judicial System Act of 1994 regulates the court system. The Civil Procedure Code of 1952 was dramatically amended after 1989. Among the most significant amendments was the replacement of the two-instance with a three-instance court procedure in 1997. The Civil Procedure Code also contains rules on execution proceedings.

While the legal framework for commercial contracts is sound and robust, many interviewees expressed concerns about the inefficient enforcement process. (A major concern expressed by the European Commission in its Annual Report on Bulgaria for 2000.

Interviewees almost uniformly expressed frustration with the delays and length of court procedures. Commercial disputes, it was noted, often take several years to conclude.

Interviewees commented on the numerous reasons for the low quality and slow speed of court procedures. One is the overload of cases. With insufficient staffing, the basic courts, responsible for hearing commercial disputes, cannot manage the current load. District Courts in Bulgaria have commercial divisions that are responsible for keeping the commercial/company registry where all merchants and relevant circumstances are registered. In Sofia City Court, the largest court in Bulgaria with 100 judges, the commercial division consists of seventeen judges, eight of whom are dealing only with company registration. The other nine are hearing cases on commercial disputes and bankruptcy.

Judges are overloaded with paperwork and administrative responsibilities (a minimum of 20 percent of their time is spent on administrative and clerical matters, according to the Ministry of Justice). Computerization of the courts, judges complain, is either lacking or insufficient, impeding efforts to simplify and speed work. Only the Varna and Shumen District Courts have Web sites for publishing court decisions.

Eleven model pilot-courts have carried out administrative reform and introduced computerization. These are the District Courts in Shumen, Sofia, Smolyan, Blagoevgrad, Gabrovo; the Regional Courts in Blagoevgrad, Gabrovo, and Smolyan; the family division of the Sofia Regional Court, and the Courts of Appeal in Sofia and Plovdiv. Funding is provided by USAID with management from the East-West Management Institute. These pilots have successfully increased the quality of work several-fold.

With 112 Regional Courts and 29 District Courts in Bulgaria, the entire court system — administration, court docket, and judges' work — should be computerized and adequate training provided, for long-lasting progress in functioning. This requires heavy investment and coordination of donors' efforts. The World Bank, the EU delegation, Open Society, and the embassies of the United Kingdom, Germany, and the Netherlands are all working on automation projects. Automation of courts also falls within the 2001 Strategy and Action Plan of the Ministry of Justice.

Moving the company registry out of the District Courts is being discussed within the legal profession but not at the official government level. If the company registry is taken out of the courts, legally trained personnel are still required to perform this function to ensure proper control over application of the law.

Often the law is interpreted differently in different courts in the country. The Supreme Court of Cassations is entrusted with the obligation to ensure strict and equal application of the legislation by all courts (Judiciary Power Act). For this purpose the Supreme Court of Cassation issues and publishes interpreting decisions on matters that have caused incorrect or contradicting court practice. These interpreting decisions are mandatory for all courts and the executive power. A Bulletin of the Supreme Court of Cassation is published monthly and distributed to all courts in Bulgaria.

Judges' lack of specialization is another problem. In the countryside, where courts are smaller, specialization is nearly impossible. The same judge must hear criminal, administrative, civil, and commercial cases. The creation of specialized commercial courts is currently under discussion, and the Ministry of Justice is considering eventual amendments in this respect, as stated in its Strategy for Reform of the Judiciary in Bulgaria.

Several interviewees expressed the opinion that before the changes, the court system was functioning better. Cases were decided faster, the quality of decisions was higher, and judges were professionals. Consenting opinion cites the major reasons for problems in the courts are lack of education and training for judges and low criteria for admission. The programs of the Magistrate Training Center, an NGO sponsored by foreign donors, should be expanded, and the center's status with the Ministry of Justice needs clarification.

Poor facilities, insufficient funding of the judiciary, and low salaries for both judges and court administrative staff make it difficult to attract or retain well-qualified professionals in the judicial branch, contributing to lack of efficiency. The European Commission's Annual Report for the Year 2000 cited under funding of the judiciary as the major reason for the system's malfunctioning. Discussion in Parliament (December 14, 2001) on the 2002 budget called for a 21 percent increase in funding for the judiciary. Total funding would reach 121,9 million levs, but the Supreme Judicial Council, the authority responsible for the judiciary, has requested 180 million levs as the minimum necessary for guaranteeing proper functioning. Donor funding and involvement will be required during 2002 to increase court efficiency.

Interviewees also cited the low level of legal education as a major factor in court inefficiency. Law graduates are generally poorly prepared. The graduates, practicing lawyers, and judges lack a basic understanding of the market economy. Courses in economics, accountancy, and finance could help remedy this.

Lawyers are essential players in court disputes and invaluable in assisting the court. However, they are the least assisted segment of the legal profession. Efforts have been organized on behalf of the bar association for training of young lawyers only. No provisions exist for continuing legal education (CLE) for senior attorneys and others. CLE remains an area requiring donor focus.

Some interviewees believe the inefficiency of the court system is partly due to the multiple possibilities to appeal. Unofficial debate in the legal profession has opened on the eventual restoration of the two-instance court system.

One judge noted the extremely high percentage of appeals in civil court litigation, close to 100 percent in bankruptcy cases. Although the right to appeal can be used as a tool for delay, the courts are careful not to violate the right to a fair trial, as requested by Article 6 of the European Convention on Human Rights (ECHR), which is ratified by Bulgaria. The judiciary needs organizational reform to ensure fast and quality dispute resolution even if each party uses its right of appeal to the maximum.

The Ministry of Justice has developed a Strategy for Reform of the Judiciary in Bulgaria and an Action Plan for its implementation in the next five years. Among its major points is compulsory continuous legal training for magistrates and court administration officers, computerization of the court system, and creation of specialized commercial courts. Also under consideration is reintroducing the two-instance appeal system for commercial disputes.

The pace of reform in Bulgaria also poses difficulties for the court system. The executive is driving the legislation. Some interviewees believe that the new laws are inadequate and that the government lacks the institutions to enforce them. Laws are driving the reforms, but more time is required to prepare the social environment. A positive aspect of the reform is the supportive role of the mass media in educating the public. The laws are published in multiple formats and are easily accessible by the general public. Law commentaries are published in a constant stream by top-level professors and professionals. Several software companies offer electronic versions of the legislation and court practice.

Applying a sound and popular system of alternative dispute resolution (ADR) in Bulgaria for commercial contract disputes has not resolved inefficiency in civil court litigation.

Many end users noted that the creation of an effective ADR system and court modernization (computerization, improved administration and infrastructure, increased court personnel, greater funding, and improved judicial training) is the keys to a more efficient court system. Without improvements in enforcement of judgments and shortened time periods for litigation, investors will not be confident of efficient and prompt protection of their rights in the event of a contractual dispute.

Interviewees indicated that standardized forms of commercial contracts are not popular in Bulgaria. The Bulgarian Chamber of Commerce and Industry (BCCI) has translated and published all editions of INCOTERMS, as well as other International Chamber of Commerce (ICC) standards and guidelines. Merchants in Bulgaria prefer to design their contracts according to the specific client and circumstances. Foreign investors usually use their own ready contracts. Encouragement of standardized forms for certain types of agreements might be effective in ensuring certainty and predictability in the commercial

sector. Legal software and publishing houses in Bulgaria (including Ciela) have published handbooks with standardized commercial contracts.

SUPPORTING INSTITUTIONS

1. Arbitration and ADR. Arbitration and ADR in Bulgaria are gaining popularity but need advertising and publicity to achieve wider acceptance and utilization in commercial disputes.

The Civil Procedure Code Article 9 Paragraph 1 stipulates that "the parties to a property dispute may agree that it would be resolved by an arbitration court, unless the dispute has as its subject matter real rights or possession over real estate, support money or labor relations rights." The arbitration court may have its seat abroad if one of the parties has its residence or seat in another country.

Bulgaria is a signatory country to the 1958 Convention on Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) since 1961 and to the European Convention on International Commercial Arbitration since 1964. In 1988 the Law on International Commercial Arbitration (made after the UNCITRAL Model Law on Arbitration) was passed, which applies to international commercial arbitration based on arbitration agreement when Bulgaria is the site of arbitration.

The two major courts of arbitration are the Arbitration Court at the Bulgarian Chamber of Commerce and Industry (AC at BCCI) and the Arbitration Court at the Bulgarian Industrial Association (AC at BIA).

