

Business Registration Reform Case Studies

Bulgaria

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Table of Contents

Introduction	4
Methodology	5
Results of the Reforms	5
Lessons from the Case Studies	6
Summary and Key Characteristics of the Reform	8
A. Institutional and Administrative Framework before the Reform	9
A.1. Socialist Past	9
A.2. Transition away from Socialism	10
A.3. Procedures and Institutions under the 1991 Commercial Act	11
B. Reform 2003-08: Stakeholders, Vested Interests	13
B.1. Groundwork for Reform	13
B.2. Reform Scope and Approach	15
B.3 Reform Organization and Implementation	16
C. Challenges to overcome and Conclusion	18
C.1. Legislative Changes	18
C.2. Financial Challenges	19
C.3. Organizational Challenges	20
C.4. Administrative Capacity	20
ANNEX 1. Key Persons Contributing to the Reforms	22
ANNEX 2. Institutions and Procedures for Business Start-Up In Bulgaria In 2009	24

Acronyms

BCP	Bulgarian Communist Party
CEO	Chief Executive Officer
CLRP	Commercial Law Reform Program
EU	European Union
GoB	Government of Bulgaria
LLC	Limited Liability Company
MoE	Ministry of Economy
MoJ	Ministry of Justice
OSS	one-stop shop
RA	Registration Agency
USAID	United States Agency for International Development

Introduction

Over the last twenty years, a number of countries have recognized the importance of smooth and efficient business start up procedures. A functioning business registration system is now viewed as an important regulatory requirement of any economy, and a predictable, transparent, and modern business registration system is acknowledged to help promote private sector growth and job generation.

Increasingly, governments around the world have undertaken efforts to streamline their business registration systems in order to gain whatever advantage they could in creating growth and jobs. Representatives among developed nations, countries in transition, and developing countries have explored and implemented varied approaches to transforming their business registration regulatory requirements.

While the approaches have varied, the foundation of all business registration reform is redesigning the legal and institutional regulatory framework that underlies the business registration process. Stable and professional business registration institutions help establish standards of trust, transparency, and predictability, and ensure that the public is informed of the facts as quickly as possible.

Tools that have been employed to implement reforms also have not been uniform. Some governments have created one-stop shops, while others have not; some have introduced technology and modern management techniques, while others have relied on traditional methods; some have empowered registration bodies to focus on service, while others have imposed penalty regimes on delinquent companies. Practice shows that in order to achieve sustainable reform, the menu of specific changes is not nearly as important the overall goals of reform. Countries who have achieved more business friendly environments and, consequently, larger formal private sectors following implementation of reforms, all set out to simplify the system and remove burdens on companies while focusing on protecting third parties by maintaining accuracy and encouraging compliance.

Business registration gives businesses formal status and formal operation in the marketplace. It is a dynamic process that impacts the life of its stakeholders, commercial counterparties, and employees by introducing new responsibilities, opportunities, and challenges.

Methodology

This collection of case studies describes experiences and draws lessons from varied business registration reform programs in economies in vastly different stages of development: Bulgaria, Estonia, Ireland, Madagascar, and Malaysia. The case studies were written based on a desk study of reforms in each country discussed. Then, more detailed information was gathered by field-based researchers. In some cases, detail on the business registration process that was in place prior to implementation of reforms was unavailable. As such, data on the number of businesses registered and the time required to completed registration before and after the reforms cannot be compared and contrasted.

Not all of the stories are of comprehensive reform programs that were widely successful. Most countries took different approaches to implementing the reforms. In fact, one of this paper's most important findings is that reforms of business registration processes can be implemented in a variety of legal, institutional, and cultural settings, and while most countries share common desired reform outcomes, there is no single model for achieving these results.

Whatever their range of success, all of the reforms discussed in these case studies sought to improve the instruments, processes, and institutions underlying all forms of business registration and related services. In all five countries, the broad goals of reforms were to increase economic growth and bring as many businesses as possible into the formal sector. Given the varied nature of the countries, the reform programs focused on achieving different aspects of the desired outcomes—simplified and reduced numbers of procedures, reduced costs, increased availability and transparency of information, increased compliance rates, increased protection of third parties.

Results of the Reforms

Bulgaria: Prior to reforms, business registration was handled in the 28 district courts. While a registration agency was created to take over business registration, the reform process was only partially successful due to problems in four areas: lack of strong legislative will, insufficient financial support by the government, inappropriate organizational structure of the new business registration agency, and weak human resource management.

Estonia: The government-led initiative to reform business registration introduced an experimental approach to e-registration. However, this approach achieved real reductions in the time required to register businesses only after the Minister of Justice set a requirement that business registration be completed in two hours. The actual time required was one day, but in addition to the time savings, the reforms led to a 130 percent increases in the number of enterprises registered from 1998 to 2008.

