Improving the Business Climate in Macedonia: A Legal and Judicial Enforcement Assessment

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Private and Financial Sector Development Unit, and the Poverty Reduction and Economic Management Unit, Europe and Central Asia Region
World Bank

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ACKNOWLEDGEMENTS

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Executive Summary

The European Commission and other recent assessments have identified Macedonia’s inefficient and ineffective legal and judicial system as a major constraint to the further development of a market economy, economic growth, and the expansion of the private and financial sectors. Indeed, in the 2002 EBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS), Macedonian firms were asked how problematic the functioning of the judiciary was for their business. Nearly two-thirds of respondents found the judiciary to be some obstacle for their business while 74% of these respondents found the judiciary to be a “moderate” or “major” obstacle.

As a key component of Macedonia’s investment climate, the ineffective legal and judicial system not only hinders the functioning of existing businesses, but it also creates obstacles to the definition and enforcement of creditor, contract and property rights. As a result, new businesses find it hard to start or operate only in the black or grey markets, compounding Macedonia’s unemployment problems. To improve Macedonia’s prospects for economic growth and its full transition to a market economy, changes are needed in its legal and judicial institutions; changes that can heighten judicial independence, create new roles and skills for judges, lawyers and other legal professionals and increase the institutional capacity of Macedonia’s courts.

The objective of this Legal and Judicial Enforcement Assessment (“Assessment”) is to identify the main judicial, legal, legislative and institutional constraints on the enforcement of contract, creditor and property rights in Macedonia and to integrate the Macedonian Government’s Judicial Reform Strategy with ongoing donor work. This Assessment makes recommendations on how to overcome the major obstacles to reform and move the Government’s focus towards effective implementation. Additionally, the Assessment examines the current and future donor activity in this area (see Annex 1) and suggests where additional donor assistance may be needed.

The Assessment focuses on the interaction between the institutions and laws involved in the enforcement of contract, creditor and property rights and the judicial system. The Assessment examines obstacles to enforcement in institutions such as bankruptcy trustees, asset registries, land cadastres, as well as constraints in the legislative framework (to the extent necessary). Additionally, the Assessment is concerned with how these institutions intersect with Macedonia’s judicial system in the enforcement and implementation of these rights. (The diagram below provides a visual representation of the scope of the Assessment.)
This Assessment synthesizes current fieldwork with a comprehensive review of previous studies and reports gathered from donors, consultants and other sources (see References for a list of sources). In addition to several interviews conducted by the Assessment Team, fieldwork was also conducted by a judge from the Netherlands, an Information Technology (IT) expert, a bankruptcy practitioner, and a study of 99 sample cases from the Skopje 1 Court by a Macedonian lawyer.

In an effort to address the problems of the judicial system, the Macedonian government proposed a Judicial Reform Strategy (“Strategy”), which was adopted in November 2004 along with an Action Plan providing a timeframe for its implementation. (See Tables 2-1 and 2-2). The Assessment’s evaluation of the proposed reforms concludes that while the Strategy is comprehensive and ambitious, the list of proposed reforms is heavy on legislative actions but light (or vague) on the institutional and behavioral changes that will be needed to implement new legislation and to reach the goal of creating a functional and efficient justice system. Following a comprehensive analysis of judicial and other constraints, the Assessment attempts to augment the Government’s proposal with recommendations on how to achieve this goal.
Main Findings

1. Judicial Constraints on the Enforcement of Creditor, Property and Contract Rights:

By focusing on creditor, property and contract rights, the Assessment was able to identify some systemic and specific constraints on the efficient and effective judicial enforcement of these rights in Macedonia. The specific constraints are based on an analysis of the laws, institutions and 99 sample cases from Skopje 1 Court. The latter provide examples of problems that are likely to be found in courts across Macedonia, especially judges’ lack of authority in the courtroom and their aversion to using the procedural tools and sanctions available to them. Other systemic constraints include procedural, organizational, material and human resource issues, as well as questions of judicial incentives and practice, such as:

- **Case Backlog and Judicial Inefficiencies.** Caused by: (i) large numbers of misdemeanor and utility cases that unnecessarily require judicial action; (ii) several procedural shortcomings and associated abuses from parties and their lawyers; and (iii) an ineffective system for delivering summons and notices.

- **Administrative Disputes.** The Government’s proposed solution to resolve the backlog of administrative disputes in the Supreme Court by transferring jurisdiction to new higher first instance courts does not address the root cause of the problem, which are the shortcomings in the administrative decision making and review process itself.

- **Judicial Incentives and Practice.** The Strategy does not address the important issue of judicial incentives and the willingness of judges to exert control over their cases by enforcing time limits for certain actions and court tax or fee provisions, following procedural rules for the protection of assets or for the use of authenticated documents, and using tools available under existing law to proactively manage cases.

- **Information Technology.** The ongoing modernization of IT in the courts has not produced the desired result because the applications have been designed to automate a specific manual process rather than to reach a specific, strategic outcome for judicial and court processes.

- **Enforcement of Judgments.** Under existing law, an action to enforce a judgment can take as long or longer to complete than the underlying case because a wholly separate proceeding must be initiated in front of an enforcement judge. This proceeding allows the losing party in the earlier substantive case to reopen a range of ostensibly concluded issues and object to a number of actions that the court must take (e.g., inventory, valuation and sale of assets) and then file interlocutory appeals against adverse rulings in the execution proceeding. Thus, at the end of 2003, there were approximately 210,000 un-enforced commercial and general civil cases in Macedonian courts. (The new Enforcement Law adopted in May 2005 will transfer
this process to licensed, private sector enforcement agents, but the impact of the Law will depend on how effectively it is implemented.)

- **Alternative Dispute Resolution (ADR) - Arbitration and Mediation.** Currently, ADR techniques are not used in any significant way to address commercial disputes. One-third of the examined cases from the Skopje 1 analysis were in some stage of settlement but were constrained by court requirements for additional information. Establishing ADR on a broader scale might be done through a formal court-annexed or court-recommended mediation process and could help reduce case backlog.

In addition to these systemic constraints, the Assessment found that poor relationships between the courts and many government institutions and agencies, and the poor quality of official records and information specifically hindered the enforcement of creditor, contract and property rights. For instance, incomplete cadastre records make the enforcement of property claims difficult, while the lack of cooperation from the Central Registry or unavailability of information on the location of parties or witnesses can hinder contract and creditor rights cases.

### Analysis of 99 Civil Cases: Summary of Findings

The case analysis contained 33 cases on property rights, 33 on creditor rights and 33 on contract enforcement from Skopje 1. All of the analyzed cases were plagued by judicial, procedural, practical and institutional problems – leading to inordinate delays and sometimes questionable outcomes. A number of cases revealed shortcomings in how judges manage their cases, as well as non-compliance with court requests and orders by other government agencies and private parties.

For example, in one real property case, it took 11 court hearings and almost three years before the court decided to dismiss the case for lack of jurisdiction. (In this case, the proceedings were delayed once as the court was on strike, three times because the defendant did not appear in court, and four times due to problems with an expert witness). In another real property case, the plaintiff withdrew the suit himself after four years of litigation and 11 hearings still had not produced a court judgment. (It was unclear whether the matter was settled out of court or if the plaintiff simply gave up). The analysis of even this small sample of cases makes clear the substantial backlog of civil and commercial cases facing Macedonia’s courts.

Of the 33 creditor rights cases, all suffered from non-delivery of documents, 5 revealed institutional problems and 4 showed possible political interference. Analysis of the contract enforcement cases revealed frequent abuse of process by litigants, the passivity of the judges in taking control of the cases before them, and the resulting frustration for all parties. In one separate case, a plaintiff’s attorney nearly succeeded in obtaining a double payment of a judgment, because neither the court, nor the post office kept sufficient records of delivered judgment payments. The defendant resorted to informal means to prove that payment was in fact sent by post and received by the winning party. There has been no follow-up investigation of the parties’ actions.

The bankruptcy of MHK Zletovo - a complex, bankruptcy litigation case - similarly reveals many substantive and procedural problems: defendant’s ability to delay the case for years by requesting recusal of even the higher court judges; removal of the registered office (“seat”) of an incorporated debtor to another jurisdiction at any time before a bankruptcy is opened; apparent
fraud; and even the judge mentions that bribes were offered. In another case, a contract enforcement for alleged non-payment for delivered goods took two years and 13 hearings due to witnesses’ and an administrative agency’s non-compliance with court orders.

Nearly all of the analyzed cases reveal similar patterns of delays, inefficiencies, and lack of cooperation by outside agencies. This situation clearly has a negative impact on the business environment.

2. Enforcement of Creditor, Property and Contract Rights.

Creditor Rights

The Macedonian parliament passed a modern Bankruptcy Law in late 1997, which has been amended four times, and currently another set of amendments are being drafted. In a recent assessment of the insolvency laws of 27 transition countries, the EBRD described the Macedonian bankruptcy law as “generally satisfactory and in many areas, of a high quality.” Some changes to the legal framework and bankruptcy process are nonetheless needed, based on implementation practice and the present draft amendments to the Law. These amendments, with suitable recommendations for improvement, are discussed in detail in the Assessment.

Although Macedonia has performed well in terms of legal drafting, implementation has been comparatively weak. Procedural, institutional, and political problems interfere with the effective implementation of the bankruptcy law. When the debtor is large and/or politically well connected, or still socially or state owned (Macedonia has largely completed the privatization of socially owned enterprises), the process does not work nearly so well.

Reform in the courts and supporting institutions could improve the implementation process. With regards to the courts, there is a need to increase the experience and competence of judges who hear bankruptcy matters. In addition, there is also demand for specialized, better focused and better organized Commercial and Bankruptcy Divisions within the general courts. Although supporting institutions, such as the Macedonian Bankruptcy Association, the Macedonian Bankruptcy Trustees Association, the Macedonian Judges Association, and the Macedonian Bar Association, are assisting with reform in various degrees, there is an urgent need for the reform of the bankruptcy trustee profession, including the establishment of a proper Bankruptcy Chamber, professional standards, licensing, continued training and discipline. Capacity is also needed in the Government ministry, which will supervise trustees in the future.

Property Rights

Real Property Rights

Based on the “Doing Business” data, and compared to the broader regional and OECD averages, Macedonia presents a mixed picture in respect to registering real property. It appears to be performing better than the regional average in terms of time taken for
registration, but worse in terms of cost (as a % of property per capita). Overall, the reports show that the lack of clarity, predictability and certainty are the biggest problems in enforcing real property rights. In addition, the results of the World Bank’s Foreign Investment Advisory Service Survey indicate that the purchase of real estate and construction are the single largest administrative obstacles for businesses in Macedonia.

The lack of confidence and difficulty caused by incomplete records has a negative effect on private sector investment and development of the economy overall: many land transactions are not registered, and cadastre and other records held by courts and notaries are incomplete and out-of-date leading to uncertainty and a lack of trust in the property markets. Secure and respected land titles depend on the creation of a reliable and efficient title registry, and the problems impeding the completion of the Cadastre and consolidations of the mortgage data in the Cadastre or the Central Registry, must be resolved first and foremost.