The AC at BCCI is the oldest of the arbitration courts in Bulgaria predating the socialist era. During socialist rule after 1972, it functioned mainly as a mandatory arbitration center for disputes between legal entities of the COMECON countries. Following the legislative changes in Bulgaria after 1989 and with adoption of a new statute (1990) and new rules (1993), the AC at BCCI became a permanent arbitration court with voluntary competence that resolves domestic and international disputes between physical persons and/or legal entities. It can function also as ad hoc arbitration court following the consent of the parties.

The AC at BIA was established after the 1989 changes with assistance from the American Bar Association's Central and East European Law Initiative (ABA CEELI). Other ACs in Bulgaria is barely functioning.

The ACs derives their competence from an arbitration agreement between the parties (usually an arbitration clause in their contract), or from a party requesting the AC to resolve the dispute without objection from the opposing party.

The lists of arbitrators at the two ACs are composed of outstanding Bulgarian lawyers, judges from the Supreme Court of Cassation and the Supreme Administrative Court, other judges, distinguished scholars, and practitioners with sound knowledge of the law

and high respect in the legal and business communities. The AC at BCCI has an extensive list of 72 arbitrators for domestic disputes, 54 arbitrators for international disputes, and an open list of 33 foreign arbitrators. According to the Law on International Commercial Arbitration (1988), an arbitrator is not required to be a citizen of Bulgaria. The AC at BIA has a list of 31 arbitrators and 12 mediators.

The AC at BCCI has the highest level of expertise. It resolves both civil property disputes and disputes for filling gaps in the contracts or for their adaptation to the new circumstances.[19] The number of domestic cases resolved by the AC at BCCI has steadily increased: 91 in 1998, 139 in 1999, and 175 in 2000. The number of international cases each year is in the range of 41 to 51. Six months are required to finish a case in 76 percent of the arbitration cases at the AC at BCCI. Major foreign investors and large state companies prefer to resolve their commercial disputes at the AC at BCCI.

Since it is a new AC, no statistics are available for the arbitration cases at the AC at BIA.

The arbitral tribunal can consist of one or more arbitrators with the number determined by the parties. If parties fail to agree on the number, three arbitrators are used, with each party choosing one arbitrator and those two choosing the third.

Many interviewees and end users pointed out the indisputable benefits of arbitration in comparison to court litigation. AC offers business entities the opportunity for simple, fast and cost-effective means of resolving commercial disputes. Judgments of the arbitration courts are final and unappealable. They serve as a direct title for their execution. The arbitral award has the same legal effect as the final decision of the Supreme Court of Cassation.

For international arbitration matters, the parties have the right to choose foreign law and a foreign language(s) for the proceedings. The arbitral tribunal applies the law chosen by the parties. If parties to the dispute have not designated the applicable law or if the chosen law is inadmissible, the arbitration panel applies the law determined by the rules of conflict of laws it considers applicable to the case. In all cases, the arbitral tribunal applies the terms of the contract and takes into account the trade usages.

The President of the AC at BCCI has been actively involved in the South East European Legal Initiative and belongs to the European Group for promotion of arbitration, sponsored by the ICC. The AC at BCCI has the organizational structure, expertise, and sound legal basis for its activity.

[19] Personal or family disputes, including alimony disputes, real rights disputes, real estate possession disputes, and labor disputes cannot be subject to arbitration.

A mediation option is also available to parties at both ACs. However, mediation is still an unknown and unused pathway for dispute resolution in Bulgaria. ABA CEELI and the Sofia City Bar Association recently organized a training course for mediators. Training and publicity are preconditions for the success of this ADR method.

2. Notaries. Since 1998 the notary in Bulgaria has been private. The notaries are organized in a Notary Chamber. Interviewees and end users expressed satisfaction with the speed and quality of notary work. The Law on Notaries and Notary Activity limits one notary officer per 10,000 persons of the population. Notary fees are considered reasonable and do not discourage formation of contracts.

The regulation of notary activity in Bulgaria follows continental procedures. Notary officers are empowered to perform state activity and are liable and insured for their professional activity. Admission criteria are considered high. Only Bulgarian citizens can become notaries. Before admission, notaries are required to have a law degree and a minimum of two years experience in the legal profession. They must also possess high moral qualities. The notary admission exam is considered one of the most difficult in the legal profession.

Bulgarian notaries have limited functions in the area of commercial activities. Among the cases for which the Commerce Act requires verification by a notary officer are: the specimen of signature of sole traders and of the executive officers of a company, the articles of the general partnership and the limited partnership agreement, and transfer of shares of a limited liability company. Powers of attorney are valid only if verified by a notary.

Commercial contracts are not required to be in a particular form. Only real estate transactions must be in a notary form. According to a 1997 amendment to the Civil Procedure Code, if parties to a commercial contract choose to have their signatures verified by a notary, in case of breach of the contract, the last is directly enforceable for the object of the contract obligation. A writ of execution is issued directly without court litigation.

In conclusion, both the legal framework and the practical activity of the notary in Bulgaria are adequate and supporting business community needs. Notaries are easily available and accessible. They are well prepared professionals, familiar with the existing commercial regulation in the country and provided disciplinary violations are eliminated, the reform in this area is deemed a success.

3. Bailiffs. Interviewees regarding the efficiency of execution of court judgments and arbitral awards have expressed serious concern. Although the Civil Procedure Code (Articles 237 to 255 and Articles 323 to 423) generally concedes to bailiffs' sufficient authority to enforce judicial and arbitration decisions, the business community considers bailiffs ineffective.

All reasons for the ineffectiveness of the civil courts discussed so far are valid for the bailiff. Lack of facilities, computerization, salaries, and training hamper their effectiveness. The Sofia bailiff's office has no computer. No training course has been organized for the 40 bailiffs in Sofia, let alone for those in the countryside.

Bailiffs complain of inadequate legal regulation of their status in the Judicial Power Act. To become a bailiff, the applicant must conform to the requirements for becoming a judge: Bulgarian citizenship, law degree, completed mandatory professional internship, and high moral and professional qualities. Yet bailiffs' salaries are lower than judges' salaries, and professionally the highest status they can reach is that of a District Court judge.

Bailiffs are not members of the Judges' Union, and no separate bailiffs' association has been organized to promote their professional interests.

Unofficial discussion is taking place about privatizing the state executive procedure or eventually privatizing some bailiff functions. Opinions of lawyers, academic people, and other professionals on this question are split. Many eminent practitioners and law teachers oppose the withdrawal of the state from the execution process. Investigation and comparative analysis are required to determine efficacy.

The head of the Sofia bailiff's office focused on two major reasons for the inefficiency of the execution proceedings. First, the serving of the summons for the execution needs legislative improvement, and a private element might be implemented here. Weakness in the entire court litigation also contributes to the delay in finishing a pending court dispute.

The second major problem is the practical blocking of the execution in case of an appeal against actions of the bailiff. Article 335 of the Civil Procedure Code stipulates, "the lodging of a complaint shall not stop the actions of execution." In case of complaint, the whole execution file is sent to the court for a ruling, which has the practical effect of blocking execution. A mechanism is urgently needed that can ensure continuation of the execution in such cases, which requires an amendment in Article 335 of the Civil Procedure Code.

4. Trade Associations. Legislative drafting since 1989 in Bulgaria has been dynamic, as Parliament passed new laws and amendments related to commercial issues. Bulgaria's new economic orientation, from a centrally planned to a market economy, required a new and sound legal basis. This caused instability in the legal framework. The search for more effective legal regulation also resulted in 24 changes in the Commerce Act since 1991 and in many other laws.

Only the MPs and the Council of Ministers have the legislative initiative to introduce a bill. There is no formal mechanism for stakeholders to participate in or to initiate legislative reforms, condition that needs remedying.

Trade and business associations — such as the Bulgarian International Business Association (BIBA), the BCCI, the BIA, and the American Chamber of Commerce (Amcham) — try to promote improvement of the business environment by requesting amendments in the legal framework or improvements in the implementing institutions. They have been lobbying, issuing white papers, and using the media to direct attention to major difficulties for businesses in Bulgaria. Draft amendments to business-related laws have been put forward.

Joint efforts have proven more successful than isolated and individual efforts. However, so far business associations have united efforts only on an ad hoc basis.