Ireland: During the economy's high-growth period of 1980s and 1990s, a low rate of company compliance with the annual return obligations contributed to a large backlog in registry updates. Although Parliament discussed this problem on numerous occasions over these two decades, improvements occurred only following a direct initiative from the Prime Minister in 1999 to introduce an enforcement and penalty regime. Perhaps in part due to the fact that the registry in Ireland is not legally binding, companies saw little incentive to change their behavior prior to the introduction of penalties for failure to update the registry. However, as of 2008, compliance with filing annual returns is above 90 percent and still improving.

Madagascar: While the donor-initiated reform program led to the establishment of a one-stop shop for business registration failed to achieve any recognizable improvements of the business registration process and services, the President's instruction to create the Economic Development Board of Madagascar (EDBM) resulted in significant simplification of registration requirements and procedures. When the EDBM began managing one-stop-shop procedures, registration of companies in Antananarivo was able to be completed in one step and within 5-7 days. This led to a 158 percent increase in the number of new businesses registered from 1998 to 2007.

Malaysia: The Cabinet established the Companies Commission of Malaysia in order to facilitate growth of the private sector economy. The top-down supported reform was implemented by this autonomous agency that adopted a service orientation and utilized IT and modern management tools to improve performance while the steps in the process of business registration remained unchanged. Through the electronic system, registration time dropped to one day, and the number of new enterprises registered increased by 58 percent from 2001 to 2008.

Lessons from the Case Studies

Despite lack of similarity among the case studies, some themes emerge as important lessons about business registration reform.

- 1. Top-level support improves results.** Results are most likely to be achieved if they are supported by and even led from the highest levels of government. This is particularly true if the reforms are occurring in a tumultuous or high-growth period for the country.
- 2. Legal concept and principles matter.**
 - Legally valid business registries are most likely to be kept up-to-date by companies and therefore also provide third parties who access the information the best protection from inaccuracies.

- Simplification of pre-registration procedures, such as notarization requirements and publishing business registration publicly for a period of time have substantial impact on the time and costs of starting of a business.

3. Technology leads to efficiency.

- The use of information technology can facilitate the simplification of registration procedures and consolidation of steps in the registration process; however, recognition of an electronic signature is required to make e-registries equal to other solutions.
- An electronic registry is a prerequisite for an efficient information service.

4. Impact of one-stop-shops depends on the approach. While institutional cooperation and/or a one-stop-shop will reduce the burden on the business, the impact to the efficiency, costs, and quality of registration procedures will differ depending on whether the approach to the one-stop-shop is a postal, physical, or network service or a single-point registration.

Postal services allow businesses to business file the registration dossier in once place, and physical services co-locate staff of the different institutions in one place. In the network service registration materials are electronically distributed to and from the necessary institutions, and in a single-point system, which represents the best practice approach, the registration mandate is delegated to one institution that perfects the registration on behalf of collaborating institutions.

5. Information service must consider public access. Registry frameworks and reforms not including public access to legally binding information do not represent good practice for providing protection of third parties.

Summary and Key Characteristics of the Reform

This case study focuses on the attempts of the government of Bulgaria (GoB) to promote and implement reform of the business registration system to better suit the new economic framework that emerged in the country following the collapse of Communist rule. The uniqueness of the Bulgarian case is that there were two distinct stages of business registration reforms, which marked two separate periods in the sociopolitical development of Bulgaria: the transformation from planned to market economy and the accession of the country to the European Union (EU). The first period of reform in the 1980s led to the creation of a new business registration system, under the purview of the courts, while the second, which began in 2007, moved business registration from the courts to an autonomous business registration agency under the Ministry of Justice (MoJ).

The reforms eventually resulted in the establishment and operation of an effective physical and online one-stop shop (OSS) for business registration. The new system, which was partially self-sustainable, reduced the time and cost of business registration. However, the purpose of this case study is to show the legal, institutional, administrative, and financial challenges that were overcome in the process.

Key Reform Characteristics

Aspects:	Characteristics:
Background	Evolution from socialist past to business registration under the purview of the judiciary
Baseline Data	-Prior to the reform, there was no available data regarding the number of enterprises registered. -Registration was cumbersome and slow.
Post-reform Performance Indicators	-Number of new enterprises registered: 52,000 in 2008 -Number of enterprises re-registered: 128,000 in 2008 -Total number of registration requests submitted for 2008: 315,000
Scope	<i>Institutional:</i> Removal of the role of the 28 district courts in the registration process, creation of registration agency under the Ministry of Justice <i>Legal:</i> Synchronization of 47 codes and laws and passage of Commercial Registry Act of 2007 <i>Technology:</i> Introduction of a database registry, e-filing, online applications, online information retrieval
Funding	Although 25% of the fees and revenues collected remain in the budget of the Registration Agency, the reform started with inadequate funding and lack of budgetary autonomy.