### Shareholder Rights

The company law legal framework has been significantly improved recently with the enactment of a new Company Law in 2004, with the assistance of USAID. The process used to prepare the 2004 Company Law can be a model for going forward, in that it engaged the private sector and allowed sufficient time for review and revision of the draft. As a result of the Company Law Reform, the Securities Law will also be revised. A drafting committee has been formed to revise the current Securities Law, with assistance from USAID through the Financial Sector Project.

In general, Macedonians know very little of their shareholder rights. Of the shareholder group, only 29% were able to mention three such rights. The low level of shareholder awareness of their rights suggests that they can be easily misled or manipulated and shows that there is a strong demand for shareholder information and protection. Although some institutions, such as the Macedonia Securities and Exchange Commission (SEC), the central registry, the courts, and various shareholder associations, all try to provide varying degrees of enforcement of these rights, there is still a relative dearth of true enforcement capacity. A key recommendation of the recent World Bank Financial Sector Assessment was to improve the protection of shareholder rights and to enforce directors’ duties. Unfortunately, it cannot be said that this goal has yet been achieved, in spite of improvements in the regulatory framework. There is still a great need for improved capacity building and resources at the SEC, and likewise a need for improved capacity building in the judiciary.

### Intellectual Property Rights (IPR)

Macedonia’s IPR system is still developing, with assistance from several donors. There is a need for a proper IPR enforcement framework for Macedonia, particularly in the light of Macedonia’s accession to the World Trade Organization (WTO) in September 2002 and its need to comply with the European standards. The legislative framework needed to modernize the country’s laws and regulations in line with the WTO and to approximate national legislation with the related EU Directives is discussed in the Assessment.
The protection of intellectual property rights requires specialization in the courts. Judges, businesses and NGO’s require training on rights and obligations under the law and the function of the Bureau for the Protection of Industrial Property. In the opinion of the Assessment team it is unlikely that the assistance rendered to date will satisfy the necessary capacity and institution building needs. IPR is therefore an area where donors can perhaps render more assistance.

**Contract Rights**

According to the “Doing Business” data, which reflects the ease or difficulty of enforcing commercial contracts, Macedonia performs worse than the regional and OECD averages, as discussed more fully in the Assessment.

The Law on Obligations is the primary law applicable to contract formation. The Company Law also contains provisions in relation to representation, agency, partnership, guarantees, assignment, and limitation periods. While the legal framework for contract law is considered adequate by users, the process of development of the contractual legal regime is ongoing and in the considered opinion of the Assessment team will benefit greatly when based on actual implementation experience and a more transparent process employed during the drafting of amendments. The weakest link in Macedonia’s poor record of enforcing contract rights remains the courts, for the same reasons as discussed above.

The Notary profession has an important role in the drafting, execution and quality control of documents and the enforcement of executive titles. However, they do not have the power to obtain the pledged property, which must still be voluntarily turned over or taken with police assistance. The system appears to be working well, in spite of some judges questioning the propriety of notaries serving this role, as it makes them advocates of the creditor in the enforcement process instead of neutral arbiters in the transaction. The Assessment team found the notaries to be largely positive and in support of this system, which is not surprising given the realities of the underlying financial incentive structure.

**Secured Transactions**

Macedonia’s secured transactions regime functions relatively well, in terms of both the legal and institutional frameworks. Based on the USAID-funded Corporate Law and Institutional Reform Assessment, Macedonia’s collateral registry system is among the strongest rated of the 11 countries assessed to date in the Europe and Eurasia region. There is still room for further improvement, however, as pointed out in the various reports and based on the fieldwork of the Assessment team – both in terms of the legal framework and in the overall registry system. Generally, however, it was reported that the registry operated in an efficient and open manner and users seemed to be satisfied.

The new Macedonian Law on Contractual Pledges and Contractual Mortgages replaced the 1998 Law on Pledges of Movable Property and Rights, in January 2003. The 2003 Law regulates: (i) charges over movable property, securities, claims and other rights; and (ii) mortgages over immovable property. The new law determines that pledge agreements can have executive force, which facilitates enforcement. The functioning of
this law and the key implementing institution, the computerized Central Registry (which includes the pledge registry and the registry of rights to real estate), is discussed in the Assessment. The Macedonian Central Registry, and especially the Pledge Registry, have been models for other countries in the region, with a national computerized database and public access (for a fee) to all records. User satisfaction with the Pledge Registry is generally high. However, the enforcement role of the courts in this area is seen as problematic, similarly to other areas described in this Assessment. The greatest need in the area of enforcement of secured transactions is again in the area of institution and capacity building, including at Universities, where theoretical and practical training needs to be scaled up.
**Recommended Policy Reforms**

Based on the Assessment Team’s analysis and other inputs, which are referenced in the main text of the Assessment, the following Recommendations are presented for consideration.

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<th>Recommendations</th>
<th>Proposed Measures</th>
<th>Time Frame</th>
<th>Responsible and Implementing Authorities</th>
<th>Ongoing and Proposed Donor Projects</th>
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<tr>
<td><strong>Implementation of Judicial Reform Strategy</strong></td>
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<tr>
<td>Maintain a Judicial Reform Council that will effectively monitor the implementation of the Strategy.</td>
<td>1. Give the Council the full authority to monitor implementation, provide feedback to the government, and propose adjustments to the Strategy’s implementation. 2. Determine the financial implications of implementing the reform strategy. 3. Develop and publish its preferred sequencing and implementation of the various legislative reforms and regulations contained in the Strategy. 4. Allocate human resources, time, and funding for the drafting of sub-laws or regulations, institution and capacity building inside and outside of the Government.</td>
<td>S and thereafter ongoing</td>
<td>Parliament, Ministry of Justice, Judicial Reform Council, Judiciary</td>
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<td>Conduct an open and inclusive regulatory drafting process.</td>
<td>1. Make drafts and final decisions publicly available. 2. Institutionalize a structured dialogue with the business community and other stakeholders on existing legislation and administrative procedures, giving sufficient time for a response (for example, no less than one month).</td>
<td>S/M and thereafter ongoing</td>
<td>Parliament, Ministry of Justice</td>
<td>FOSIM</td>
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<td>Improve staff skills and “right staff” the judiciary.</td>
<td>1. Amend the Law on Courts to provide equal representation of citizens for all communities as required by the Ohrid Agreement. 2. Reorganize and retrain staff to meet specialization needs. 3. Match administrative skills with new responsibilities in the courts.</td>
<td>M</td>
<td>Ministry of Justice, Judiciary</td>
<td>USAID Court Modernization Project (CMP) USAID/ABA/CEELI</td>
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<td>Adapting to European Standards for judicial efficiency by using CEPEJ as a guide to:</td>
<td>1. Balance quality of justice with efficient use of recourses. 2. Develop uniform and efficient tools to measure and analyze judicial activity. 3. Reconcile all requirements for fair trial with the need for prompt justice.</td>
<td>S</td>
<td>Parliament, Ministry of Justice, Judiciary</td>
<td>EC/EU CARDS 2003 EC/EAR Luxembourg FOSIM EURS</td>
</tr>
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<td>Enhance judicial efficiency by reintroducing specialization within the existing court system.</td>
<td>1. Implement an initial inventory of existing courts and courtrooms. 2. Amend The Law on Courts as needed to harmonize with Constitutional amendments and create specialized departments with jurisdiction over specific types of cases. 3. Reorganize existing courthouses as needed to accommodate this specialization. 4. Prepare specific plans to provide the necessary additional training for judges and judicial staff.</td>
<td>S/M and thereafter ongoing</td>
<td>Parliament, Ministry of Justice, Judicial Budget Office, Judiciary</td>
<td>USAID CMP EC/EU – CARDS 2004 FOSIM EC/EAR IOM World Bank</td>
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<td>Adopt case management techniques.</td>
<td>1. Set case processing time standards; provide for early case screening and settlement discussions; create caseflow management procedures. 2. Adopt new Civil Procedure or Litigation Law to improve and expedite court and litigation procedures. 3. Remove commercial registration from courts. 4. Adopt new Law on Misdemeanors (in line with Constitutional changes), allowing administrative agencies to enforce sanctions and provide for mediation and settlement procedures.</td>
<td>S/M</td>
<td>Ministry of Justice, Judiciary, Judicial Budget Office</td>
<td>USAID CMP</td>
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<td>Improve Service of Summons.</td>
<td>Decide on a preferred method for improving the delivery of summons and notices – creation of court units or use of private delivery services – and move to adopt and implement quickly.</td>
<td>S/M</td>
<td>Parliament, Ministry of Justice</td>
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<td>Resolve backlog of Administrative Cases in the Courts.</td>
<td>1. Reform administrative procedures, practices and appeal process by effectively implementing the draft Law on General Administrative Procedure to ensure that administrative decision are transparent, supported by written reasons, subject to fair and impartial review process before reaching a court. 2. Transfer Administrative Disputes out of Supreme Court to new specialized department.</td>
<td>M</td>
<td>Parliament, Administrative Agencies, Ministry of Justice</td>
<td>USAID CMP OSCE</td>
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| Reform incentives that judges face.                 | 1. Coordinate proposed Law on Judicial Salaries with the objectives of improving judicial efficiency and eliminating case backlog and delays.  
2. Link pay to i) rate of processed cases; ii) removal of backlogged cases.  
3. Align salaries with scope and type of cases.                                                                                                   | S          | Ministry of Finance, Ministry of Justice, Judiciary, Republic Judicial Council | USAID/ ABA/CEELI                    |
| Advance Alternate Dispute Resolution Agenda.        | 1. Develop Laws on Mediation and Arbitration.  
| Develop Judicial Information Technology strategy.   | • Perform a functional analysis of court procedures and processes in light of anticipated the adoption and implementation of new procedures and processes from the draft of Civil Procedure Law.  
• Design new modules for the ICIS system, taking into consideration the development of new, standard forms, practices and processes (particularly those changes being developed under the USAID-funded Court Modernization Project).  
• Redesign user interface based on close consultation with the ultimate users of the systems: court staff and judges.  
• Development of an enhancement for data collection, data storage and data exchange that includes the generation of key statistical information for use by the court and Ministry management.  
• Install network linking IT systems in courts and other justice institutions.  
• Develop a long-term training program for staff on all levels of the judiciary, covering general IT training, as well as application-specific training.  
• Develop plans to standardize the quality of expected network services, including maintenance, and back-up services.                                                                                      | M          | Ministry of Justice, Judiciary, Court Budget Office | EC/EU CARDS 2005 USAID CMP            |
| Creditor Rights                                     | Better understanding of the characteristics of Bankruptcy cases.  
Undertake a study that includes assessment of the number of cases, size, industry and ownership pattern of debtors, duration of each step in the process, who was the initiating party, and geographical distribution. Examine the “backlog” of cases handled by bankruptcy/liquidation judges.                      | S/M        | Ministry of Justice or Ministry of the Economy Court Budget Office |                                    |
<table>
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| Concentration and Specialization of Bankruptcy Courts. | 1. Bankruptcy cases should be limited to Skopje, Bitola, and Stip courts  
2. Liquidation cases should remain under the 16 basic level courts that hear commercial cases.  
3. Set up specialized bankruptcy departments in the Bitola and Stip courts (similar to which already exist in two Skopje courts), where judges hear only bankruptcy cases and are not rotated to other departments as a matter of policy, but only on basis on inadequate performance. If a judge is transferred to another part of the court, he should remain “seized” of his bankruptcy cases until their completion. | S/M        | Ministry of Justice, Judiciary           |                                     |
| Improve judges’ understanding of Bankruptcy Law.     | Implement formal on-going training program for judges who hear bankruptcy cases.                                                                                                                                               | S/M and thereafter ongoing | Judiciary, Judicial Training School    |                                     |
| Develop a Profession of Bankruptcy Trustees.         | 1. Establish pre-exam training program and on-going professional education program for trustees.  
2. Create monitoring and disciplinary mechanism insuring that trustees maintain professional standards. All for the imposition of sanctions on a trustee, ranging from compulsory professional education to the suspension or removal of the person’s license to act as a trustee.  
3. Ensure that all trustees maintain their formal and practical knowledge (licenses should lapse when license holder has not been appointed to a new file in the previous 2 years). | S/M and thereafter ongoing | Ministry of Justice or Ministry of the Economy, Trustee Organization | World Bank |
| Bankruptcy Court fees.                               | Develop formal tariff that will apply to all petitions to open a bankruptcy proceeding.                                                                                                                                                | S          | Ministry of Justice or Ministry of the Economy |                                     |
| Correct recent amendment to the Bankruptcy Law, which exempts the tax department from the requirement to lodge a deposit with its petition, and from identifying the source of funds to pay the fees of experts and interim trustees. | 1. Either stipulate that a tax assessment has the force of an unpaid judgment on which a bankruptcy must be opened directly;  
2. Or create a mechanism within the government whereby the costs of the preliminary proceedings can be funded in exactly the same way as private creditors fund their petitions. | S          | Ministry of Justice or Ministry of the Economy |                                     |
<p>| Accelerate bankruptcy proceedings.                   | Amend the Bankruptcy Law to restore and clarify the original intent of article 4(4) and eliminate the need for preliminary proceedings in certain circumstances.                                                                                                                                   | S          | Parliament, Ministry of Justice or Ministry of the Economy |                                     |</p>
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<td>Ensure that Bankruptcy cases are heard as quickly as possible.</td>
<td>1. Define “Urgent” in the Code on Civil Procedure in a more precise way to clearly indicate bankruptcy cases. 2. Ensure that all lawsuits ancillary to the main bankruptcy proceeding, such as the resolution of disputed claims, are heard by the bankruptcy division of the court, and are treated as urgent.</td>
<td>S</td>
<td>Ministry of the Economy or Ministry of Justice, Judiciary</td>
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<td>Prevent forum shopping by companies.</td>
<td>Future amendments to the Bankruptcy Law and /or the Company Law should include a stay on any attempt by the company to remove itself from the court district that has jurisdiction to hear a bankruptcy application at the day that the petition was filed.</td>
<td>S</td>
<td>Ministry of the Economy or Ministry of Justice, Judiciary</td>
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<td>Improve parties’ cooperation and compliance with bankruptcy proceedings.</td>
<td>Clarify Bankruptcy judges’ understanding and authority to impose effective sanctions (penalty, detention) for failure to cooperate on the part of any party with knowledge of the debtor.</td>
<td>S/M and thereafter ongoing</td>
<td>Ministry of Justice, Judiciary</td>
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<td>Strengthen trustees’ power over assets.</td>
<td>The law should be amended to clarify and strengthen the trustee’s right to possession of the assets of the debtor, including assets in the hands of third parties.</td>
<td>S</td>
<td>Ministry of the Economy, Trustee Agency, Judiciary</td>
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<tr>
<td>Resolve problems with insufficiency of bankruptcy notice.</td>
<td>The Court or the trustee should be required to give direct notice to all known creditors of a debtor at the opening of the bankruptcy proceeding.</td>
<td>S</td>
<td>Trustee Agency, Judiciary</td>
</tr>
</tbody>
</table>