Lawyers associations have not actively proposed changes in commercial law. The Supreme Bar Council is not active in providing input to current legislative changes. No specialized lawyers groups exist dedicated to contract law issues. Creation of a Business Lawyers Association might be considered.

The Institute of Certified Public Accountants, on the contrary, has been active in participating in working groups on drafting legislation related to accountancy and auditing.

The Association of Commercial Banks is following the legislative development related to banking and commerce and insists in being involved in the legislative process. Nonetheless, interviewees noted that participation of banks and other business entities in the legislative process has room for improvement.

Formally, no notice and comment period for regulations is provided in Bulgaria. The executive drives the legislation. However, the adequacy of its staff affects the quality of legislation. Parliament and government should reach out to the public for input, e.g., calling the top 10 businesses in a particular area for their comment. ABA CEELI has successfully done this twice in the commercial law area. The result was positive with the Law on Procurement.

The Parliamentary Information Center, located at the Parliament office building, was created a year ago to distribute information on future legislative changes, including drafts. Such advance information could enhance the indirect participation of business and professional organizations in the legislative process.
BCCI, the oldest and largest NGO in commerce in Bulgaria, has been regularly asked by the Parliament and the government for opinions on law drafting. Many times the BCCI proposals are not agreed on, but its regular cooperation is positive. BCCI has requested that better and more detailed information *on future legislative bills* be provided to the public and is lobbying for a requirement that the government solicit and receive NGOs' and businesses' opinions before a bill's review by the relevant parliamentary committees.

BCCI maintains an active Web site with updated information on new legislation in commercial law, general civil law, and bilateral agreements of Bulgaria for

avoidance of double taxation and for mutual promotion and protection of investments. The Web site also solicits comments on current legislation and proposals for future laws.

Specialized publishers in law matters publish regular and timely texts of laws and reference material related to commercial law that are easily available to the general public in bookstores and even on the streets. Professors and practitioners have published academic treatises and interpretations of commercial laws to guide courts and lawyers. Periodicals and other publications report regularly and accurately on matters related to contract law to give the business community and the public a proper understanding of commercial matters.

THE MARKET FOR CONTRACT LAW REFORM

The demand for contract law reform in Bulgaria did not seem as high as in other areas of commercial law reform, because practitioners, judges, and business entities are relatively comfortable with existing legislation. Criticism was restricted to areas of implementation and enforcement.

Greatest frustration is felt with the efficiency of the judiciary, which needs serious reform to secure proper enforcement of commercial contracts and execution of court and arbitration judgments. Establishment of specialized commercial courts is under discussion and is on the list of the Ministry of Justice. These courts will eventually deal with bankruptcy and commercial contracts and will facilitate commercial law enforcement. Improving alternative dispute resolution is also required.

Currently, the creation of a working group for drafting amendments to the Commerce Act, the Civil Procedure Code, and other laws is projected. Among the major issues are amendments in the lease contracts and in the regulation of the execution and enforcement of court judgments.

F. FOREIGN DIRECT INVESTMENT

OVERVIEW

Since 1992, Bulgaria has experienced a steady upward trend in foreign direct investment (FDI). From a modest $34.42 million in 1992, Bulgaria attracted more than $1 billion in FDI in 2000 from more than 25 countries. According to official government figures, between 1992 and 2000, the industrial sector attracted over 50 percent of total FDI into Bulgaria, followed by finance, trade, tourism, transport, telecommunication, construction and agriculture.[20] Furthermore, an encouraging trend is that in 2000 and for the third consecutive year, FDI in greenfield projects, joint ventures, and additional investment in companies exceeded FDI through privatization. During the same eight years, European investors constituted the largest foreign investors led by Germany, then Belgium, Italy, and Greece. As of the first quarter of 2001, Bulgaria had a total of 49,000 foreign investors, 4,000 of which are foreign investment companies.[21]

The substantial improvement in FDI to Bulgaria over the last three years signals a growing investor confidence in its economy and the economic policies pursued by the government. The severe economic crisis in1996 to 1997 forced the government of Bulgaria (GOB) to undertake major economic reforms to create a functioning market economy and an investor-friendly business environment. Nevertheless, when compared with the rest of Eastern and Central Europe, Bulgaria has lagged behind in attracting FDI. The mixed history of economic reforms, poor infrastructure, an underdeveloped financial system, a perception of widespread and extensive government corruption, an uncertain, confusing and burdensome commercial law environment, and an unreliable judiciary have had a significant negative impact on the inflow of FDI into Bulgaria. Of particular concern to many foreign investors are uncertainty of the commercial law and regulatory framework; archaic, excessive and burdensome licensing requirements; and lack of confidence in the judiciary.

LEGAL FRAMEWORK

Bulgaria's legal framework offers foreign investors a number of critical and fundamental protections and guarantees, as well as certain provisions aimed at attracting and increasing the flow of foreign capital into Bulgaria. Some of the protections are enshrined in the Bulgarian Constitution, which provides for certain equal treatment for foreign investors by disallowing discriminatory practices and allowing for judicial review of potentially discriminatory practices.[22] The Bulgarian Constitution provides additional advantages and protections for foreign investors by establishing a priority of international

[20] *Bulgaria 2001 Business Guide,* page 20.
[21] These figures were provided by the Foreign Investment Agency during the interview on November 30, 2001.
[22] Article 19(2) of Bulgarian Constitution.

treaties and obligations over domestic laws and regulations.[23] If such advantages and protection are stipulated in the international treaties and obligations to which Bulgaria is a party, they must be extended to foreign investors even if the domestic law and regulations stipulate otherwise.

In addition to the constitutional framework to protect foreign investor and prohibit discriminatory law, the GOB sought to attract FDI through additional protections and incentives. In October 1997, the GOB adopted the Law on Foreign Investment (LFI).[24] LFI largely follows similar laws friendly to foreign investment by providing national treatment to foreign investors and according them the same protection under the law provided to Bulgarian investors. Thus, a foreign investor may invest in any of the following:

- Shares and stakes in commercial companies
- Ownership title over building and limited ownership title over property
- Ownership title and limited ownership title over movable property when considered long-term tangible assets
- Ownership title over enterprise, or detached parts thereof, in accordance with the stipulation of the Law on Restructuring and Privatization of State-Owned and Municipal Enterprises
- Securities, including debenture and treasury bonds, as well as derivatives issued by the State, by the municipalities or by other Bulgarian legal persons, with a remaining term until maturity not shorter than six months
- Loans, also in the form of financial leasing, for a term not shorter than 12 months
- Intellectual property rights
- Rights stemming from concession contracts and contracts for the assigning of management.

Foreign investors and nationals, however, may not directly acquire ownership rights in land. This constitutional prohibition on the foreign ownership of land does not apply to Bulgarian companies irrespective of the foreign equity participation in such companies.

LFI also strengthens the constitutional protection against the expropriation of property without fair compensation or expropriation due to subsequent legislative changes.

The GOB has made significant attempts to attract foreign investment through diplomatic initiatives. The most important is the GOB decision to join the European Union and to bring its political, economic, and legal environment up to EU standards. Bulgaria also joined the World Trade Organization (WTO) in 1996 and the Central European Free Trade Agreement in 1998 and has entered into free-trade agreements with neighboring Turkey and Macedonia. (See section on International Trade below.)

[23] Article 5(4) of Bulgarian Constitution states: "[A]ny international instrument, which has been ratified …, promulgated and entered into force with respect to … Bulgaria, shall be considered part of the domestic legislation… It shall supersede any domestic legislation stipulating otherwise."
[24] Promulgated in the *State Gazette*, Issue 97 of 1997; supplemented, *State Gazette*, Issue 29 of 1998; amended and supplemented, *State Gazette*, Issue 153 of 1998 and Issue 110 of 1999).

In general, Bulgaria's FDI regime can be characterized as follows:

- It is largely open, with investment only regulated or disallowed in certain categories.
- Free repatriation of profits and compensation in the event of expropriation are guaranteed.
- Foreign investors are granted national treatment, except for purposes of urban land ownership.
- Foreign investors can participate in all transactions not specifically forbidden by law, including the privatization program.
- Percentages of foreign participation in commercial companies are not restricted.