Important attributes of the reform	Prior to reforms, companies were registered in 28 district courts.
Approach and methodology	Consolidation of internal and external reform efforts— attempts to apply best practices were made, but essential issues were overlooked.
Monitoring	None cited.
Training	None cited; weak human resource capacity.
Awareness building	Numerous events and workshops were organized to promote the need for business registration regulatory changes among stakeholders.

A. Institutional and Administrative Framework before the Reform

A.1. Socialist Past

To better understand why business registration reforms in Bulgaria were conducted differently than in other countries, one needs to track the history and traditions of the Bulgarian business registration system from the mid-1960s to the early 1990s.

Prior to the transition to a market-oriented economy in the early 1990s and accession to the European Union in 2007, Bulgaria’s business registration regime was rooted in the socialist economic principles that pervaded the Eastern bloc. After the Bulgarian Communist Party (BCP) came into power in 1945, private companies, corporations, and all forms of private business entities were replaced by 100-percent state-owned and controlled economic and foreign trade organizations. These organizations were not incorporated in any of the common forms of incorporation used today, such as corporations, limited liability companies, or joint stock companies. Instead they were organized as groups of people performing economic activities at a particular factory or enterprise.

Consequently, these entities were not registered in a centralized business registry. Documentation on these entities was filed with local administrations or the ministry responsible for the sector of the planned economy in which the organization operated. In effect, there were a number of small “business registries” dispersed throughout state institutions in Bulgaria in the 1960s and 1970s.

In October 1980, the State Council¹ enacted Decree 535, which allowed business entities to be set up separately from the structure of socialist economic and foreign trade

¹ The State Council was an executive committee within the National Assembly that was created by the 1971 constitution as the primary executive agency of the national government. The State Council included representatives from trade unions, the Communist Youth League of Bulgaria (Komsomol), and other mass organizations. It supervised the Council of Ministers and had the right to repeal ministry decisions.

organizations and enabled socialist economic organizations to cooperate with foreign companies. Under this decree, business registration was administered as a set of procedures applicable when a new company was incorporated before various ministries, the Bulgarian People's Bank, and the Council of Ministers.²

A.2. Transition away from Socialism

In January 1989, Decree 56 (Ukaz 56) on the Economic Activity of Firms introduced the first centralized business registration system by specifying that companies must register with a district court among the 28 serving Bulgaria. Business registration thus became a responsibility of the judiciary, and judges were put in charge of the incorporation of new companies.

While Decree 56 functioned as a transition instrument away from the socialist toward a more commercially oriented approach, the registration process it introduced was slow, inefficient, and lacked standardization. Each of the 28 courts had independent application and registration processes. Judges exercised broad discretion in deciding whether Decree 56 conditions had been met. Procedures to be followed and documentation to be filed—for example, application forms,³ the number and form of required supporting documents, the content of company charters, the definitions of company structures—varied from district to district. All documents were filed on paper, and stored in the archives of the district courts.

Decree 56 was replaced by the Commercial Act, which was passed by Parliament in 1991. The Bulgarian Commercial Act, a typical example of classic civil law codification, was heavily influenced by the French-Italian civil law tradition. It covered all aspects of commercial, company, insolvency, and trade law.⁴ Business registration was covered in Chapter III Commercial Registry. Under the provisions, a business registry was organized for each of the 28 district courts and “judges from firm departments” were in charge of business entry. No electronic format for business registration was envisaged, and due to the strict notion of “document” as defined in the Bulgarian Penal Code, all necessary documents, articles of associations, powers of attorney, and shareholder agreements were submitted and stored in hard copy.

The Commercial Act was not the only piece of legislation related to the business registration process. The National Statistics Institute Act, tax laws, and social security

² *Report of the Bulgarian Economic Growth & Transition Project*, edited by Richard W. Rahn and Ronald D. Uit. Washington, October 1990, available at http://www.omda.bg/bulg/Ran/ran_new/data/page20.html

³ There were no standardized application forms available, so every legal entity drafted its own application forms and constitutive documents as they deemed proper and in compliance with the Decree 56.