### Property Rights

<table>
<thead>
<tr>
<th>Recommendations</th>
<th>Proposed Measures</th>
<th>Time Frame</th>
<th>Responsible and Ongoing and Proposed Donor Projects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Create a clear and efficient real property title registry.</td>
<td>Establish a formal coordinating unit that would be responsible for proposing a workable timeline and the resources required for resolution of the problems that impede the completion of the Cadastre and consolidations of the mortgage data in the Cadastre or the Central Registry.</td>
<td>S/M and thereafter ongoing</td>
<td>Government, Relevant Cadastre and Geodetic Agencies, World Bank</td>
</tr>
<tr>
<td>Clarify the legal status of the Law on Construction Land.</td>
<td>Initiate adoption of relevant legislation to clarify how the right for use will be transformed into the right of ownership in the future.</td>
<td>M</td>
<td>Government, Parliament, Relevant Cadastre and Geodetic Agencies</td>
</tr>
<tr>
<td>Recommendations</td>
<td>Proposed Measures</td>
<td>Time Frame</td>
<td>Responsible and Implementing Authorities</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------------</td>
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<td>------------------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| Accelerate the process of surveying and title registration for unrecorded lands. | 1. Continue “systematic” registration and encourage “non-systematic” (or priority) registration of titles.  
2. Consider introducing provisions that require all new real estate transfers not yet registered in the Cadastre to be recorded in the Cadastre. | S/M and thereafter ongoing | Government, Relevant Cadastre and Geodetic Agencies                                                     | World Bank                          |
| Increase capacity of the State Bureau for Geodesy Affairs to complete the new Cadastre. | Address the issues of lack of financing, high volume of work, lack of planning and cooperation among the state institutions, unclear legislation and unclear policy directions. | S/M and thereafter ongoing | Government, Relevant Cadastre and Geodetic Agencies                                                     | World Bank                          |
| Increase the rate of real estate registration and survey work.                  | Introduce private surveying of the land, paying close attention to the design of the licensing and oversight system so as to ensure open and transparent decision-making. | M and thereafter ongoing | Government, Relevant Cadastre and Geodetic Agencies                                                     |                                     |
| Increase the protection of shareholder rights and enforcement of directors’ duties. | Create a mechanism whereby a court decision can be applied across a shareholder group without each shareholder having to be a party to the court challenge or provide for “class action” lawsuits. | M                  | SEC                                                                                                        |                                     |
| Strengthen the effectiveness of the SEC.                                        | 1. Revise securities legislation to strengthen the enforcement powers of the SEC.  
2. SEC to prepare a work plan to strengthen the transparency and accountability of the SEC, particularly with regard to public disclosure of decisions made. The Securities Law should meet the standards of EU Transparency Directive.  
3. Harmonize the entire securities framework with the new Company Law and Listing Rules.  
4. Securities Law should state that any restrictions in the transferability of shares should be null and void. | M                  | Government, Parliament, SEC                                                                               | SEC                                |
| Strengthen shareholder associations.                                             | 1. Revise the securities legislation to require that publicly-traded companies use “cumulative voting” in the election of members of boards of directors.  
2. Establish an institute of directors and prepare a corporate governance code. | M                  | Parliament, SEC                                                                                           |                                     |
| Improve Company Law                                                             | 1. Remove the possibility for legal entities to sit on boards (which weakens accountability and liability of board members).  
2. Provide some basic “whistleblower” protection to employees who report fraud or shareholder abuse. | M                  | SEC                                                                                                        |                                     |
<table>
<thead>
<tr>
<th>Recommendations</th>
<th>Proposed Measures</th>
<th>Time Frame</th>
<th>Responsible and Implementing Authorities</th>
<th>Ongoing and Proposed Donor Projects</th>
</tr>
</thead>
</table>
| Contract Enforcement | Improve enforcement of court judgments through new Enforcement Law. | 1. Implement the new Enforcement Law, emphasizing the necessary capacity and institution building.  
| Decrease the costs of registering small loans. | Consider lowering the fee from its current level of approximately $40 USD. | M | Government, Central Registry | |
| Improve the Law on Contractual Pledge. | Amend the Law so that an unregistered pledge ranks lower in priority to registered pledges, but is not deemed illegal. | M | Parliament, Government | |
Part 1: Introduction

Box 1 – The Long And Winding Road:
A Case Study of Property Rights in Macedonia’s Courts.

The following case study highlights some of the judicial, procedural, practical and institutional issues encountered when conducting a civil trial in Macedonia, particularly as it relates to enforcement of real property rights – one of the focus areas of this Assessment.¹ The plaintiff in this case is an individual from Skopje, and the two defendants are the State and the Public Company which manages real property owned by the State. The cause of action concerns the determination of an ownership right over real property, being a house and the land on which it is situated. In the lawsuit the plaintiff is contending that he purchased the real property in 1959 and that for more than 40 years he occupied and used that real property. However, in the Public Cadastral Book, the real property is recorded in smaller, fractured dimensions and not as a unit. Furthermore, the State is recorded as the owner, without any apparent legal grounds. In his petition the plaintiff consequently asks that he be declared the owner of the real property, that the property be correctly consolidated and that the property and rights thereto be correctly reflected in the Public Cadastral Book.

The lawsuit was submitted to the court on 22 June, 2000. The trial then proceeded as follows:

- The first hearing was scheduled and held on 17 November 2000, after passage of almost five months. This hearing was adjourned, as there was no evidence of notice delivery made to the second defendant.
- The second hearing (on 15 December 2000), third hearing (on 29 January 2001), were both adjourned, as the court was on strike.
- The fourth hearing was held on 5 March 2001, which was adjourned, as neither defendant was in court.
- The fifth hearing was held on 4 April 2001, when the merits were discussed for the first time. The court decided that an expert from the State Department for Geodetic Matters must conduct an inspection of the property. On 26 April 2001 the expert conducted an inspection of the property. The expert opinion was delivered to the court on 25 May 2001.
- The sixth hearing was held on 4 July 2001, when all parties were present, but the hearing was adjourned as the expert did not appear in court to explain his opinion.
- The seventh hearing was held on 3 October 2001, when all parties were present, but the hearing was again adjourned because the expert again did not appear in court.
- The eighth hearing was held on 9 November 2001, all parties present, when the court decided that an additional expert inspection had to be conducted and the hearing was adjourned. The additional written expert opinion was delivered to the court on 28 November 2001.
- The ninth hearing was held on 31 January 2002, when the hearing was adjourned and the court decided that the expert had to be present to be personally questioned on his opinion.
- The tenth hearing was held on 28 March 2002, which was adjourned because the second defendant was not in court - there was no delivery of the relevant notice to appear.
- The eleventh hearing was held on 30 April 2002, when all evidence was presented and the hearing was closed.
- In mid June 2002, the first instance decision was delivered to the parties. In this

¹ This is an actual case selected from the limited case analysis conducted by a Macedonian law firm in Skopje 1 Municipal Court, for the Assessment team during March-April 2005.
decision, the Court declares that it has no jurisdiction to hear this matter, as the lawsuit is under administrative jurisdiction. All previously undertaken actions were set aside and the lawsuit rejected.

- The plaintiff then submitted an appeal to the Appeal Court, but on 20 February 2003, the Appeal Court rejected the appeal, and confirmed the first instance court decision. The Appeal Court therefore found that the First Instance Court decided correctly, namely that the subject of the lawsuit was in fact under administrative jurisdiction.