Bulgaria is a signatory to the United Nations Convention on International Sale of Goods (Vienna Convention) in force for Bulgaria since 1991, to the ICSID Convention concluded in Washington in 1965,[25] the 1958 Convention on Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) since 1961, and the European Convention on International Commercial Arbitration since 1964. Bulgaria is also a member of the Multilateral Investment Guarantee Agency (MIGA), part of the World Bank group. In 1988, Bulgaria adopted the Law on International Commercial Arbitration, which was modeled after the UNCITRAL Model Law on Arbitration.

IMPLEMENTING INSTITUTIONS

The two primary agencies responsible for setting the policies on foreign investment and encouraging FDI are the Foreign Investment Agency (FIA) and the Advisory Council on Foreign Investment and Financing (ACFIF). FIA is a government agency established in 1995 as a one-stop-shop institution for foreign investors. It coordinates the activities of the various states agencies on matters relating to FDI and acts as the primary organ for promoting and encouraging FDI in Bulgaria. FIA has a staff of 24 personnel, 12 of whom are technical and legal experts. In addition to acting as the information clearinghouse on foreign investment, FIA also acts as an intermediary between the government agencies and the foreign investors during the different stages of a business transaction including initial dispute mediation. In addition to providing a comprehensive guide on conducting business in Bulgaria, FIA makes all relevant information available on the Internet at www.bfia.org.

ACFIF is a consultative body to the prime minister on matters relating to improving the investment climate in Bulgaria. It meets twice a year with the prime minister and the Council of Ministers to discuss business policy questions.

SUPPORTING INSTITUTIONS

In 1992, Bulgarian foreign investors organized the Bulgarian International Business Association (BIBA). BIBA has become one of the most influential NGOs representing the interest of the international business community in Bulgaria. In addition to its

[25] Bulgaria's application came into force on May 13, 2001.

educational activities, BIBA publications help promote and improve the business environment in Bulgaria. BIBA's membership has grown to more than 150 members from 20 different countries.

In addition to BIBA, the American Chamber of Commerce in Bulgaria (AmCham) is the second largest NGO advocating friendlier business environment for foreign investors. AmCham brings together U.S. and Bulgarian businesses and promotes closer economic relations between U.S. and Bulgarian commercial enterprises and state institutions. The Bulgarian Chamber of Commerce and Industry also plays an important role promoting a healthy business environment for domestic and foreign investor.

THE MARKET FOR FOREIGN DIRECT INVESTMENT

Recognition is widespread among government officials that Bulgaria's economic development depends in large part upon FDI. This perception in part explains the GOB's singular focus on EU accession. However, despite the official public pronouncements about creating a healthy market economy that encourages FDI, the government seems insufficiently attentive or responsive to the concerns of the international business community in Bulgaria. Interviewed business associations and investors consistently raised as a major problem the lack of a consultative mechanism between the private sector and the government. This represents a major obstacle to developing investment legislation adequate to address the needs of the business community in general and the foreign investor in particular.

G. INTERNATIONAL TRADE

OVERVIEW

Bulgaria's international trade policies are largely determined by the fact that the European Union (EU) and the Central and Eastern European Countries (CEEC) are its main trading partners. In 2000, the total trade turnover (imports plus exports) between Bulgaria and the EU was $5,320.3 million (approximately 47.1 percent of the total trade turnover of Bulgaria), and $3,431 million between Bulgaria and the CEEC countries (approximately 30.3 percent of the total turnover). As a result, the thrust of Bulgaria trade policies is aimed at EU integration and enhancing its trade with the CEEC bloc and neighbors, Turkey and Macedonia.

LEGAL FRAMEWORK

Bulgaria has been a member of the World Trade Organization (WTO) since 1996 and has in principle adopted a liberal foreign trade regime. By virtue of this membership, the Bulgarian constitution mandates that Bulgaria's trade regime comply with all the rights and obligations set forth in the WTO agreements, including the principles of non-discriminatory trade (national treatment and the most favored nation) and reduction and elimination of trade barriers and transparency. From a practical perspective, however, the legal framework provided by the WTO seems to play a minor role in shaping Bulgaria trade policies. Two reasons can be cited for this lack of attention to the WTO. First, Bulgaria joined the WTO in 1996 without being forced through the arduous WTO accession process, as many transition economies are doing today. Second, as was stated earlier, Bulgaria's trade policies are driven primarily by the imperatives of the EU accession.

Trade relations between Bulgaria and the EU are governed by the European Agreement of Association (entered into force on February 1, 1995) and the Interim Agreement on Trade and Trade Related Matters (entered into force on December 31, 1993). For the last three years, the EU has extended preferential trading treatment for Bulgarian and industrial products, but by 2002, tariffs between the EU and Bulgaria will be completely eliminated. Bulgaria has also signed in 1993 the agreement with the European Free Trade Association.

Despite its international trade treaties and commitments, Bulgaria domestic regulatory and licensing regimes are likely to hamper any further trade liberalization in good and services. While many of the import and export-licensing requirement have been removed, licensing and bureaucratic obstacles remain to the free flow of trade.

IMPLEMENTING INSTITUTIONS

For the purpose of this assessment, Bulgaria's implementing institution is the Ministry of Economy. The assessment of its institutional capacity is based on an admittedly narrow sample of meetings with relevant government officials, donor-funded advisors, and private sector participants. Overall, however, Bulgaria seems to lack the appropriate institutional mechanism to deal with the WTO in an effective manner. Nor does there appear to be an inter-agency mechanism to deal with WTO and international trade issues that affect the various ministries. The problem is compounded by the dearth of expertise and qualified individuals knowledgeable about trade.

SUPPORTING INSTUTITIONS AND THE MARKET FOR TRADE LIBERALIZATION

The market for trade liberalization is relatively strong in Bulgaria. Government officials recognize the importance of trade and investment. However, trade liberalization in Bulgaria seems to be largely associated with simply joining international organizations or large economic blocs. Little evidence exists that after joining the WTO, Bulgaria has acted to enhance its trading regime or capitalize on the benefits of the global trading system. More troubling is that Bulgaria has failed to carry out many of its WTO obligations, such as its noncompliant customs valuations regime. In fact, WTO membership appeared of marginal interest to many government officials interviewed during the assessment.[26]

Similarly, the current singular focus in Bulgaria on accession to the EU seems to cloud the economic priorities with the political imperatives of joining the EU. Other than the generally perceived benefits of EU membership, the team detected little discussion on Bulgaria economic and trade priorities in light of the demands and cost of joining the EU.

To capture the benefits of free trade, trade liberalization must be institutionalized in Bulgaria. This requires introducing the appropriate institutional mechanism to formulate and execute trade policies and creating the necessary trade facilitation tools on an intra-agency basis. It also requires a greater awareness on the part of the business community of the benefits of the multilateral trading system for the Bulgarian economy.

[26] One notable exception is the Office of Patents.

H. REAL PROPERTY

OVERVIEW

A land restitution process that is fraught with delays, has disillusioned many, and has created suspicion and doubt about the government's equity, fairness, and motivation has stunted Bulgaria's land market. However, Bulgaria moved forward in the transition to a market economy and has developed a legal framework that is sufficient for land transactions and lending. The professionals working in the real property sector are promarket and have been lobbying for legislation in their favor. A gap persists between the services, information, and systems available in the city in comparison to those available in the rural areas.

LEGAL FRAMEWORK

The legal framework for ownership, transfer, and mortgage of real property in Bulgaria, while not perfect, is sufficient. However, areas of concern include ownership, mortgage, registration, real property taxation, and zoning and land use.

1. Ownership. Foreign ownership of land is limited. Fully foreign legal entities cannot own land. This is a problem in relation to EU accession and to foreign banks that want to engage in land- based lending.

2. Mortgage. The mortgage legislation is flawed, although bankers are highly motivated to make legislative changes to the Code of Civil Procedure, which deals with the foreclosure procedure and realization of the subject of mortgage. Members of the Ministry of Justice, Members of Parliament, and bankers' associations are drafting changes to the Code of Civil Procedure. The following issues have been identified as problematic:

- Legislation is unclear in relation to priorities upon foreclosure.
- Legislation regarding second and third mortgages is unclear and incomplete.
- Creditors are not required to provide debtors with notice of default and a certain period of time to cure the default.
- Low sale prices usually prevail at the public auction because a notice appears at the office of the execution judge and on the property itself, but the law does not require broader publication in newspapers.
- Unlike mortgage legislation in most countries, Bulgarian legislation does not explicitly give lenders the right to credit bid[27] at a foreclosure sale.