⁴ The same legislative approach may be found in numerous Latin American countries, where business registration is part of the Commercial Code. See the commercial laws of Argentina, Brazil, Venezuela, Peru, and Chile, for example.

laws⁵ imposed another set of obligations upon the business registration process. In addition to being mindful of all of these laws, businesses had to comply with numerous rules, ordinances, decrees, and secondary legislative and administrative acts as a prerequisite to completing the business registration process. The enactment of the new Bulgarian Commercial Registry Act in 2007 provided firm evidence of the immense burden for compliance with business registrations as 47 Bulgarian codes and laws had to be amended in order to synchronize all business registration procedures with the provisions of the new law.⁶

A.3. Procedures and Institutions under the 1991 Commercial Act

The business registration process was slow, burdensome, and ineffective in its time and cost requirements for business. The 1991 Commercial Act and other related legislation⁷ required at least 10 main steps to incorporate a limited liability company (LLC). Below is the list of required procedures:⁸

1. Issuance of certificate declaring the uniqueness of the registered name by the state-owned company, Information Systems PLC;
2. Submission of request before the commercial registry of the district court to register the LLC, which must include the articles of association and a notary-certified statement of consent and signature of the manager;
3. Deposit in a bank of paid-up capital;
4. Payment of court fees to the district court's bank account;
5. Issuance of a court decision to register the company in the district court's commercial registry;
6. Publication in the State Gazette of the court decision regarding registration;
7. Purchase of a company seal;
8. Registration with the National Statistics Institute (Bulstat);
9. Registration with the tax authorities;
10. Registration with the Social Security Administration.

These procedures usually required the involvement of professional experts such as lawyers, notaries, bank clerks, and judges, thus adding to their execution time and cost. As under Decree 56, once the court decision on registration was issued, the files of newly incorporated companies were stored in paper form in one of the 28 district courts' archives.

⁵ The tax and social security laws were transferred later into social security code and tax-social security code.

⁶ See the Transitional Provisions of the Commercial Registry Act, available at <http://www.brra.bg/>.

⁷ Such as the Civil Procedures Code, the Tax Procedures Code, the Mandatory Social Security Code, the State Gazette Act, the National Statistics Institute Act, the Company Income Tax Act, the Physical Persons Income Tax Act, and the related secondary legislation.

⁸ For more detailed description see the *Doing Business* project, available at <http://www.doingbusiness.org/ExploreTopics/StartingBusiness/Details.aspx?economyid=30>

Under the Commercial Code, access to company files was public, but in practice access was granted only to those who knew the company file number, registration date, and court of registration. Although not a legal requirement, this mandatory practice was imposed to compensate for the constraints inherent in how courts organized and administered their business registration files.

The methods of accessing information stored in company files varied from court to court. In some courts, access to the company file would be granted only if the requestor knew the file number and division of the court where the file was stored. In smaller courts, the requestor simply needed to know the company name and incorporation date.

This lack of procedural uniformity was a consequence of several constraints, including variation in the approaches to administering the paper-based filing systems; lack of computerization and integration of the business registration function across the 28 district courts; dissimilar registration practices; and lack of familiarity with computers among court staff and judges. The only way for lawyers and third parties to access a company file was to go to the court registry office, wait in line, submit a request with the file number and company registration date to the law clerk, and wait for the file to be located and delivered.⁹

Procedures for accessing company files in the courts were similar to those for accessing information at other public institutions, such as books in public libraries. However, unlike libraries, which often keep multiple or ordered replacement copies of books, registries only filed original business registration information. This posed a serious problem when information was lost, damaged, or stolen.

Despite a rule that business registration information be disclosed to the public and made available upon request to third parties, it was common practice for files to be kept in judges' offices. Under Bulgarian law, access to judges' offices is strictly forbidden, as a result, requestors were sometimes unable to see file details. Among the negative consequences of this situation were:

- Limited access to essential information for business decision making, for example, the inability of third parties to verify information such as the value of company assets or whether the CEO of a company has the power to sign a particular transaction.
- Delay in or even inability to conclude certain types of contracts that require the attachments of certified copies of business registration file documents.

⁹ The procedure described was and still remains relevant for obtaining access to all other types of files in many of the Bulgarian courts.

- Refusal of the notary public or other authorities to verify transactions in the case of missing business registration certificates.

B. Reform 2003–08: Stakeholders, Vested Interests

B.1. Groundwork for Reform

In early 2003, the GoB began work on business registration reform in response to the call for change both from within and outside the country. Bulgarian business associations and foreign investors wanted to change the status quo, and the European Union (EU), in the context of the country's accession, pressed the GoB to address the issue. Various non-governmental organizations, international organizations, and professional associations supported the reform. The Sofia-based United States Agency for International Development's (USAID's) Commercial Law Reform Program (CLRP) also was actively involved. Additionally, the dynamic young staffers in the Ministry of Economy (MoE) and the MoJ were eager to support the reforms. Surprisingly, some judges also were tacitly supportive of reforms, even though the majority of courts were reluctant to participate in public discussions. Numerous events and workshops were organized to promote the need for business registration regulatory changes.

The Case for Business Registration Reform in Bulgaria

The pre-reform, court-adjudicated business registration process had a number of weaknesses:

Institutional

- The lack of integration with 28 commercial courts registering businesses allowed for confusion in the marketplace, such as the possibility of 28 different companies with the same name due to the lack of a country-wide check on business names.
- Inefficiencies resulting from the 28 commercial courts and other agencies, such as statistics, tax, and social security authorities checking every document.