Source: Case Register, Skopje I First Instance Court

Recent assessments of the private and financial sectors in FYR Macedonia\(^2\) have indicated that the functioning of the judiciary is a constraint to the development of the private and financial sectors – as also illustrated in the case study above. One recommendation from the World Bank Financial Sector Assessment is that “The Government should move aggressively to reform and strengthen the judicial sector, and to strengthen the implementation and enforcement of a wide range of laws to foster respect for the rule of law and the court system.” In addition to assessments such as these, the European Community has made the proper functioning of judicial institutions and the justice sector a key criterion in its analysis and assessment of Macedonia’s progress towards accession. Article 74 of the Stabilization and Association Agreement notes that: “Cooperation in the field of justice will focus in particular on the independence of the judiciary, the improvement of its effectiveness and training of the legal professions.”\(^3\) The Partnership Agreement between the Community and Macedonia stresses the importance of judicial enforcement of contract and creditor rights to the development of a business environment that supports a free market economy.\(^4\)

Furthermore, the FIAS Administrative Procedures survey has indicated that 64% of the respondents consider the “functioning of the judiciary” to be a problem, with 73% of these respondents considering it to be a “major” or “severe” problem. Nearly identical results were found in the 2002 EBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS) which asked Macedonian firms how problematic the functioning of the judiciary was for their business. 62% of respondents found the judiciary to be some obstacle for their business while 74% of these respondents found the judiciary to be a “moderate” or “major” obstacle.


\(^3\) Stabilization and Association Agreement, Art. 74.

\(^4\) Upgrade the efficiency of the administrative and judicial systems and streamline the efficiency of bankruptcy procedures, PA, Annex 3.1. “[E]nsure the enforcement of creditor rights within a transparent legal framework . . .” PA, Annex 3.2.
"People have no trust in the courts because the proceedings last too long, all the parties involved tend to abuse the procedural laws (including the judges), corruption gets increasingly rampant, while judges prove to be insufficiently competent. Changing the laws and the Constitution is not enough. An educational institution for judges and prosecutors should be set up and the ranks should be rejuvenated." Former Justice Minister Ixhet Memeti, INFOMAC Daily News, April 1, 2004.

Systemic problems in the Macedonian judicial sector include weak enforcement of creditor, property and contract rights, high levels of politicization at all levels in the courts, lack of accountability of judges and the absence of a systematic program of assessment, review and training of judges. Corruption is also reputed to be a major problem.

The identification and diagnosis of these problems are well known within Macedonia’s legal and judicial communities, donor organizations and within the Government. (See Box 2.) In an effort to resolve or begin to address many of these problems (and as part of its EC accession process), the Macedonian Government created a Justice Reform Council in May 2004 led by the Ministry of Justice and charged with analyzing and proposing solutions to the problems plaguing Macedonia’s justice system. The Justice Ministry, with the aid of the Council, prepared the Strategy on the Reform of the Judicial System with Annexes Attached ("Judicial Reform Strategy") which was formally adopted by the Government in November 2004. The Government is now actively working to implement the broad range of legislative, regulatory and institutional recommendations contained in the Judicial Reform Strategy, starting with amendments to Macedonia’s 1991 Constitution.

Scope and Purpose of Assessment

This Legal and Judicial Enforcement Assessment ("Assessment" or "Assessment") sets out to examine the implementation and judicial enforcement of creditor, property and contract rights in Macedonia. The Assessment was undertaken to collate findings from earlier World Bank studies (see fn. 1) and the work of other donors, all of which identified significant weaknesses in judicial enforcement of these rights. The World Bank conducted the Assessment in accordance with an agreement with the Macedonian Government contained in the Country Assistance Strategy.5

The Assessment focuses on the interaction between the institutions and laws involved in the enforcement of contract, creditor and property rights and the judicial system. The Assessment examines obstacles to enforcement in institutions such as bankruptcy trustees, asset registries, land cadastres, as well as constraints in the legislative framework (to the extent necessary). Additionally, the Assessment is concerned with how these institutions intersect with Macedonia’s judicial system in the enforcement and implementation of these rights.

The objective of the Assessment is to identify the main judicial, legal, legislative and institutional constraints on the enforcement of these rights, in an integrated manner to the extent possible. The purpose is to provide the Government and donors with an overall picture and analysis of the present situation, as well as recommendations for overcoming these constraints at the policy and implementation levels. In addition to the Assessment team’s own recommendations, the Assessment will consolidate and integrate the main recommendations made previously in the many reports and analyses done to date. The Assessment will describe planned donor activities in the area of judicial reform, particularly as these impact the enforcement of creditor, property and contract rights and will relate these activities to the Government’s plans for implementing the Judicial Reform Strategy. The need for a more systemic approach to managing and coordinating this process will be emphasized.

In order to achieve the above outcomes, the Assessment addresses three main questions:

- What are the institutional and judicial constraints to the enforcement of creditor, property and contract rights in Macedonia?
- What are donors and the Macedonian Government doing and proposing to do to overcome these constraints?
- What additional analysis, recommendations and assistance can help address the enforcement of contract, creditor and property rights?

To assist in answering these main questions, the Assessment team has compiled a Summary List of Donor Activities (see Annex 1), and in the course of this Assessment this List will be correlated with the recommendations that emerge from the Assessment.

Methodology

The Assessment was undertaken in the context of a wide range of completed and ongoing donor activity on the broad topics of legal and judicial reform. Key multilateral donors such as the European Agency for Reconstruction (EAR) and bilateral donors such as USAID have provided significant grant funding to assist with a range of reforms, ranging from commercial law to judicial administration and judicial training to IT and computers for a number of justice sector institutions. The donors and their consultants have prepared a large number of reports, analyses and studies on a variety of issues in Macedonia’s legal and judicial system in the course of providing this assistance. Given the existence of this extensive set of studies, the World Bank began the Assessment by conducting a thorough desk review of those reports and analyses that it could gather from donors, consultants and other sources. A full, though surely not complete, list of these reports and studies is contained in the attached Bibliography. Two sets of consultants were engaged to conduct the desk reviews of this material, each providing a unique perspective on legal and judicial reform in Macedonia.6

6 The authors gratefully acknowledge the extensive contributions made by Ms. Angela Angelovska-Wilson and Mr. Andrew Ting on behalf of Center for Democracy and Reconciliation in South East Europe and Mr. Gerassimos Fourlanos in preparing the desk reviews.
The intention of the Assessment team is not to duplicate the independent, in depth analyses of the judiciary, courts, legislative frameworks and relevant institutions that are contained in these reports and studies. Instead, the Assessment draws liberally from the analysis and conclusions of this earlier work, as supplemented by the interpretations of the desk reviewers. The Assessment focuses on the analyses and findings of the earlier work as they relate to the enforcement and implementation of contract, creditor and property rights and presents them in a consolidated manner. This analytical work has been duly supplemented by the fieldwork, interviews and observations of the Assessment team during a series of missions to Macedonia from the middle of 2004 through early 2005.

In the course of reviewing the previous analyses, the Assessment team determined that additional research and evaluation of judicial and institutional constraints to the enforcement of contractor, creditor and property rights would enhance the Bank’s Assessment and provide additional value to the Government. As a result, the Bank undertook a number of supplemental analyses. First, an experienced judge from the Netherlands with judicial reform expertise was asked to spend time with her Macedonian counterparts, shadowing them, in order to provide a sense of the issues, obstacles and concerns that affect Macedonian judges. Second, an IT expert with extensive experience in judicial issues, particularly in South East Europe, assessed the present use of computer hardware and software in the Macedonian courts and provided the Assessment team with recommendations for enhancing judicial IT to improve the efficiency and effectiveness of the judiciary. Third, the Assessment team drew on the expertise of a bankruptcy practitioner with extensive experience in Macedonia and a World Bank expert on the practical aspects of corporate governance to review the treatment of creditor and shareholder rights, respectively. Fourth, the Assessment team engaged a Macedonian lawyer to prepare an analysis of sample cases dealing with the enforcement of contract, creditor and property rights in the Skopje 1 Court. In addition, the Assessment team compiled a table of ongoing and planned donor activities (Annex 1) to assist in the process of coordinating and planning donor activities. The Assessment team also mapped the recommendations following this Assessment to the activities listed in Annex 1 in order to identify areas where additional donor assistance is needed.

Structure of the Legal and Judicial Enforcement Assessment

The Macedonian Government’s drafting and adoption of the Judicial Reform Strategy, begun and concluded during the course of the World Bank’s work on this Assessment, represents a significant political step in the reform process – one that not many other transition countries have so clearly taken. The Judicial Reform Strategy has now taken center stage in Macedonia’s efforts to reform the justice sector. As a result, Part 2 of the Assessment provides a brief examination of the Strategy and how the Government proposes to implement it, including ongoing and planned activities that the Government has prioritized and sequenced.

In Part 3, the Assessment examines the judicial constraints to the enforcement of creditor, contract and property rights. The Judicial Reform Strategy identifies a number of issues
in the judicial system that can delay, complicate or hinder the enforcement of these rights. The Assessment will examine a number of the generic problems affecting the judicial system that impact on the adjudication and enforcement of all types of cases equally. In particular, the Assessment will look at the inefficiencies that have led to the case backlog in Macedonia’s courts as well as general constraints, such as the system for delivering summons and enforcing judgments. In addition, the Assessment will describe the situation within the judicial system specific to the adjudication and enforcement of creditor, property and contract rights - using examples and analysis drawn from selected contract, creditor and property rights cases.

As noted above in Figure 1, the enforcement of creditor, property and contract rights implicates factors outside of the judiciary – different institutions, legislation and other issues come into play with the enforcement of each of these rights. Part 4 of the Assessment will investigate how these institutions and legislation constrain the enforcement of contract, creditor and property rights. Particular emphasis will be placed on the interaction between these institutions and legislation and the judicial system. The Assessment will examine how these non-judicial problems feed back into the judicial system to effect enforcement of these rights.

Finally, the Assessment concludes with a number of recommendations. The Government’s Judicial Reform Strategy contains a series of short and medium term actions that it has put forward in order to address the shortcomings in the justice system. The Assessment will provide a summary of those actions related to the enforcement of contract, creditor and property rights, as well as identify a number of areas not included in the Strategy that should be considered priorities for the Government’s reform efforts. The Assessment team has endeavored to collect information on the ongoing and planned work of other donors (Annex 1). The Assessment will attempt to “map” this work against the needs and priorities identified in the recommendations following this Assessment, in order to help identify gaps or areas where reform needs are not being met.
Part 2: Macedonia’s Strategy for the Reform of the Judicial System

In November 2004, the Macedonian Government, following six months of preparation, formally adopted a Strategy on the Reform of the Judicial System with Annexes Attached (Judicial Reform Strategy). The Judicial Reform Strategy has become a key part of the Macedonian Government’s effort to begin accession negotiations with the European Union. The European Commission has identified Macedonia’s inefficient and ineffective legal and judicial system as a major constraint to the further development of a market economy and raised these concerns in the accession questionnaire. The Commission has noted that it will “look very carefully to all implementation issues related to judicial reform” as it prepares its Opinion on accession. As a result, even after the resignation of the Government that developed the Strategy and the formation of a new Government, the Prime Minister, Ministers of Justice and Finance and others have endorsed the Judicial Reform Strategy and made its implementation a “strategic priority” as spelled out in the first paragraph of the Strategy itself.