3. Registration. Registration in Bulgaria is moving from a deed registration system toward a title registration system with financial backing from foreign donors including

[27] In a "credit bid," the lender receives a credit against any bid up to the outstanding amount of the debt. In other words, if the outstanding loan amount is $100, the creditor could bid up to a $100 without having to put any more cash into the property. This gives the creditor the ability to protect the investment he has already made in the property.

the World Bank and the EU. The system will change over time, with both systems operating in Bulgaria for some time to come. The registration legislation takes into account these two systems and does not fully embrace a title registration system. However, both systems appear to be capturing the transactions. The registration and cadaster law, which was passed in April 2000, represents years of negotiation and compromise.

4. Real Property Taxation. One consideration regarding real property taxation is that taxes are not paid on restituted land for five years after the issuing of the land commission decision to restitute land to former owners. Many of those interviewed stated that once they had to pay taxes on restituted land, they would sell the land. The introduction of taxes on restituted land will have an impact on the land market and on local governments that receive revenue from these taxes.

5. Zoning and Land. One area of concern in relation to zoning and land use is arable land within settlements or "regulation land." Regulation land is designated for agricultural use; therefore, the prices are relatively low. All real estate agents interviewed reported an active land market for regulation land. The buyer takes the risk of not receiving permission to change the land's use purpose after the purchase. The cost of requesting a change of use is fairly high, but regulation land is three to five times more expensive than other agricultural land.

The procedure for conversion of agricultural land is complex. However, the procedure does not involve public debate or opportunity for citizen involvement in the change of use purpose process. The mayor appoints a committee with representatives from regional services (transportation, police, and sanitation). The committee decides whether the proposal can go forward and provides the Ministry of Agriculture with minutes from the committee meeting. Another commission from the Ministry of Agriculture and the Ministry of Public Works and Urban Development decide on whether to allow the change of use. A tax is paid on the land for conversion, depending on its quality. If the land plot is more than 30 hectares, the Council of Ministers must make a special decision. The decision of the commission returns to the regional committee. Upon approval, the land commission changes the cadastral maps.

IMPLEMENTING INSTITUTIONS

Real property registry raises several concerns. First, ownership does not require registration, but transfers of ownership must be registered. Much of the restituted rural land is registered with the local land commissions but is not registered with the district courts. Land data are kept by different agencies and with private surveying companies.

Registration organization and procedures vary from district to district. Our field research found that only some registration offices are in communication with the land commissions. Some entry judges were following rules from the 1950s; others were following the more recent legislation of 1997 (before the April 2000 law was passed).

In spite of these problems, lenders exhibit a surprising amount of confidence in the registration system. Lenders interviewed did not complain about unregistered or undiscovered encumbrances. Moreover, all lenders stated that the information required could be gathered quickly.

Zoning and land use are areas requiring further research. In the past, the urban planning "courtyard regulation" could change property boundaries and transfer ownership by administrative acts, causing insecurity and litigation. Although recently abolished, this regime still causes ambiguity in boundaries and disputes. Cumbersome urban planning procedures, inadequate resources and staffing, and lack of uniform professional standards further complicate the issue.

The court system is functioning but is overwhelmed by land disputes and restitution issues. Although the restitution process has been completed insofar as land division plans covering 99.13 percent of the agricultural land have been finalized, many claims for restitution are still pending. We were unable to quantify the claims during our fieldwork, but according to anecdotal reports, unresolved claims range from 2,000 to 3,000 in each region. Some claims are still pending in court, and others have resulted in decisions entitling claimants to land from municipal land funds or to compensation vouchers.

Although virtually all agricultural land has been restituted, probably less than half of it is marketable as the heirs have not decided whether or how to divide the land. Until land transactions become more common and land value increases, the government cannot force heirs to make these decisions, although it might consider programs that provide incentives to heirs to make decisions. The government can also ensure that court cases among heirs are resolved equitably and as quickly as possible, and it may make sense to establish special judges to handle such cases.

No arbitration court or mediation process is available for resolving contract disputes over real estate between legal entities (Article 9 of the Code of Civil Procedure). Information is lacking on mediation and arbitration as an alternative dispute resolution system. Interest is increasing in expedited systems for handling land restitution disputes and for foreclosures of both movable and immovable property.

SUPPORTING INSTITUTIONS

Perhaps the area most suited for donor assistance is in the support of institutions. Bulgaria has competent real estate brokers, lawyers, bankers, and farmers. However, these groups lack the resources and training to develop systems to assist the development of a land market.

Lack of appropriate and abundant land market information is a serious handicap in the development of a land market in Bulgaria. Agricultural land information on prices for leasing and selling agricultural land is limited. Land valuations are not always related to land markets, and people are concerned about selling land without understanding the market and land value.

Moreover, real estate agents in one part of the country do not have information about real estate available in another region. This poses difficulties to the many people who have been restituted land in areas far from where they live and need information for markets in those areas.

Where farmers' groups exist and especially where they are part of a credit cooperative, farmers are generally in a better market environment. Farmers' associations are needed that will lobby for and protect members, exchange price information on land and agricultural products, and provide information and legal assistance to members. Small rural farmers are vulnerable, especially in industries such as dairy, where food safety standards make it difficult to continue operating as in the past.

MARKET FOR REFORM

Private ownership of land in Bulgaria is no longer a debated topic. It has been fully accepted by the government and the people that private ownership of land is positive and desirable. Professional associations and trade and special interest groups provide input and feedback on real property issues and have access to policy and lawmakers. The mechanism is not necessarily formalized, but functions. While laws and regulations are readily available in Sofia, they are less available in rural areas, and rural residents are less likely to be engaged in the legislative process.

A major area of need is in public information about the laws. The restitution law and its amendments, regulations, and interpretive decisions are incomprehensible to many landowners and heirs because of frequent changes to rectify earlier mistakes. Few people fully understand their restitution rights. Notwithstanding efforts by the Ministry of Agriculture to disseminate public information on the restitution process, our recent fieldwork indicated that most bankers, lawyers, real estate brokers, and other market participants did not have sufficient confidence in title to restituted agricultural land to engage in transactions. These people did not know that the restitution process had been completed with respect to agricultural land. Nor did they understand the limitation in remedies that makes title to land division parcels virtually immune from future claims or appeals.

Although a public information campaign will not bring about large numbers of land transactions, a widespread effort to assure people that title to restituted land is secure would stimulate markets.

In addition to public information, legal aid services are needed in the rural communities. Land disputes and land misunderstandings will only increase as the land market opens up and the land tax is imposed. Rural user groups do not regularly participate in the legislative process. Many individuals do travel to Sofia to sit in the Ministry of Agriculture with their complaints and concerns. Farmers need information to be productive and to make wise decisions regarding their land.

The land registry is in transition. Rural people were generally not concerned about registration, because few were engaging in land transactions. However, the urban registries are increasing in importance and should be an immediate area of focus. A mechanism for obtaining feedback from the private sector and monitoring registration changes would be helpful.