Legal

- Business registration procedures set forth in laws lacked flexibility for making necessary changes.
- Judges held broad discretion to decide whether a company was compliant with the law, which led to a subjective registration regime.
- The lack of precise legal provisions for approved standardized forms for business

registration led to different registration practices within different courts.

- Lawyers and notaries had to be involved to incorporate a company.

Procedural

- Only one copy of the registration file stored in the business registry led to the need to gather the information again if this copy was lost or destroyed.
- The lack of common practices among registration judges and courts had the effect of empowering judges to request different documents.
- For each company, at least 10 mandatory steps were needed to register; procedures for large companies with complicated structures and foreign companies were more difficult.
- Procedures were time consuming; the Court often required a month to decide on a registration.
- Procedures were costly: a minimum of €2,500- was required to start a LLC; additionally, fees were required for legal services; State Gazette fees, court fees; business name fees; statistic registration fees; notary fees.
- Four different identification numbers—business registration, tax, statistics institute, and social security number—were difficult for companies to track.

Technological

- The lack of an electronic registry created inefficiencies and made record retrieval more time consuming.
- In the absence of a centralized database, it was possible to incorporate companies of the same name in different courts.
- The lack of automation of business processes slowed the process.

Duplication of information in the various registries for tax, statistics, and social security authorities created room for error and created extra work.

Different stakeholders¹⁰ tried to raise awareness and initiate reforms without knowing that similar projects already existed. The MoJ created a special working group to review

¹⁰ Jacobs, Scott, and Catherine Masinde. 2009 (forthcoming) *Stakeholder Management in Business Registration Reforms: Lessons from 10 Countries*, Washington, D.C.: International Finance Corporation.

business registration best practices and draft a work plan on how to implement them in Bulgaria. At the same time, USAID's CLRP started work on five areas for reforming the Bulgarian commercial and company legislation, one of which focused on business registration reform. Meanwhile, the MoE created two new directorates—the Investment Policy Directorate and the Common Economy Policy Directorate—which were eventually involved in the reform. For nearly two years, these stakeholders worked separately on their projects.

In 2004, stakeholders combined efforts to create a working group including state officials, judges, and business association representatives to prepare an action plan and draft new legislation. The creation of the working group coincided with the EU's implementation of directives on business registration, which required EU candidates to modernize their registration systems. In order to fulfill this requirement, the GoB decided to reform the old system.

By 2005, the MoJ and MoE, the courts, the business associations, the EU, and USAID had combined their efforts on business registration reform in Bulgaria.

B.2. Reform Scope and Approach

B.2.1. Legislative, Structural and Technological Changes

Once all the parties interested in reform were working together in the context of both in-country and external catalysts, progress toward real reform was forthcoming. By mid-2006, Parliament enacted the new Commercial Registry Act, which provided for structural, organizational, and technological changes in the Bulgarian business registration system.

The Act addressed all issues related to business registration, and therefore all business registration provisions were removed from the Commercial Act. The Commercial Registry Act transferred responsibility for business registration from the judicial to the executive branch of the GoB and created a registration agency under the MoJ. The registration agency was also in charge of the real estate registry and the national statistics registry (Bulstat). The idea was to enhance integration and data exchange between those two registries and the business registry. Registration officers handling business registration were no longer judges,¹¹ but rather clerks with legal education.

The new law provided for several technological changes designed to increase the efficiency of the business registration process:

- A unified, electronic database¹² that enabled automation of filing;

¹¹ This would help the judges focus on more legal issues in the courts instead of performing technical business registration activities.

¹² See Article 2.1 of the Commercial Registry Act, available at <http://brra.bg/CielaDocuments.ra>

- Introduction of a unified identification number, valid for all tax, social security, and statistical purposes;
- Delegation of the tax, social security, and statistical registration to the business registry through transfer of data from the registry to respective institution;
- Standardized forms, which were available online and in the registry offices;
- Online business registration and online access to the files archives;
- Online distribution and submission of unified registration forms;
- Filing of electronic documents;
- Removal of the requirement to publish newly registered companies in the State Gazette;¹³
- Free access to the business registry to all state institutions;¹⁴
- Registration of European corporations;¹⁵
- Access to information via identification number or name of the company or one of its shareholders.

The Business Registry Act followed good practices and new global trends in business registration. It provided for all the necessary legislative, structural, and technological changes that a modern business registration system should implement in order to fulfill the needs of its clients. However, the implementation of the new business registration system did not start as expected.

B.3. Reform Organization and Implementation

Despite an apparently smooth reform planning process, the organization and implementation of the Business Registry Act were stymied by organizational and financial problems. Parliament postponed the Act's entry into force— initially from, April 2006, eventually to January 2008.