As adopted, the Strategy focuses almost exclusively on the judicial system with an additional section focusing on the public prosecutor. While earlier drafts of the Strategy included key reforms in the bar, notaries, penitentiaries and public attorney in the body of the Strategy, these complementary institutions are now addressed in specific annexes. As of the preparation of this Assessment, it is unclear whether this drafting change will have implications for the original and highly beneficial comprehensive nature of the Judicial Reform Strategy’s proposed actions. In response to uniform criticism and comments on earlier drafts from the international community, including the World Bank, OSCE and EU, the final Judicial Reform Strategy includes an Action Plan that lays out a general timeline for the adoption of specific reform actions. Unfortunately, the Government did not respond to the international community’s other suggestion to include an estimate of the budget implications and costs for implementing the Strategy. In response to these concerns, the Minister of Justice informed the World Bank in early 2005 that her staff, with help from outside consultants and the judicial budget office, has undertaken to determine these financial implications.

If fully implemented, the Judicial Reform Strategy provides a medium term plan (three years from 2005 through 2007) to guide a comprehensive reform of the justice system. However, other than the Action Plan added to the final version of the Strategy, the Judicial Reform Strategy provides little information or guidance on exactly how it will be implemented or who will be leading the implementation. According to the Strategy and

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7 Letter from Head of EC Delegation, Amb. Chiarini to the Minister of Justice, (February 9, 2005).

8 While the Bank recognizes the importance that the regulation of legal professions, particularly the bar and notaries, has on the effective functioning of Macedonia’s legal system, an assessment of this regulation in Macedonia is beyond the scope of this Assessment. Initial analyses of Macedonia’s legal professions can be found in ABA-CEELI’s Macedonia- The Legal Profession Reform Index (June 2004). European benchmarks for legal profession regulation can be found in Ian, Paterson. “Regulation of Legal Services,” Staff Training Course on Elements of Judicial Reform. World Bank. Washington D.C. World Bank (January 11-13, 2005).
information from the Ministry of Justice, the Judicial Reform Council that was formed to prepare the Strategy will monitor implementation through review of quarterly reports provided by the bodies preparing specific reform actions.\(^9\) (The Judicial Reform Council is an ad hoc oversight body distinct from the Republic or State Judicial Council which is an official state body charged with the appointment, review and discipline of Macedonia’s judges.) However, there is no operation-level group to support the Council.\(^10\) In addition, the sequencing and priority of implementing actions is unclear. For example, while the Strategy would require amendments to several key laws both before and after the adoption of Constitutional amendments, the Action Plan does not show these multiple actions. In fact, while the Strategy and Action Plan initially envisioned the adoption of new laws (Law on Misdemeanors) and changes to several others (such as the Law on Courts and Law on the Republic Judicial Council) \textit{before} the amendment of the Macedonian Constitution, the new Government has reversed these priorities and has now focused efforts on drafting and introducing Constitutional amendments before preparing or amending key implementing legislation. These implementation concerns will be addressed further in the Recommendations section of the Assessment.

**Diagnosis of Problems and Constraints in Macedonia’s Judicial System**

The Judicial Reform Strategy was primarily developed and drafted within the Ministry of Justice. But, as the Strategy notes, the Ministry’s ideas were subject to review by an inter-ministerial Judicial Reform Advisory Body as well as comments from a number of international organizations, including the EU, OSCE, and World Bank. In addition, with assistance from the OSCE, the Ministry of Justice held public meetings and discussed the drafts of the Judicial Reform Strategy with judges, lawyers, prosecutors, and other participants in the judicial system.\(^11\) As a result, the Strategy’s analysis of the problems and constraints facing Macedonia’s judicial system has been subject to broad scrutiny.

Preparation of the Judicial Reform Strategy and the World Bank’s Legal and Judicial Enforcement Assessment began nearly simultaneously in May 2004 and proceeded on parallel tracks throughout 2004. Interestingly, the Strategy and the Assessment Team have both benefited from and rely on the extensive and detailed analyses and reports on many facets of the judicial system prepared by international donors and their consultants.

\(^9\) The Assessment team was told that the Ministry of Justice would primarily be leading a series of working groups that would draft and develop the reforms. These groups are formed and staffed on an ad hoc basis depending on the subject of the reform or legislation.

\(^10\) The Delegation of the European Union suggested the formation of such an operational working group to support the Judicial Reform Council as did the World Bank. \textit{See} Letter from Head of EC Delegation, Amb. Chiami to Minister of Justice, (February 9, 2005).

\(^11\) The Assessment team received mixed reviews of these sessions with some interlocutors expressing dissatisfaction with the opportunity to comment on and influence the drafting of the Strategy. In contrast, the Ministry of Justice has strongly defended the process of preparing the Strategy as fully transparent and inclusive.
As a result, the diagnoses of the problems and constraints facing Macedonia’s judicial system overlap in many areas, as Table 2-1 illustrates.

### Table 2-1: Diagnosis of Problems in Macedonia’s Judicial System

<table>
<thead>
<tr>
<th>Government Judicial Reform Strategy</th>
<th>World Bank Assessment Team</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slow procedures and inaccessibility of justice.</td>
<td>High backlog due to inefficient civil procedure laws and rules that are open to abuse by parties and judges.</td>
</tr>
<tr>
<td>Difficult and prolonged execution of final decisions.</td>
<td>Weak and ineffective procedures for the enforcement of judicial decisions.</td>
</tr>
<tr>
<td>Overburdened justice institutions with minor cases.</td>
<td>Judges preoccupied with administrative matters and courts preoccupied with non-judicial functions such as registration issues.</td>
</tr>
<tr>
<td>Unorganized case management.</td>
<td>Supreme Court overloaded with jurisdiction over administrative disputes and unclear and unfair administrative procedures, at all lower courts. Except at the project pilot courts, there is no well organized case file management system. Also, no case file management “review”.</td>
</tr>
<tr>
<td>Obsolete IT equipment and insufficient use of IT.</td>
<td>IT and communications require networking, website, security and hardware-software integration, along with improved case management software and IT training.</td>
</tr>
<tr>
<td>Insufficiently skilled human resources and lack of continuous education system for judges, public prosecutors and other staff of the judiciary and the Public Prosecution.</td>
<td>Lack of specialization in courts and lack of specialized knowledge for judges.</td>
</tr>
<tr>
<td>Instances of unprofessional and unconscientious behaviour and corruption.</td>
<td>Depoliticize and professionalize the judiciary. Need for additional legal, technical and “case management” training. Need for implementation of a transparent but strict and operational disciplinary procedure plus regular judicial inspections/audits.</td>
</tr>
<tr>
<td>The Constitutional and legal solutions for selection of judges and appointment of Public Prosecutors open to political influences.</td>
<td>Lack of capacity, institutionalization and professionalism of bankruptcy trustees. Depoliticizing of the appointing authority and establishing a transparent process based on objective criteria for appointment.</td>
</tr>
<tr>
<td>Absence of detailed criteria for financing courts and the Public Prosecution.</td>
<td>Need for effective implementation and institutionalization of new Law on Enforcement and amended Civil Procedure Law.</td>
</tr>
<tr>
<td>Poor economic situation.</td>
<td>Insufficient staffing for the monitoring and implementation of the Judicial Reform Strategy.</td>
</tr>
<tr>
<td>Underdeveloped public relations.</td>
<td>Closed and non-inclusive legislative and regulatory drafting process.</td>
</tr>
</tbody>
</table>

The Judicial Reform Strategy identifies weaknesses in judicial independence and the inefficient operation of the judiciary as the main problem areas for reform. According to

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12 Specific request from Macedonia Ministry of Justice to the World Bank Assessment Team.
the Strategy, judicial independence in Macedonia is threatened in two ways: the manner of election and dismissal of judges and the financial independence of the judiciary. The Strategy specifically notes that the method of selecting judges (and prosecutors) is open to political manipulation and, as a result, the judiciary is marked by political, unethical and even corrupt behavior. The Strategy also explicitly notes that Macedonia's judiciary has been under-funded and lacks the procedures necessary to develop appropriate budgets and resource allocations. In addition, the Strategy identifies the lack of sufficient training for support staff as well as for judges as a constraint on the judiciary's independence. In contrast, the Assessment Team was more narrowly focused on issues of contract, creditor and property rights enforcement and therefore did not explicitly address questions of judicial independence. That said, the Assessment Team is in agreement with the Strategy's call for the depoliticization and professionalization of the judiciary.

Unsurprisingly, the Strategy and Assessment Team diagnoses match most closely when examining problems with the efficient functioning of the courts. As noted in many of the studies and reports on which both the Strategy and the Assessment team relied there is clear agreement that the courts are overloaded with cases and have responsibility for a number of "non-judicial" tasks that have led to a severe backlog and delay. Both diagnoses identify procedural gaps and abuses as a key additional cause for the delay in court proceedings. In addition, the severe problems with the enforcement of court decisions, including the ineffective judicial enforcement departments and enforcement judgment procedures that are open to abuse, are also included.

One area where the Assessment Team goes beyond the analysis contained in the Judicial Reform Strategy is identifying critical implementation issues. (These are highlighted in italics in Table 2-1.) The Team had the benefit of reviewing the Strategy while it was prepared and therefore has identified (and previously commented on) the need to clarify and strengthen the Strategy's own implementation mechanisms. Specifically, the Team raised the need to create a small staff dedicated to the monitoring and coordinating the implementation at the operational level. Similarly, the Team identified the implementation of the proposed new Enforcement Law and amended Civil Procedure or Litigation Law, as key future issues on which the Ministry of Justice will need to focus additional resources and attention. Given the Assessment's focus on the enforcement of key commercial rights, the Team's diagnosis includes reference to the problems facing the protection of creditors' rights under the existing bankruptcy procedures. In particular, the Assessment Team has identified the poorly regulated and unprofessional actions of Macedonia's trustees as a constraint on proper creditor protection. Lastly and more broadly, the Team was repeatedly told of Macedonia's relatively non-transparent and closed legislative and regulatory policymaking and drafting processes. While the Ministry of Justice has highlighted the efforts made to increase participation in the process for preparing the Judicial Reform Strategy, the Assessment Team found this to be "the exception that proves the rule" of small government-controlled working groups to draft legislation and minimal or no opportunity or procedures for outside review and

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13 In various translations this law is sometimes called Litigation Law or Law on Litigation Proceedings, but for consistency purposes the Assessment will refer to it as the Law on Civil Procedure.
comments. As a result, parties that will be subject to new legislation or even judges who will be asked to interpret and apply the legislation generally do not have a chance to participate in the drafting and development process.

Judicial Reform Strategy Proposals for Action

The Judicial Reform Strategy’s realistic and unvarnished diagnosis of the problems facing Macedonia’s judicial system is matched by an equally clear objective set for the Strategy: “to put in place a functional and efficient justice system based on European legal standards.”

The actions and steps contained in the Strategy for overcoming these problems are far-reaching and breathtakingly ambitious: setting up a new Constitutional and legal framework for the judicial system that includes improvements in organization, administration, managerial, material and human resources. The Judicial Reform Strategy essentially describes the steps needed for a comprehensive second phase in the reform of Macedonia’s judicial system.