SUMMARY OF RECOMMENDATIONS

IR 1.3.1- Streamlined Business Laws and Regulations in Place		
Problem	*Approach*	*Priority*
Bankruptcy: The bankruptcy law contains provisions which promote unnecessary litigation and appeals, impeding efficient resolution of process and bankruptcy cases	Revise and amend the Bankruptcy Law to eliminate the provision causing unnecessary litigation, delays and appeal	ST
Bankruptcy: Inexperienced bankruptcy bar, receivers and judiciary resulting in incorrect application and enforcement of bankruptcy law	Provide training to judges, receivers, administrators, and lawyers on the implementation and enforcement of the Bankruptcy Law	MT
Collateral: Banks inexperienced in risk assessment, lowering availability of secured transactions	Develop program and create institutional course in commercial lending risk assessment (cross-cutting with IR 1.1.2)	ST
Collateral and Real Estate: Lack of clarity for defining priorities in the event of foreclosure on pledged property increases risks for lenders, thus increasing cost of credit and lowering availability of capital	a. Review and clarify priorities through regulation and academic commentary	ST
	b. Provide training to judges, lawyers, and lenders in the clarified law	MT
Company and Collateral: Computerization of registration processes not centralized to permit electronic searches of all databases, increasing costs and risks related to searches	Upgrade computer capacity to link existing stand-alone systems or otherwise permit electronic searches	MT
Company: Company incorporation and registration laws act as barriers to entry, clog court dockets, hinder entrepreneurship, and unnecessarily increase financing risks	Revise company law to streamline incorporation process and all subsequent acts and amendments that require court registration or oversight, including reducing or eliminating involvement of judges	MT
Company: Unnecessarily burdensome business permits and licensing procedures substantially increase cost of doing business and encourage corruption and informal economy	a. Conduct process re-engineering evaluation	ST
	b. Continue support for the current efforts to review and reform Bulgaria business licensing and permits requirements	MT
Competition: Commission for the Protection of Competition (CPC) is preferred to courts by private sector, but unable to provide sufficient services, reducing opportunities to bypass court system and obtain more rapid resolution	Review and re-engineer CPC processes, including creation of separate divisions for competition and consumer protection; and provide training to staff to improve overall service delivery capacity	MT
Courts: Lack of understanding of basic concepts of market economics among lawyers and judges leading to inability or unwillingness to apply modern commercial laws	Provide training to judges in the basic concepts of modern/market economics and the role of judges in the post communist commercial environment	MT
Cross-Cutting: No mechanism in place for continuing legal educations for legal professionals to adopt and apply new laws and processes	Establish institutional continuing legal education system, coupled with mandatory requirement for CLE	MT
IR 1.3.2 Strengthened Business and Professional Association Advocacy		
Problem	*Approach*	*Priority*
Cross-cutting: No formal mechanism for private sector to provide input on legislative and regulatory process	Adopt and implement formal requirements for meaningful public notice and comment on all laws and regulations issued by parliament and government	MT
Cross-cutting: Insufficient experience with and understanding of lobbying for business interests	Assist business and professional associations to adopt formal and more effective lobbying mechanisms to address business concerns	MT
Cross-cutting: Ineffective bar associations not providing CLE; opportunities for professional development; input into commercial policy, legislative & regulatory initiatives; or input on judicial appointments	Assist bar associations to take up advocacy and reform role	MT

Cross-Cutting (with particular impact on **Company**): Enhanced corporate governance standards, business ethics - including codes of corporate conduct, compliance with contracts - not well understood or applied	Create public education program and modules for use by business associations and business schools	MT
Real Property: Poor information on real estate prices and poor land valuation practices depress the national real estate market	Assist the development and enhancement of real estate agent associations and farmers' associations to provide better information on land markets and values, and to ensure adoption of best practices in land valuation	MT
IR 1.3.3 Improved GOB Capacity to Analyze Policy Options and Related Laws and Regulations		
Problem	*Approach*	*Priority*
Cross-cutting: Poor training of lawyers, judges, business professionals, and legislative and executive branch officials in modern commercial concepts and international business norms and best practices	Work with law schools, business schools, professional associations, and NGOs to provide business and legal community with modern concepts of the market economy and modern commercial law	LT
Trade: Limited compliance with WTO requirements constraining needed trade liberalization	Conduct assessment of existing compliance and create program to address priority areas	ST
Trade: Lack of adequate institutional mechanism to design and implement trade policies and comply with WTO obligations	Restructure WTO unit to take responsibility for formation and execution of trade policy	MT
Competition and Trade: General lack of technical capacity to analyze market-oriented commercial policy options	Utilize existing or establish public policy institute, think-tank or other entity to provide government with studies and policy papers	MT
IR 1.3.5 Enhanced Enforcement of Contracts		
Problem	*Approach*	*Priority*
Courts: Total breakdown in legal enforcement of commercial obligations damaging economic development due to:		
1. excessive procedural delays	a. Assist existing task force to revise code of civil procedure to remove unnecessary procedural delays and streamline process for executory judgments	ST
	b. Continue supporting efforts to modernize court administration and case management	LT
2. lack of judicial expertise regarding laws and role	a. Public education program to create understanding of impact of courts on economy/role of judges	ST
	b. Train judges in expedited procedures, courtroom management	LT
3. ineffective execution of judgments	Review and revise bailiff system to enhance enforcement and execution of contracts	LT
4. insufficient system of alternate dispute resolution	Support the growth of arbitration as an alternative to courts	ST
IR 1.3.6 Transparent, Effective Legal Policies to Prevent Corruption		
Problem	*Approach*	*Priority*
Cross-cutting: No formal mechanism for stakeholder involvement in legislative and regulatory process, increasing potential for abuse of process and non-transparent policy-making	a. Assist business, professional associations and NGOs to adopt formal and more effective lobbying mechanisms to address business and economic concerns	ST
	b. Adopt and implement formal requirements for meaningful public notice and comment on all laws and regulations	MT
Courts: Lack of written, publicly available, and published court opinions creates confusion and uncertainty, hinders legal development, and enables corruption	Require and implement system of mandatory written opinions, preferably published on internet	MT

APPENDIX A
ASSESSMENT TEAM MEMEBERS

1. **Emad Tinawi – Team Leader- FDI and International Trade Law**
   Booz Allen & Hamilton Inc., 8283 Greensboro Drive, McLean, Virginia 22102
   Tel. (703) 377-1109; fax (703) 917-2379
   e-mail: tinawi_emad@bah.com

2. **George C. Paine, II – Bankruptcy Law and Judiciary**
   US Bankruptcy Court, Middle District of Tennessee, Chief Judge; 218 Customs House, 701 Broadway, Nashville, TN 37203
   Tel. (615) 736-5587; fax: (615) 736-2716
   e-mail: george_paine@tnmb.uscourts.gov

3. **Wade G. Channel – Collateral Law**
   Booz Allen & Hamilton Inc., 8283 Greensboro Drive, McLean, Virginia 22102
   Tel. (703) 902-4578; fax: (703) 917-2379
   e-mail: channell_wade@bah.com

4. **Charles A. Schwartz – Company Law**
   USAID, Bureau for Europe and Eurasia; E & E/MT, Room 5, 07-62; 1300 Pennsylvania Ave. N.W., Washington, DC 20523
   Tel. (202) 712-1761; fax: (202) 216-3009
   e-mail: cschwartz@usaid.gov

5. **Timothy T. Hughes – Competition Law**
   US Federal Trade Commission, Office of the General Counsel; Legal Counsel for International Technical Assistance 600 Pennsylvania Ave. N.W., Washington, D.C. 20580
   Tel. (202) 326-3503; fax: (202) 326-2477
   e-mail: Thughes@FTC.gov

6. **Tsvetanka Spassova-Stoyanova – Contract Law**
   Lawyer, Visiting Scholar at UW School of Law, Seattle, WA
   1417 NW 63rd Str., #5
   Seattle, Washington 98107
   Tel. (206) 782-6339 / Tel.in Bulgaria (+359 2) 980 10 29
   e-mail: tsslaw@hotmail.com

APPENDIX B
LIST OF MEETINGS

1. **Supreme Administrative Court** - 2, Stamboliiski Blvd.; tel. 940 4111, 981 30 42, 988 23 77
   Mr. Vladislav Slavov, President of the Supreme Administrative Court

2. **Supreme Court of Cassation** - Member-judge(s) of the Supreme Court of Cassation ; Palace of Justice, 2, Vitosha Blvd.
   Mrs. Kina Chuturkova - 3rd floor, room 7; tel.957 3889,
   Mr. Borislav Belazelkov - 3rd floor, room 13; tel.987 6800,
   e-mail:belaselkov@mail.bol.bg

3. **Constitutional Court** – 1, Dondukov Blvd., tel. 940 23 35, 987 04 77, 98560-3191
   Mrs. Margarita Zlatareva – Justice, e-mail: M.Zlatareva@constcourt.govrn.bg

4. **Sofia City Court: Commercial Division, Company Registry, and Bankruptcy; Palace of Justice**, 2, Vitosha Blvd., 2nd floor
   Mr.Emil Markov, President, tel.9219-332
   Mrs.Kamelia Efremova – Chair of Commercial Division, including Company Registry, tel.980 86 81
   Mr. Aleksei Ivanov – Judge, Commercial disputes, tel.45 84 88

5. **Sofia District Court** – 2, Vitosha Blvd., 4th floor, tel.981 5742
   Mrs. Neli Kutskova - President

6. **Ministry of Justice** - 1, Slavyanska str., tel.91408;
   Mr. Sevdalin Bojikov - Deputy Minister, tel. 987 76 86, 933 32 50

7. **Magistrate Training Center** - address: Ministry of Justice (Building next to the Presidency) , 2a, Dondukov Blvd. , Top Floor, room 826; tel.988 87 51; 933 22 76
   Mr.Dragomir Yordanov - Executive Director, E-Mail: Mtc@Dir.Bg

8. **Bailiff 's Office** - Sofia, 2, Patriarh Evtimii str., tel.9809581, 9809582
   Mrs.Ivancheva – Head of the Office

9. **Bulgarian Chamber of Commerce** - 42, Parchevich str.,
   tel. 987 26 31, fax:987 3209
   Tsvetan Simeonov - Vice President, e-mail:simeonov@bcci.bg
   Mariana Stefanova - Manager

10. **Arbitration Court at the Bulgarian Chamber of Commerce** – 42, Parchevich Street, tel.9802733 / 087254847.
    Mr. Silvi Chernev – President.