The Act specified that the newly created registration agency take over all business registration responsibilities from the 28 district courts. All existing companies were to be re-registered with the new agency in six months, while all files were to be transferred from the courts to the new agency, scanned, and stored in electronic form in the agency's branches. This re-registration of all existing companies was stipulated by the Accountancy Act which was not synchronized with the Business Registry Act at the time. The purpose of such re-registration was to ensure continuity in the annual returns filing for all existing companies registered under the old system. Concurrently, the registration agency was to begin accepting new business registration applications, which created additional workload for its staff and decreased the overall effectiveness of the

¹³ This reduced the public notification time between two weeks and a month.

¹⁴ Under the old law state institutions had to pay a fee and request registry information under these procedures as the public.

¹⁵ As provided by EU Regulations 2157/2001, 1453/2003 and 2137/85 of the European Council

agency. Additional delays resulted from the fact that newly hired law clerks were learning how to operate a new registration system.

In October 2006, when the agency was supposed to begin work, it had neither sufficient facilities nor staff numbers to fulfill the abovementioned tasks. State budget monies, which were to finance the registry and technical maintenance, were delayed. The resulting lack of administrative capacity made it impossible for staff to accept all of the re-registration and the new business registration requests. Consequently, Parliament suspended the implementation of the Act for a year and a half, returning business registration to the courts, and the head of the registration agency and the Deputy Minister of Justice in charge of the reform resigned.

Despite the upheaval, the registration agency opened its doors to the public in January 2008, and the reform process seemed to be back on track. The Minister of Justice pledged she would resign if there were additional delays.¹⁶ However, feedback from the business community and lawyers was ambiguous. Some were happy with the new standardized forms and online business registration. However, most were dissatisfied mainly due to delays in the new system's registration process that resulted from the huge volume of re-registration of old companies.

Because registry staff numbers were still insufficient, company representatives waited in line for hours to submit their documents. Additional delays were incurred by those who were missing a document. These customers were required to exit the queue, return and pay a second fee, wait again, and resubmit the whole package of documents. Some offices were far from the city centers, making it time consuming to reach them.

Reforms failed to reduce the lawyers' fees because the paperwork was not simple enough for companies to complete the process without assistance. The role of the public notaries also was not diminished. On the whole, in the first six months, the registration system became even slower and less effective than before the reform.¹⁷

Within three months, under pressure from business membership organizations and bar associations, the GoB announced an amendment to the Commercial Registry Act, the goal of which was to remedy the legislative gaps and streamline procedures by removing the unexpected bottlenecks that the initial reform revealed. On March 26, 2008, Minister of Justice Miglena Tacheva announced the new amendments to the public. She stated that the amendments should help clear the way for more significant and productive changes by neutralizing obstacles that were identified in the initial stages of the reform process. The amendments included these procedural changes: i)

¹⁶ *Out of Court: Business Entry in Bulgaria*, posted by Simeon Djankov on January 2, 2008 in Business regulatory reform, Eastern Europe and Central Asia, available at <http://blog.doingbusiness.org/2008/01/out-of-court-bu.html>

¹⁷ See the *Doing Business* 2008 report

the obligation to re-register all existing companies in six months was removed, and the deadline for re-registration was extended to three years by synchronizing the Accountancy Act and the Commercial Registry Act; ii) the obligation to submit the same set of documents twice was removed; iii) the need to pay the registration fee a second time if a document was missing was removed; iv) the role of the notaries was decreased; v) easier access to the registry was granted for lawyers; vi) the obligation for CEOs to appear in person before the registry was abolished; vii) a longer period of reservation of a business name was envisaged.

C. Challenges to Overcome and Conclusion

In general, although business registration reform in Bulgaria occurred simultaneously with similar processes in other European countries,¹⁸ successful outcomes took longer to develop in Bulgaria. The partial success of the reform during the first year was a consequence of problems in four areas: lack of legislative will, insufficient financial support, inappropriate organizational structure of the new business registration agency, and weak human resource management. All of these problems delayed progress and had negative effects on the registration agency and the business community.

C.1. Legislative Challenges

The main legislative problems were the delays in the enactment and entry into force of the new law and ineffective organization of its implementation. While all three legislative phases of reform—assessment, design, and implementation—were completed from a legal standpoint, a fast and effective business registration system was not created.

The assessment phase was conducted during 2004–06 by a number of foreign and local experts,¹⁹ including lawyers, judges, and state officials. During this phase, foreign experts drafted numerous reports and recommendations while key local experts were sent abroad to study international best practices.²⁰ Simultaneously, a public campaign and broader discussions on the topic were organized by the Ministry of Justice in cooperation with USAID. Different commercial associations, ministries, judges, lawyers, and members of Parliament took part in these public activities. The assessment phase concluded with approval of a common platform, which was embraced and accepted by all stakeholders. This platform envisaged the creation of an independent state body in charge of a centralized and automated business registration system, which would be accessible online and would replace the existing system.