The Action Plan annexed to the Strategy provides a list and proposed timeline for most of the Strategy’s reform actions. As noted above, the Strategy groups its reform actions under two broad categories: improving judicial independence and judicial efficiency. In addition, the Strategy includes actions to improve the human resources in the judicial system, including increasing minority representation (in line with the requirements of the Ohrid Framework Agreement). The Assessment Team has developed Table 2-2 below from the text of the Strategy, as well as the Action Plan, in order to provide a list of those reform actions focused on the judicial system and improvements to the enforcement of contract, creditor and property rights and the planned timeframe for their completion.

Table 2-2: Proposed Actions to Implement the Judicial Reform Strategy

<table>
<thead>
<tr>
<th>Actions to Improve Judicial Independence</th>
<th>Timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Draft and adopt legislation on establishment of public institution for training of judges and prosecutors.</td>
<td>short-term</td>
</tr>
<tr>
<td>2. Upgrade the Center for Continuous Education by turning it into a public institution for training judges and public prosecutors.</td>
<td>mid-term</td>
</tr>
<tr>
<td>3. Implement initial training for judicial candidates.</td>
<td>mid-term</td>
</tr>
<tr>
<td>4. Amend Constitution to redefine system for selection, discipline and responsibility of judges.</td>
<td>short-term 15</td>
</tr>
<tr>
<td>5. Pass new Law on Republic Judicial Council [Re-define the competence, composition and role of the Republic Judicial Council to implement Constitutional amendments.]</td>
<td>mid-term</td>
</tr>
<tr>
<td>6. Adopt objective criteria for accountability of judges and clarify judges’ disciplinary responsibility and immunity.</td>
<td>mid-term</td>
</tr>
<tr>
<td>7. Establish the Supervisory Board composed of judges to oversee.</td>
<td>mid-term</td>
</tr>
</tbody>
</table>

14 Judicial Reform Strategy, p. 4.

15 Constitutional amendments were originally conceived to be prepared for adoption at the end of 2005 or as a mid-term action. However, following the change in Government in December 2004, priority was placed on preparing Constitutional changes before undertaking other actions.
<table>
<thead>
<tr>
<th>#</th>
<th>Action Description</th>
<th>Time Frame</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.</td>
<td>Law on Judicial Salaries (Align salaries with scope and type of cases.)</td>
<td>short-term</td>
</tr>
<tr>
<td>9.</td>
<td>Law on Court Budget</td>
<td>short-term</td>
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<td>10.</td>
<td>Law on Courts</td>
<td>mid-term</td>
</tr>
<tr>
<td></td>
<td><strong>Human Resources and Representation of the Communities</strong></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Conduct human resource study based on expected legislative and organizational</td>
<td>short-term</td>
</tr>
<tr>
<td></td>
<td>changes and develop timetable for activities.</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Amend the Law on Courts to provide equal representation of citizens from all</td>
<td>mid-term</td>
</tr>
<tr>
<td></td>
<td>communities.</td>
<td></td>
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<tr>
<td>3.</td>
<td>Exempt court counselors, legal associates and administrative staff from Law on</td>
<td>Time frame</td>
</tr>
<tr>
<td></td>
<td>Civil Servants.</td>
<td>not specified</td>
</tr>
<tr>
<td></td>
<td><strong>Actions to Improve Efficiency of Judiciary</strong></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Amend Law on Courts. (Harmonize with Constitutional amendments, including the</td>
<td>mid-term</td>
</tr>
<tr>
<td></td>
<td>creation of a dual system of first instance jurisdiction with higher courts to</td>
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<td></td>
<td>deal with more complex cases (e.g., corruption cases or commercial disputes) and</td>
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<td></td>
<td>to improve summons procedures through organizing court summons units or</td>
<td></td>
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<tr>
<td></td>
<td>specialized delivery services.)</td>
<td></td>
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<tr>
<td>2.</td>
<td>Draft new Law on Administrative Disputes (Transfer appeals to new higher first</td>
<td>mid-term</td>
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<tr>
<td></td>
<td>instance court.)</td>
<td></td>
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<tr>
<td>3.</td>
<td>Amend Constitution to give administrative agencies jurisdiction to resolve</td>
<td>short-term</td>
</tr>
<tr>
<td></td>
<td>minor offenses.</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Adopt new Law on Misdemeanors. (Allowing administrative agencies to enforce</td>
<td>mid-term</td>
</tr>
<tr>
<td></td>
<td>sanctions and providing for mediation and settlement procedures.)</td>
<td></td>
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<tr>
<td>5.</td>
<td>Remove commercial registration from courts.</td>
<td>short-term</td>
</tr>
<tr>
<td>6.</td>
<td>Adopt new Law on Litigation (Civil Procedure Law). (To improve and expedite court</td>
<td>short-term</td>
</tr>
<tr>
<td></td>
<td>and litigation procedures.)</td>
<td></td>
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<tr>
<td>7.</td>
<td>Adopt new Law on Execution and Security. (Establishing the basis for an execution</td>
<td>short-term</td>
</tr>
<tr>
<td></td>
<td>service outside of the courts and licensed by Ministry of Justice.)</td>
<td></td>
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<tr>
<td>8.</td>
<td>Amend laws governing key registration systems and registries. (Increase information</td>
<td>Time frame</td>
</tr>
<tr>
<td></td>
<td>on debtors available to courts and improve cooperation with courts.)</td>
<td>not specified</td>
</tr>
<tr>
<td>9.</td>
<td>Establish new Enforcement Service.</td>
<td>mid-term</td>
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<tr>
<td>10.</td>
<td>Develop Law on Mediation.</td>
<td>mid-term</td>
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<tr>
<td>11.</td>
<td>Complete installation of IT and software applications in the courts and other</td>
<td>short-term</td>
</tr>
<tr>
<td></td>
<td>institutions (includes training and recruitment of technical staff).</td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>Install network linking IT systems in courts and other justice institutions.</td>
<td>mid-term</td>
</tr>
</tbody>
</table>

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16 A new Law on Misdemeanors was to be prepared in the short-term and then revised following the Constitutional amendments. However, with priority being placed on amending the Constitution, it is likely that the new Misdemeanors Law will become a mid-term objective.

17 A new Registration Law creating a “one-stop” shop for company registration, which would remove registration from the courts, could be passed in 2005.
In order to address the deficiencies in judicial independence, the Strategy proposes significant changes to Macedonia’s Constitution and the creation of a new judicial and prosecutorial training institution. The Constitutional changes involve the re-fashioning of the Republic or State Judicial Council and the creation of a new subsidiary supervisory board, composed of judges, who would have responsibility for applying new, objective criteria for evaluating and disciplining judges. Under the Constitutional changes and a new law, all judicial candidates would be required to successfully complete training and a final examination at a new formal training institution based on the existing Macedonian Judges Association Center for Continuous Education before being eligible for appointment. In addition, the Strategy recognizes that sound finances and sufficient salaries are an important component of an independent judiciary. However, it leaves the basis for determining financial self-sufficiency vague and is silent on the actions needed to guarantee that the Ministry of Finance will provide sufficient budgetary resources to reach this goal.

As noted above, the new Government has revised the Strategy Action Plan to make amending the Constitution the first priority for judicial reform. The change in priorities is logical and appropriate from an implementation standpoint; however, it has raised the political profile of the Judicial Reform Strategy and could complicate its implementation. While the first draft of the amendments was prepared by a group of experts led by a legal scholar, the subsequent Government-approved revised amendments sent to the Parliament have become a topic for political speculation in the press. The fact that the Constitutional amendments have become the subject of political debate should not be surprising – changes to the fundamental law of a country should be accomplished through the political process. However, this process highlights the need for the parties of the governing coalition and their leaders to engage the opposition and the public in serious discussions and negotiations about the purpose and impact of the proposed changes. With the outcome of the amendment process unclear during this process, it is possible that the Strategy’s subsequent planned legislative reforms could be delayed because drafting will likely begin only after the Constitutional changes are agreed upon.

To address the large and still growing backlog of cases clogging Macedonia’s courts, the Judicial Reform Strategy includes proposals to restructure and reorganize the court system and reduce the judicial role in such non-judicial activities as company registration. Both Constitutional amendments and legislative changes are proposed in order to divide the existing first instance courts into “higher” and “lower” courts and to create special departments in the first instance and appeals courts with jurisdiction over specific types and sizes of cases (e.g., organized crime, administrative appeals, and larger civil and commercial cases will be heard in special department of the higher courts). The Assessment Team heard numerous complaints from lawyers, judges and businesses...

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19 During the course of 2003, Macedonia’s courts dealt with over 1.2 million cases. Judicial Reform Strategy, p. 9.
describing the problems caused by the loss of this specialization during the first phase of judicial reform. As a result, specialization within the courts and judiciary should be well received. Unfortunately, the Strategy makes no mention of the additional training and reorganization of the courthouses that this reform will likely require to become effective. In addition, the Judicial Reform Strategy proposes to relieve the backlog of administrative appeals to the Supreme Court by shifting jurisdiction over these cases to the higher first instance courts. While this may solve one problem, it is likely to only create a bigger backlog problem at the higher courts. A more thorough solution would be to reform the administrative decision making and review process so that fewer of these disputes result in appeals to the courts in the first place. (See discussion of administrative disputes in Part 3 below.)

The Judicial Reform Strategy's more detailed assessment of the inefficiencies that plague the court system include: inefficient delivery of summons, slow procedures, poor management of the proceedings, frequent postponing of cases, and slow execution of court decisions. This assessment leads to the Strategy's proposal of a number of specific legislative changes, particularly to the Civil Procedure Law and Law on Courts, which are expected to reduce the opportunities for parties to delay proceedings, provide judges with greater control over proceedings, change the notion of judges determining the "substantive truth" by shifting the burden of proof to the parties, and create the basis for new methods for the delivery of summons. This last objective is left vague in the Strategy most likely due to a lack of agreement on whether to sanction the use of non-judicial delivery services. In contrast, the Strategy is quite clear that the solution to the problems with the execution of judicial decisions, including poor resources and staff in the existing court Execution Departments, is the adoption of a new law that will create a system of execution agents completely outside the courts. The Strategy also recognizes that effective and efficient execution of judgments requires trustworthy registries and records on debtors and therefore, proposes changes to a number of laws affecting the various registration systems in Macedonia. (The issues surrounding execution and enforcement will be addressed more fully in Parts 3 and 4 below.)

In addition to actions to improve the independence and efficiency of the judicial system, the Reform Strategy addresses the difficult issue of minority representation in the judiciary and court staff. According to the Strategy, Macedonia has 2145 employees in its courts, including 641 judges, 650 court administrators, and 642 typists. These figures are much higher than the staffing figures for European countries of comparable populations such as Norway and Finland as well as for transition countries such as Cambodia. Interestingly, Macedonia's staffing figures do compare well with those for its

Footnotes:
20 The Macedonian Government has requested World Bank assistance in the form of an investment loan, to help with physical reorganization and restructuring of courthouses.
21 According to the Judicial Reform Strategy, the backlog of administrative disputes at the Supreme Court grows by about 1000 per year. Judicial Reform Strategy, p. 13.
22 Judicial Reform Strategy, p. 12.
neighbour Greece.\textsuperscript{23} Therefore, notwithstanding the backlog and delays in the judicial system, it is likely that Macedonia has a staffing problem – possibly over-staffing but almost certainly "wrong-staffing" in the form of a mismatch between the court system’s needs and the staff’s skills and experience. This process will be complicated by the Strategy’s additional, and appropriate, objective to fulfil the Ohrid Agreement’s goal of improving the legitimacy of government institutions, including the courts, by increasing the representation of minorities among judges and other court staff. The Strategy recognizes that this is a long-term process and proposes a human resource study to better understand the issues facing the court staff. However, the immediate need to reorganize and “right staff” the courts (in terms of retraining and reassigning judges and staff to new positions and responsibilities) following Constitutional amendments and changes in the Law on Courts, as well as the creation of the judicial training institute may provide an opportunity to begin to tackle the minority representation issue early and directly.