11. **Bulgarian Chamber of Notaries** - 7 Pirotska str., 6th Floor
    Elena Elenkova, President. tel.9809932 at the Chamber, office:9862410 / 088336682; e-mail:notariat@internet-bg.net
    Svetlana Milenkova - Notary

12. **Registry of Pledges – Ministry of Justice (building next to the Presidency)**, 2a, Dondukov Blvd. 7th floor; tel.986 23 27, 933 32 65
    Mrs.Elena Petkova - Director

13. **Commission for Protection of Competition** – 19, Vitosha Blvd., Fl.2, room 19, tel. 088 61 56 11
    Mr.Katerin Katerinov – President

14. **Commission for Trade and Consumer Protection** - 4A, Slaveikov Sq., tel. 987 74 45; fax: 987 32 88
    Mr.Damyan Lazarov – President,

15. **Privatization Agency** - 29, Aksakov str., tel.987 75 79, 980 38 46; fax: 981 13 07
    Mr.Apostol Apostolov - Director

16. **Foreign Investment Agency** - 3, Sveta Sofia str., tel.980 09 18, fax:980 13 20
    Mr. Marinov - President

17. **Ministry of Economy** – 8, Slavyanska str., tel.98 42 71, fax: 981 11 59
    Kaloyan Ninov – Deputy Minister

18. **Central Bank** – 1, Batenberg sq., tel.91 459, fax: 9145 1945
    Mr. Ananiev
    Mr. Timnev

19. **Institute of Certified Public Accountants** – 7A, Aksakov Str., tel.980 12 17
    Prof.Durin – President
    Mr. Jelyazkov – Member of the Board
    Mr.B.Kostov – Member of the Board

20. **Bulgarian Stock Exchange** – 1, Makedonia Sq.,Fl.12; tel.986 59 15, 986 58 63 fax:987 55 66, e-mail:mmoravenov@bse-sofia.bg
    Mr.Manu Moravenov – Director

21. **European Institute** – 96, Rakovski str., tel.988 64 10
    Mrs.Liubov Panayotova – Project Director;
    e-mail:lpanayotova@europeaninstitute.net

22. **Patent Office** – 52 B, G.M.Dimitrov Blvd., tel.71 13 305, 71 13 316
    Mr. Mircho Mirchev - President

23. **Patent Expert in Private Practice** Mr. Emil Benatov – 36 B, Liulyakova gradina, tel. 971 27 59, 973 3619, fax: 973 3603; e-mail:benatov@datacom.bg

24. **Bulgarian International Business Association (BIBA)** – 8A, Hristo Belchev str., tel.981 91 69, 981 95 64, 988 67 76
    Mr. Nikolai Babev - President

25. **Bulgarian Industrial Association (BIA)** - 16-20, Alabin str., tel.932 09 11
    Mr.Bojidar Danev – president, e-mail: danev@bia-bg.com

26. **ABA CEELI** – 135 A, Rakovski str., fl.4, tel.980 80 84, 981 13 12
    Ms.Hristo Ivanov – Legal Advisor, e-mail: Christo@aba-bg.org

27. **ABA CEELI** – 135 A, Rakovski str., fl.4, tel.980 80 84, 981 13 12
    Mr. Jim Corsiglia – e-mail: jcorsiglia@hotmail.com
    Mr. Keith Thomas – Liaison

28. **Sofia City Bar Association** – 1A, Vitosha Blvd., 2nd floor, tel.9885893,
    fax: 988 58 93
    Mr.St. Botev – President
    Natalia Tsenova - Secretary
    Mrs.Vasya Ilieva – Council member

29. **American Chamber of Commerce (AMCHAM)** – 19, Patriarh Evtimii str., tel.981 43 40, 981 59 50, fax: 980 42 06
    Mr. Philip Philipov – Executive Director, e-mail:philip@amcham.bg

30. **Faculty of Law / Sofia University** – 15, Tsar Osvoboditel Blvd.
    Mr. Angel Kalaidjiev – tel.048 937 985; 980 40 21, 981 28 42
    Company law, Commercial law

31. **Faculty of Law / Sofia University** –
    Mr. Alexander Katzarski - tel.088 35 48 15; 937 65 20
    Commercial law

32. **Faculty of Law / Sofia University** -
    Ms. Valentina Popova – tel.087 61 98 24; 986 13 30
    Bankruptcy

33. **Bulgarian Parliament** – 1, Batenberg sq., tel.90 40 34; fax: 980 89 16
    Mr. Ognyan Gerdjilov – Speaker
    Mrs.Kamelia Kasabova – Deputy Speaker

34. **Bulgarian Parliament** – 1, Batenberg sq., tel.90 40 34; fax:980 89 16
    Mr. Valery Dimitrov - Chairman, Economic Policy Commission, tel.987 90 34
    e-mail:valgeodim@parliament.bg

35. **EBRD** – 17, Moskovska str., tel.932 14 14, fax:932 14 41
    Mr. Michael Delia – Deputy Director, Bulgaria; e-mail: deliam@sof.ebrd.com

36. **World Bank – INTERPRED**, 36 Dragan Tsankov str., tel.91 81 41, fax: 971 20 45
    Mr.Oscar de Bryun Cops
    Ms.Lada Stoyanova, Deputy Country Manager, Senior Operation Officer – tel.918 14 228

37. **Barents, Privatization** – 29, Aksakov str., tel.953 11 06, fax:951 69 02
    Mr. Alan Hawkins, e-mail: alan@techno-link.com

38. **Bulgarian American Enterprise Fund** – 3, Shipka str., Fl.2, tel.943 30 77, or 946 15 56, fax: 946 01 18, e-mail: Thiggins@baefinvest.com
    Mr. Thomas Higgins

39. **East West Management Institute Judicial Assistance Program** – 55 A, Alexander Stamboliiski Blvd., tel.988 70 35, 988 65 36, fax:988 65 35
    Mr. Lawrence Vetter – Director, e-mail:mail@ewmi.orbitel.bg

40. **Management Systems International (MSI)** – 57, Maria-Louisa str., tel.983 12 11, 983 11 94
    Mr. Howard Ockman – Director, GSM:088 456 030; e-mail:howard@msi.bg

41. **Institute for Market Economy** – 32, Patriarh Evtimii str.,tel.987 41 35, 981 29 75,
    Mr. Krasen Stanchev (subcontractor to MSI)

42. **The British Know-How Fund** – 9, Moskovska str., tel.933 92 22, fax:933 92 33
    Ms.Antoaneta Grancharova – Head of Section

43. **The EU** - Delegation of the European Commission, 17, Moskovska str.