¹⁸ For example, Luxembourg, Russia, and Estonia.

¹⁹ Among these were Norway Registers Development (NRD), Jacobs & Associates, USAID's CLRP, and Bearing Point.

²⁰ State officials from the Ministry of Justice, Ministry of Economy, Sofia City Court, and Sofia BAR Association were sent on study trips organized in cooperation with NRD to Norway and InfoCamere to Italy.

During the design phase, a special working group was created to draft the new business registration law, which was based on the common platform and on recommendations made during the assessment phase. The drafting of the law went smoothly, but some institutions' opposition to the new law delayed its enactment. State institutions, the main parties opposed to the law, wanted to ensure that all provisions were based on best practices. The Bulgarian president Georgi Parvanov, who also contributed to the delay by vetoing the law, called for additional political and legal scrutiny in order to guarantee a good law and a stable operating system. When the law was finally published, its entry into force was postponed four times.

The implementation phase of the law revealed numerous legislative gaps and legal ambiguities, which caused delays in business entry. Among the major gaps was the failure to synchronize the Business Registry Act and the Accountancy Act, which led to very short deadlines for re-registration of old companies. The failure of the law to address the transfer of archives and personnel from the courts deepened the problem. The simultaneous re-registering (of old companies) and registering (of new companies) by an understaffed agency overwhelmed the system. Another gap was failure to reduce the time to register new companies. A one-day process, which was envisaged by the law, spilled over to two months.²¹ Soon after a further amendment to the law on May 2008, the Registry Agency was able to start significantly reducing the deadlines to register new companies.

C.2. Financial Challenges

The financial support was inadequate for a successful reform effort partly because the GoB neglected the needs of the business registration system.

Budget allocations were insufficient, and some local offices lacked the facilities they needed. The reform envisaged the creation of a completely new information technology infrastructure, transfer of registration out of courts, and creation of a new registry under the MoJ. Nevertheless, only limited funds were allocated for software, hardware, and facilities.²²

Since the agency received its funding from the MoJ, it lacked budgetary independence, a fact that did not help build a solid foundation for successful business registration reform.²³ However after the legislative changes in 2008, the Registry Agency was

²¹ This was the situation as of August 2008. According to the *Doing Business 2009* report, company registration with the Commercial Registry takes 35 days.

²² According to the Registry Agency's Deputy Director, in the beginning of the reform the entire budget of the agency, including hardware, software, and staff salaries, was 1.5 million euros.

²³ For comparison, see the cases of Ireland and Malaysia, where the business registry funded reform through registration charges.

allowed to retain 25 percent of the collected fees for software maintenance, capacity building, and staff salary increases.

C.3. Organizational Challenges

There were two main problems in the organizational structure of the business registration agency: inappropriate institutional organization and inconvenient office locations. The agency's lack of institutional independence resulted in an inadequate organizational mandate. The initial idea was to organize the agency as an independent institution, which in Bulgaria is a state agency supervised directly by the government as opposed to an executive agency supervised by a specific ministry. Instead, the registration agency was created as a subdivision of the MoJ. This executive agency also is in charge of the land registry and the statistics registry, Bulstat. The result of merging the business, land, and statistics registries was that the business registry lost its importance during the first year of the reform and was dependent on different administrative levels above it. It shared offices, budget, and management with other registries that were different in function and nature.

The geographic location of the business registration agency offices far from the downtown areas in some districts was another organizational problem. Office location matters when most of the businesses continue to register companies through the physical submission of documents. In other countries where documents are submitted primarily online this is of little consequence; however, in Bulgaria during the first six months of the reform only 4 percent of clients used online submission services.²⁴ However, this percentage has steadily increased since then, in part because the fees for online registration are 30 percent lower than those for physical registration.

C.4. Administrative Capacity

In Bulgaria, prior to the reform, only judges were involved in business registration. After business registration was moved out of the courts, it was impossible for these judges to be transferred as staff of the registration agency. The new Commercial Registry Act stipulated that registration be performed by people with a legal education and three years of legal experience. This requirement—excessive by global standards, rare among European countries,²⁵ and nonexistent in former Soviet countries²⁶—when combined with low civil servant salaries, made recruiting staff difficult. As a result, the institution was short-staffed for the first year after the reforms and only gained adequate levels of staff after increasing salaries.

²⁴ By June 1, 2008.

²⁵ See the case of Serbia.

²⁶ In Russia, Ukraine, and Armenia, business registration is performed by state employees with varied backgrounds.