While comprehensive and ambitious, the Judicial Reform Strategy’s list of proposed reforms is heavy on legislative actions but light (or vague) on the institutional and behavioral changes that will be needed to implement new legislation and to reach the goal of creating a functional and efficient justice system. In only two instances does the Strategy explicitly recognize the need to plan for institutional change: the medium term goals of establishing a new judicial training institution (and training its first class of judge-candidates) and creating an independent enforcement institution. The Strategy’s Action Plan and timelines would appear to underestimate the time and effort needed for the significant institution and capacity building actions that will be needed to create the judicial training school or to build an effective execution agency from the ground up. Just as significantly, the Strategy prescribes legislative changes to court procedures as if their adoption will be enough to remedy courtroom delays and obstructive actions by parties and judges. Unfortunately, the Strategy makes no mention of the major psychological and behavioral changes that these procedural changes will entail for judges and lawyers. For example, changing the judicial role from one where the search for the “substantive truth” is central to one where judges must serve as the arbiter between arguments and evidence as to what is true and what is not, raised by the parties, will require greater change in judicial “culture” and behavior than can be accomplished through simple retraining.

Even with these shortcomings, the Judicial Reform Strategy is a major political accomplishment for Macedonia. It provides a roadmap with detailed directions that can guide judicial system reform over the next few years. While this Assessment overlaps to a significant degree with the Reform Strategy, the Assessment was conducted to look at the more specific constraints that have hindered the enforcement of contract, creditor and property rights in Macedonia. The next two sections provide a detailed analysis of the judicial and non-judicial or institutional difficulties in enforcing these rights in Macedonia.

\textsuperscript{23} Fourlanos Desk Review, p. 5, fn. 1 (April 2005).
Part 3: Judicial Constraints on the Enforcement of Creditor, Property and Contract Rights

Many of the obstacles to the effective and efficient enforcement of contract, creditor and property rights are not unique; they are procedural, organizational, material and human resource issues, as well as questions of judicial practice and behavior that negatively effect all cases that come before Macedonia’s courts in equal measure. The Assessment will review and analyze these systemic judicial constraints in this Part. One specific systemic problem that Macedonia’s courts also suffer from is an ineffective and often-abused system for enforcing judicial decisions. While a new Law on Enforcement has been developed to address this systemic problem, the Assessment identifies a number of additional implementation issues that need to be addressed. In addition, the Assessment identifies judicial obstacles that are specific to cases seeking to enforce contract, creditor and property rights cases, as well as providing an assessment of alternative dispute resolution methods in Macedonia.

While a broad assessment of Macedonia’s judicial system is beyond the scope of this Assessment, the American Bar Association’s Central Europe and Eurasian Law Initiative (ABA CEELI) has developed a Judicial Reform Index (JRI) for Macedonia that provides a summary of the state of legal and judicial development in Macedonia. ABA CEELI’s JRI seeks to assess a cross-section of factors important to judicial reform in transition countries. Using international norms developed by the UN, Council of Europe and other international organizations, ABA CEELI has identified 30 different factors that have a significant impact on the judicial reform process. The JRI then measures how well a country’s judicial system correlates with these 30 factors – negatively, positively or neutral. CEELI has conducted two JRIs in Macedonia: one in March 2002 and more recently in November 2003. While the full Macedonia JRI includes a narrative commentary on each factor, Table 3-1 provides the simple correlation between the features of Macedonia’s judicial system and the JRI’s 30 factors and shows how the correlation has or has not changed over time.

Table 3-1:

<table>
<thead>
<tr>
<th>Judicial Reform Index Factor</th>
<th>Correlation 2002</th>
<th>Correlation 2003</th>
<th>Trend</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Quality, Education, and Diversity</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Factor 1  Judicial Qualification and Preparation</td>
<td>Negative</td>
<td>Negative</td>
<td>↔</td>
</tr>
<tr>
<td>Factor 2  Selection/Appointment Process</td>
<td>Neutral</td>
<td>Neutral</td>
<td>↔</td>
</tr>
<tr>
<td>Factor 3  Continuing Legal Education</td>
<td>Positive</td>
<td>Neutral</td>
<td>↓</td>
</tr>
<tr>
<td>Factor 4  Minority and Gender Representation</td>
<td>Negative</td>
<td>Negative</td>
<td>↔</td>
</tr>
<tr>
<td>II. Judicial Powers</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Factor 5  Judicial Review of Legislation</td>
<td>Positive</td>
<td>Positive</td>
<td>↔</td>
</tr>
<tr>
<td>Factor 6  Judicial Oversight of Administrative Practice</td>
<td>Neutral</td>
<td>Neutral</td>
<td>↔</td>
</tr>
</tbody>
</table>

24 As of mid-April this draft Law was under consideration in the Parliament following its second reading.
The 2003 JRI reveals that over the course of 2002 and most of 2003, Macedonia made little progress in reforming its judicial system. On the negative side there was backtracking in judicial education, where sustainability of the Center for Continuing Education is an issue, and in judicial security, where limited protection offered by the Judicial Police and risk of increasing threats against judges raised concerns. On the positive side, improvements were noted in six factors including increased judicial input and control over the budget and the random assignment of cases. Though it should be noted that for each of these factors the correlation only showed an improvement from negative to neutral. Macedonia showed little or no change for the remaining 22 factors. The Ministry of Justice recognizes the lack of judicial reform progress revealed by the 2003 JRI when it explicitly identifies the Judicial Reform Index as a source consulted during the preparation of the Judicial Reform Strategy.
1. Systemic Constraints

Case Backlog and Judicial Inefficiencies

Nearly every survey and analysis of Macedonia’s courts reveals a large backlog of pending cases and a system plagued by delays and continuances. According to the World Bank’s Doing Business 2005 database, it takes 509 days to enforce a simple contract for a debt in the courts and costs approximately 32.8% of the debt. This compares with a regional average of 412 days and 17.7% and an average for the OECD states of 229 days and 10.8%. According to a “closed case survey” of over 1500 cases in seven pilot courts conducted by USAID’s Court Modernization Project, the mean time to dispose of a commercial case in Macedonia’s courts was 223 days and approximately 78% of commercial cases were finished within one year of filing. While these times were not found to be unusually slow, the closed case survey did find a high level of pending cases (18%) that were over three years old.

The causes of the backlogs and delays are also well known. Macedonia’s procedures do not provide for case screening or a case management process that would allow judges and parties to plan ahead for the taking of evidence, the scheduling of hearings, etc. Instead cases are “managed” simply through a series of hearings many of which, as the Assessment’s case analysis revealed, have to be cancelled or postponed because of lack of preparation. Cases are plagued by a series of procedural problems and abuses that create postponements and continuances. Problems with the service of notices or summons are a leading cause of cancelled hearings. Courts are burdened with serving complaints on parties and are subject to the same service of process problems. Cases are processed manually and standards for processing (time, type of case, etc.) play little or no role.

The backlog and the delay in getting a case through court have had a negative effect on business’s perception and use of the courts to resolve their disputes. As a result, the Judicial Reform Strategy proposes a number of actions – structural, procedural and substantive – to help alleviate the backlog. Alleviating the backlog should not be an end in and of itself, however. Rather, elimination of the backlog should be seen as a means to a broader objective for Macedonia’s judicial system: improving the investment climate by raising business confidence in Macedonia’s judicial dispute resolution process and thereby removing an obstacle to increased commercial activity and investment.

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27 USAID, Macedonia Pilot Courts – Civil Litigation Caseflow Management (December 2003).
(a) Misdemeanor and Utility Case Backlog

The largest backlog in the lower courts consists of misdemeanor cases. According to the Reform Strategy, approximately 150,000 to 200,000 new misdemeanor cases are filed each year and the courts are only able to resolve around 50% of these. In fact, many of these cases are obsolete by the time a court can actually hear them. According to the Assessment Team’s interlocutors, many of these cases involve the collection of unpaid utility bills where the utility has made little or no effort to recover the debt before going to court. (An innovative method to handle these utility cases under the existing system is described in Box 3.) Misdemeanor cases also include those brought by administrative agencies seeking to enforce sanctions or punitive actions, which must be done only through a court order under the Macedonian Constitution.

Box 3 – Taking the initiative to reduce the case backlog

Even within the existing legal and institutional framework, the President of Velez First Instance Court took the initiative to reduce the case backlog in respect to the many unpaid utility bills (for example electricity and telephone bills). On closer investigation, it was established that in many of these cases there were not even the most basic efforts at primary debt collection by the utilities, before handing the unpaid accounts over to the Court for judicial enforcement proceedings. In Velez Court, four full time employees focus on the more complicated cases of enforcement. However, in addition to these full time employees, 15-20 volunteers were trained as enforcement agents to work on the backlog. The volunteers are paid 300 dinars for every case closed, after the debt is collected. Cases are also closed when it is found that the debtor is already deceased, or a legal entity liquidated. In other cases, debtors were found to be so indigent that they could absolutely not pay anything. These cases too are being closed. 9000 backlogged cases have over the last 5 years been reduced to 4000, whilst during the same period some 15,000-16,000 new such cases have entered the system.

To address this problem, the Judicial Reform Strategy proposes both changing the Constitution as well as reorganizing the courts in an effort to remove as many of these cases from the courts in the future. The Constitution would be changed to allow many of the administrative agencies (e.g., customs, traffic, etc.) to both issue and enforce their own sanctions or penalties through non-judicial or expedited judicial procedures. This will be accomplished through greater use of authenticated documents or documents that could provide for non-judicial enforcement (by presentation directly to an enforcement agent) or that a court would recognize as valid on its face. For example, utility bills could be treated as authenticated documents, allowing the utility to recover directly without recourse to a court. This change could have implications for the role of notaries who play a key role in creating authenticated documents. While this change could greatly diminish the new misdemeanor cases making it into the courts, it will not directly help to alleviate the backlog that already exists. If adopted, the Constitutional changes will increase the importance of internal administrative agency decision-making and appeals, both of which are likely to also require reform. (See subsection below.)

As an additional solution, the Strategy proposes to re-create the specialization that previously existed in Macedonia’s judicial system before the first stage of reform in the mid-1990’s. Under the Strategy existing first instance courts will be reorganized into “higher” and “lower” courts (with some consolidation of courthouses along the way). The lower courts would then be given jurisdiction over misdemeanor and low value civil and commercial cases. This would free up the higher courts to handle more sophisticated commercial cases, large value civil cases as well as organized crime and corruption cases. In addition, the courts would be internally reorganized into specialized departments to handle organized crime and corruption offenses, administrative and labor relation disputes, misdemeanor cases, etc. An alternative that is also still under consideration (though not mentioned in the Judicial Reform Strategy) would recreate specialized courts in Macedonia. Under this scenario, a new set of courts would be created with jurisdiction over specific types of cases, such as, inter alia, commercial, labor and administrative disputes. The Assessment Team was informed that a number of judges favored this option, and the Ministry of Justice noted that it was open to a discussion and debate on the respective costs and benefits of the two options.