44. **GTZ (German Technical Cooperation)** – 25-A, Jolio Cury str., tel.965 10 10, 965 10 11; fax:963 08 42
    Mr. Hanko von Knobelsdorf

45. **International Center for Non-Profit Law (ICNL)** – 6, Dobrudja str., tel.988 81 66, Mr. Liuben Panov – Director, tel.981 53 80, Mr. Michael Boyadjiev – Legal Consultant, 088 45 21 49

46. **Center for the Study of Democracy (CSD)** – 1, Lazar Stanev str., tel. 971 3000/343, fax:971-22-33, Maria Yordanova – Legal Program Coordinator, e-mail:maria.yordanova@online.bg, WWW.CSD.BG

47. **Bulgarian Banking Association** – tel.987 68 45, 981 64 93
    Mrs.Irina Martseva

48. **Balkan Star Automobile Vehicle Financing** – 5, Rezbarska str., Hadji Dimitar
    Mr. Plamen Mitev, Financial Manager, 088 72 26 52
    Tel.91988, fax:945 4014; e-mail:

49. **Colliers Continental Properties** – 7A,Aksakov str.,fl.2, tel.981 23 13, fax:986 78 76, Mrs.Tanya Koseva – President; e-mail:t.kosseva@cig-bg.com

50. **Bulgarian American Credit Bank** – 16, Krakra str., tel.9658 341, 9658 358, fax:944 50 10
    Ms. Silvia Kirilova – Legal Advisor, e-mail:

51. **Amylum Bulgaria** - P.O.Box 239, BG-7200 Razgrad, Bulgaria, tel.(084) 216 13, (084) 307 224, fax (084) 307 116
    Mr.Kolyo Boichev – Finance Manager

52. **Bulgarian American Enterprise Fund** – 16, Krakra str. Tel.965 8322, 965 8358, fax:944 5010
    Mr. Michael Hunsberger – Managing Director;
    e-mail:Hunsberger@baefinvest.com

53. **Rule of Law Institute** – 44, Parchevich.str., fl.5, tel.980 89 11, 981 49 93
    Ms. Diana Daskalova – Project Director

54. **Rule of Law Institute** – 44, Parchevich.str., fl.5, tel.980 89 11, 981 49 93
    Mr.Roussi Roussev - Secretary

55. **Stefan Kyutchukov** – Lawyer, 10, Tsar Osvoboditel str., tel.932 1100, fax:980 3586
    Djingov, Gouginski, Kyutchukov & Velichkov / Attorneys and Councellors at Law

56. **Nikolai Gouginski** - – Lawyer, 10, Tsar Osvoboditel str., tel.932 1100,
    fax: 980 3586
    Djingov, Gouginski, Kyutchukov & Velichkov / Attorneys and Councellors at Law

57. **National Democratic Institute (NDI)** – 85, Evlogi Georgiev Blvd., 1st floor, #9,
    tel. 989 72 38,
    Rick Asplund - Representative in Bulgaria, 088 63 42 38;
    e-mail:rickasplund@mail.orbitel.bg

58. **Techno Logled** - #, Sofiisko pole str., tel 91912, 088 614135
    Mr.Ognian Trayanov – President

59. **Bioplank Town cars services** – tel.577167, 088 602666
    Nicolai Spassov – Manager;e-mail:nzspassov@yahoo.com

60. **Sofia University, Faculty of Economics** – 1-3/A, Gorski putnik str. Tel.55 19 37, e-mail:banov@bcci.bg
    Bancho Banov – Assistant Professor

61. **BIC Capital Market Ltd**. – 16-20 Alabin str. Tel.980 10 90, fax:981 45 67
    Zhechko Dimitrov, - General Manager, e-mail:bic_office@bia-bg.com

62. **United Bulgarian Bank** – 5, Sveta Sofia str., tel.9854 2413, fax:9854 2335, 9854 2283 Maria Petrova

63. **United Bulgarian Bank** - – 5, Sveta Sofia str., tel.9854 2413, fax:9854 2335, 9854 2283
    Kiril Stanchev – Assistant Manager, Head of International Lending Programs, Corporate Banking Department, e-mail:stanchev_k@sof.ubb.bg

64. **Bulgarian Industrial Association** – 16-20 , Alabin.str., tel.987 9929, fax:987 26 04, Kamen Kolev – Managing Director, e-mail:kamen@bia-bg.com

65. **Sergei Penev – Seplex Consulting Co.**, 8, Sveta Sofia str., tel.880 935, fax:988 80 36; email:spenev@seplex.com

66. **USMeds Bulgaria** – 14, Kaloyanovo str., tel:563111, 955 9027, fax:955 5724
    David Hampson - President

67. **Webfactory Ltd.**, 40 Solunska str., ap.1
    Tel.987 99 11, 987 35 98, GSM:088 609 551
    Koos Schouten – Managing Director; e-mail:koos@webfactory.bg

68. **US Department of Agricultute** – US Embassy , 1, Saborna Str., tel.951556-; 963 12 43. fAx:986 95 50
    Brian Goggin – Assistant Agriculture Attache

69. **Bulgarian Center For Non-Profit Law** – 6, Dobrudja str., tel.981 53 80, fax:988 81 66
    Luben Panov – Director, e-mail:luben@bcnl.org

70. **Karen Kramer – US Embassy**, 1, Saborna str., tel.952 20 86, fax:950 10 91
    Resident Legal Adviser, US Department of Justice;
    e-mail:kkramer@usdojsofia.com

71. USAID – Nadereh C.Lee – Chief: Democracy and Local Government Office
    NDK Office Building, floor 5, 1 Bulgaria Sq., Tel.951 53 81, 951 56 70, fax: 951 50 70 , e-mail: nlee@usaid.gov

72. **Small Enterprise Assistance Funds / Trans-Balkan Bulgaria Fund** – 20-22, Zlaten Rog. Str., 5th floor, tel.917 4950, fax:917 4951;

Magdalena Kowalska – General Director; e-mail:magda@seaf.bg

73. **Small Enterprise Assistance Funds / Trans-Balkan Bulgaria Fund** – 45, Oborishte str., POBox 147, 1504 Sofia, tel.9174950, 943 41 63, fax:943 49 79
Teodora Shipkova – Legal Advisor, e-mail: teodora@caresbac.com

74. **Metro Cash & Carry – Bulgaria, Tsarigradsko Shaussee** 7-11 km., tel.918 77 200, fax:918 77 203
Dr. Emilian Abadjiev – Managing Director, e-mail:Emilian.Abadjiev@metro.bg

75. **University for National and World Economics, Department International Business Prof. Bistra Boeva** – tel.963 14 27, office 62 52 345; e-mail:boeva@apollo.netissat.bg

76. **USAID Sofia** – 23, Vrabcha str., floor 5, tel.981 19 02, 986 78 09, 986 58 79, fax:986 75 16
Iordan Chompalov – Legal Advisor, Capital Markets Regulations Project,
e-mail:iordant@cmr.techno-link.com

77. **USAID Sofia** – 23, Vrabcha str., floor 5, tel.981 19 02, 986 78 09, 986 58 79, fax: 986 75 16, e-mail:kalinam@cmr.techno-link.com
Kalina Milanova - Legal Advisor, Capital Markets Regulations Project

78. **FMI** - Jay Weinstein

79. **First Investment Bank** – 10, Stefan Karadja str., tel.981 30 91,
Maya Georgieva – Executive Director

80. **Democracy in Governance** – USAID, Sofia, NDK Office Building, Floor 5,
tel:951 56 70, 951 53 81; fax:951 50 70, e-mail:nlee@usaid.gov
Nedereh Lee – Chief:Democracy and Governance Local Governance Office
Sharon Miles

81. **CIELA** – 2, Vitosha Blvd., Palace of Justice Bookstore, tel.921 94 26,
fax:954 93 97,
Svetlozar Jelev – Manager, e-mail:batcka@yahoo.com

82. **Lachezar Popov** – Lawyer, 44, Parchevich str., floor 5, apt.15
tel./fax:980 8911, tel.981 4993, e-mail:

83. **Nikolay Yarmov** – USAID, Sofia, NDK Office Building, Senior Advisor/Enterprise Development, tel.951 5381, 963 1219, fax: 964 0102; e-mail: NYarmov@USAID.Gov

84. **Eric Anthony Jones,** PhD – US Embassy, First Secretary, Economic Section Sofia, 1, Saborna Str., Tel. 937 5220, Fax:981 89 77, 087 931 124 E Mail.Jonesa@State.Gov

85. **Rayna Dimitrova** - USAID, Sofia, NDK Office Building, Senior Advisor/Enterprise Development, tel.951 5381, 961 5381, fax: 964 0102; e-mail: RDimitrova@USAID.Gov

86. **Reginand Miller – US Embassy Sofia**, NDK Office Building, 5th floor, Senior Commercial Officer, tel.963 40 62, fax:980 6850 e- mail: reginald.miller@mail.doc.gov

87. **John Morgan – USAID Sofia**, NDK Office Building, tel.951 56 70fax:964 01 02; e-mail:lmorgan@usaid.gov

APPENDIX C
SELECTED REFERENCES

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