Administrative pressures were doubled due to an oversight in the Commercial Registry Act. The law required existing companies to re-register in the new business registry within a short timeframe, while simultaneously many new companies were seeking registration.²⁷ The system could not manage the resulting volume of filings, and new company registration was delayed in favor of re-registrations. After the amendment of the Commercial Registry Act of May 2008, the agency was able to overcome most of the bottlenecks. The most significant burden—the immediate re-registration of old companies—was removed, and a three-year deadline was provided for re-registration. Thus, the newly staffed agency was able to reduce the workload in favor of newly registered companies and to speed up registration.

The reform path in Bulgaria shows that the Registry Agency needed to overcome complex problems in order to reach the standard of service provided by the law. It took one year for registry management and administration to streamline the procedures and ensure that the system operated smoothly. Today business registration in Bulgaria takes only a couple of hours, although the legal requirement is that it be completed in seven days. The OSS for business registration is fully automated, partly self-sustainable, fully equipped and staffed, and meets the world's highest standards for business registration. Only the decisive post-reform actions of agency management and the GoB were able to guide business registration in Bulgaria, aligning it with client needs and achieving the more efficient and successful system that is critical for economic expansion.

²⁷ Bulgaria overlooked other models for dealing with this problem. For example, in Luxembourg old companies continued to act as if they were registered throughout a certain grace period while the new business registration system was open only to new companies.

ANNEX 1: Key Persons Contributing to the Reforms

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ANNEX 2: Institutions and procedures for business start-up in Bulgaria in 2009 ²⁸

Procedures	Days	Costs
1. Execute the minutes of the constituent meeting of the shareholders in the limited liability company (OOD); obtain a notary certified statement of consent and signature specimen of the manager, and two certified copies of the articles of incorporation of the OOD.	1(30 min.)	
2. Deposit paid-up capital in a bank	1-2	BGN 10 - 30
3. Registration with the Commercial Registry at the Registry Agency	35	BGN 120
4. VAT registration	1 filing, 12	

Procedure 1. Execute the minutes of the constituent meeting of the shareholders in the OOD; obtain a notary certified statement of consent and signature specimen of the manager, and two certified copies of the articles of incorporation of the OOD.

Comment: The appointment of manager(s) is evidenced by a resolution passed by the constituent meeting of interest holders. The statement of consent and signature specimen is embodied into a single document and notarization of manager(s)' signature(s) is required.

Procedure 2. Deposit paid-up capital in a bank.

Comment: The capital-accruing bank account must be opened either by the company manager or by a person authorized by a notary-certified power of attorney. Those persons delegated authority over the bank account must provide a signature specimen in person or a notary-certified specimen. The amount of capital stays blocked in the bank account until the registry issues a decision on the company registration. The Commercial Act requires that 70 percent of the capital be paid prior to incorporation. Each partner shall pay at least a one-third share, but not less than BGN 10. The payment schedule for the remaining capital may be fixed in the company's articles of incorporation but shall not exceed two years from the company's registration. After opening the escrow account and depositing the funds, the partners are issued a certificate evidencing the deposit. The certificate shall be presented at the registry.

²⁸Source: *Doing Business 2009*, available at <http://doingbusiness.org/ExploreTopics/StartingBusiness/Details.aspx?economyid=30>. The 2009 report does not reflect the impacts of some of the legislative amendments.

Procedure 3. Register with the Commercial Register at the Registry Agency.

Comment: The registration is done using a Standard Application (A4 Form – "Application for registering particulars related to a limited liability company"). The following documents must be attached to the application: (1) Agreement of Association; (2) Resolution for appointment of manager(s); (3) Notary-certified consent and signature specimen of manager(s); and (4) Bank certificate for deposited capital.

Procedure 4. VAT Registration

Comment: The Value Added Tax Act (promulgated August 4, 2006 in State Gazette 63) became effective on January 1, 2007 (Bulgaria's EU accession date). Under this new law, the company may voluntarily register for VAT purposes at any time, because the current threshold requirement has been abolished. It shall remain VAT-registered for 24 months starting from the beginning of the year following the year of VAT registration. Voluntary registration may also be completed on the grounds of reaching turnover of BGN 20,000 realized from intercommunity acquisitions for the current year (where the intracommunity acquisition shall be the import from an EU member country to Bulgaria). The company must register for VAT if its turnover for 12 consecutive months exceeds BGN 50,000, as the new VAT law provides that 0%-rated supplies and exempted supplies shall be taken into consideration in the calculation of turnover. The option for registration on grounds of certain paid-in capital has been repealed.

Specific grounds for obligatory registration for VAT purposes apply when:

- A person from an EU member state who is not established in Bulgaria provides taxable supplies of goods that are to be assembled or installed in Bulgaria by that person or at his or her expense (if the recipient is not registered for VAT in Bulgaria).
- A person from another EU member state supplies goods from Bulgaria exceeding BGN 70,000 under the conditions of distance sales of goods.
- A person (whether resident or not) performs taxable intracommunity acquisitions in Bulgaria exceeding BGN 20,000 within a given calendar year.