The Assessment Team recognizes the benefits in expertise and efficiency that specialization (either through new courts or divisions within existing courts) can bring to Macedonia. However, specialization also could have negative effects. First, specialized courts can easily become a focus of special-interest lobbying and political connections – they may be “captured” by the very commercial interests whose efficient functioning they are designed to promote. Second, breaking up the general court system into smaller specialized sub-parts can lead to rigidity, particularly if budgets and staffing are compartmentalized and it is difficult to transfer resources between them. The attention given to specialized courts can also lead to a neglect of the more general court system, undermining overall justice system. In addition, the Assessment Team has cautioned the Ministry and the judiciary to carefully consider the fiscal implications of creating a set of courts with specialized jurisdictions. This option is likely to be much more costly than creating specialized departments within the existing court structures.29

The Assessment Team found broad support for both the Constitutional changes to permit administrative action on sanctions and the court reorganization and specialization proposal. This support will be crucial for these far-reaching changes to be effective in improving the efficiency of the courts and beginning to decrease the backlog of cases. However, additional actions by the Government will also be needed. (Changes in administrative processes are discussed below.) First, there is a critical need for specialized training for judges and court staff that will need to adjust to new specialized divisions. In particular, court staff should be provided with opportunities to try to address the existing backlog of misdemeanor and utility cases through “non-judicial” means, as is now being done in the Veles First Instance Court. This could be done through training on debt collection techniques and mediation. Second, court fees can be adjusted to make

cases self-financing and suppliers of utility services can be permitted to shut off service to those who refuse to pay. In addition, the physical courthouse structures will need to be reorganized to varying degrees. The Government has requested the World Bank’s assistance with this physical reorganization. However, the Assessment Team recommends that an initial inventory of existing courthouses and courtrooms (most assessments have found that there are too few courtrooms within the existing non-specialized courts) be conducted once the Government decides which court jurisdictions are to be combined and which courts are to have specialized departments.

(b) Procedural shortcomings and abuses

Procedural problems and abuses were the one issue that ran through the 99 cases reviewed by a local lawyer as part of the Assessment Team’s case analysis work. Procedural problems led to delays, continuances and otherwise slowed down proceedings in all 99 cases. Whether the case involved contract rights, a dispute over real property or a creditor trying to collect from its debtor, Macedonia’s procedural rules and, more importantly, the way they were applied in court, served to prolong and complicate each case. The majority of these procedural problems centered on:

- Ineffective service of notice of hearing or notice to appear;
- Failure to provide necessary documents to the court or by the court; and
- Lack of judicial control over the proceedings through inability (or lack of desire) to enforce existing procedural rules, including time limits, court fees, etc.

The most egregious of these abuses are described in the Case Study Boxes below. Similar issues were raised in assessments and reports prepared by USAID consultants, ABA CEELI and EC consultants.

Revision of the Civil Procedure Law, as planned in the Judicial Reform Strategy, will address many, but not all of these procedural problems. Far ranging changes are envisioned in the way judges control their courtrooms and in the roles played by the parties and their lawyers. For instance, the Strategy recommends that burden of proving an allegation be shifted to the parties in order to free the judge from having to conduct his own investigation to determine the “substantive truth” of a case. The Civil Procedure Law would also be revised to reduce the parties’ ability to seek adjournments or postponements of trials. As of early May 2005, amendments to the Civil Procedure Law had been prepared, passed the first reading and were being reviewed and revised by the Ministry of Justice working group (with USAID assistance). However, significant

30 See generally, World Bank, PREM Note 26, “The law and economics of judicial systems,” (July 1999) and references cited therein.

change in judicial attitude and practice as well as change in lawyers’ practice and views will be necessary to implement these reforms and for the reforms to have a real impact on the clearing up the backlog and improving judicial efficiency going forward. (See subsection below.)

One reform that the Strategy does not address but that could have a big impact on addressing the procedural shortcomings and corresponding backlog is the creation of a modern case management system. With USAID assistance, seven pilot courts are experimenting with the creation of case flow management standards and procedures for civil cases. These will include the setting of case processing time standards, provide for early case screening (to determine complexity and therefore assignment to specialized departments once they are established), early settlement discussions, and uniform trial postponement policy and improved court control over continuances. The Assessment Team encourages the rapid implementation of these pilot changes and, once accepted, their rollout throughout Macedonia’s courts.

That said, the Assessment Team has identified two additional reforms that should accompany the development of case management techniques. First, judicial staff should be provided with additional training and authority necessary for them to take on additional roles in managing and processing cases. For this to be implemented, Macedonia’s courts and judicial leadership must develop a number of standardized policies and processes to guide staff responsibilities. Second, the development of standardized policies and processes for case management will depend on the collection, compilation and dissemination of systemic case management data and statistics. Improved court IT hardware and software can assist in this process (see discussion below). But the judiciary (with the help of the Ministry of Justice) will need to take a leadership role in requesting this information and ensuring that it is organized to assist in the policymaking process, and then ensuring that judges and court staff fully understand how the information has been used to improve judicial efficiency.

Once adopted, the Judicial Reform Strategy’s solutions to the backlog problem can help to stop the backlog from growing. Over time, if fully implemented, these reforms can improve the efficient functioning of the courts. But without additional procedural reforms, case management improvements and behavioral changes (discussed below) the Strategy’s solutions will not have their intended impact on judicial efficiency nor will they be sustained.

(c) Ineffective summons and notice

One procedural problem that the Assessment Team found to be particularly troublesome was the difficulty in effectively serving a summons or notice on a party to a case or a witness. According to ABA CEELI’s Judicial Reform Initiative, practitioners “universally condemned service of process as ineffective and a significant cause of

32 See USAID - Macedonia Court Modernization Project, Civil Litigation Caseflow Management (December 2003).
The Assessment’s analysis and observations certainly bore this out: Of the 23 cases personally observed in the First Instance Courts of Stip and Skopje I, three cases were continued because of improper service to a party and in two others the failure of a party to appear was most likely due to improper service. More pointedly, of the procedural problems that delayed the resolution of all 99 of the cases reviewed in the Case Analysis, the lack of, or improper, delivery of service appears in almost all of the creditor, contract and property rights cases reviewed. The local Macedonian legal consultant who conducted the Case Analysis noted that the delivery department was inefficient, inaccurate and late, and that existing procedural law was not precise and needed improvement.

Judges that the Assessment Team met with, noted that the lack of service is a key reason that they continue cases. Judges have the power to order that a witness who was properly served but failed to appear be brought to court by force or be fined. But judges acknowledge that they rarely invoke this subpoena power and instead issue warnings and continue a case. (The issue of judicial practice and “culture” is discussed in a section below.) With crowded dockets, a continuance for lack of proper service on parties and witnesses can lead to a one or two month delay as seen in the case described in the Introduction and the case studies in Boxes 6 and 7. However, from the Assessment Team’s limited experience, improper service rarely happens only once in a case (see the Case Studies below). As a result, cases are often drawn out for a year or more rather than for a few months.

Summons are served by a court courier service that is under-staffed by 50% and that uses public transport to carry 60-70 summons for delivery a day. There is no incentive for this court service to make a successful delivery. As identified in a number of the cases reviewed under the Assessment, addresses provided to the court are often wrong because Macedonians do not update their residency address, and there is no easy way to find the right address. In fact, in one case, after 19 hearings had been postponed, nearly all due to improper service, a plaintiff had to petition the court to request the defendant’s official address from the Ministry of Interior, which took an additional couple of months. The notice of complaint procedure is extremely inefficient and is the burden of the court rather than the parties; cases are noticed for pretrial hearings without verification of effective initial service.

Interviews with judges and court staff revealed a clear preference for privatizing notice serving in civil cases in order to remove the obligation for serving notices from the already overburdened court support staff. The Assessment Team notes that service

33 ABA CEELI, Judicial Reform Index, p. 13.
34 Id.
36 However, the Assessment Team was also told that the Stip First Instance Court already made use of a local courier service and still faced problems with service of process.
issues can be settled before parties even get to court. In contract enforcement cases the parties can agree upon an address for all service of process at the time of contracting. Provided Macedonian judges enforce such a provision, service of a notice or summons can be presumed to be effective once a party shows proof of delivery to the agreed address. In addition, other jurisdictions permit judges to use substitute means of notifying parties and witnesses, such as through advertisements placed in national papers, or to presume “constructive service” of process when a named representative is served. To the extent that these procedural and legislative solutions are not addressed in existing legislation or the new draft Civil Procedure Law, the Government should consider how to include them in other planned legislative reforms.

The Assessment Team was informed that even when properly served and aware of the obligation to attend, defendants routinely choose not to attend proceedings as a means of (sometimes perpetual) delay. The problem is therefore not solely attributable to lack of notice. Even in non-commercial violations such as traffic fines, it is common knowledge that receiving a ticket is meaningless, as the fine will most probably not be enforced.

Building on the diagnosis in many of the previous analyses and assessments, the Judicial Reform Strategy recognizes the problems caused by the existing inefficient summons procedures. However, the Strategy does not propose a specific solution to the problem. Instead, the Strategy proposes two distinct alternatives solutions: the creation of court summons units or the use of specialized delivery services. The Strategy leaves many questions about these alternatives unanswered: (i) Where would the court units actually sit? (ii) Who would manage and supervise these units, the judges? (iii) Would a specialized delivery service be fully private or would it be closely regulated with a licensing or supervisory role played by the Government? As these unanswered questions reveal, it is clear that beyond the necessary changes to the summons procedure contained in the draft Civil Procedure Law, the Government will need assistance in weighing the pros and cons of these alternatives and developing an institutional solution to the summons problems.

Administrative Disputes

Another bottleneck in Macedonia’s court system are the cases brought directly to the Supreme Court challenging the actions of government agencies and administrative. At present, the Supreme Court receives approximately 3000 new administrative disputes each year, yet is only able to resolve around 2000 and faced a backlog of over 4000 at the end of 2003. To address this problem, the Strategy proposes legislative changes in the Law on Courts and a new Law on Administrative Disputes that would remove jurisdiction over administrative disputes from the Supreme Court and place it with the new higher first instance courts. However, this reform will only shift the problem from the Supreme Court to other courts and will not address the likely root cause for the large number of these disputes: shortcomings in the administrative decision making and review process.

Rather than treat the issue of administrative disputes as a backlog and delay problem affecting the Supreme Court, the Assessment Team recommends that Macedonia focus efforts on reforming administrative procedures, practices and appeal processes. An ideal solution would include a focus on administrative decision making process and administrative procedures so that cases are decided transparently, decisions are provided in writing and with clear reasons, and parties have the right to a fair and impartial review of agency decisions before getting to court.

A new draft Law on General Administrative Procedure has been prepared and as of early May 2005 was awaiting final Parliamentary action on the second reading. The Assessment Team recommends that the Government work closely to ensure that administrative agencies understand the new procedures and processes, that staff is provided with training and incentives to apply the new procedures and that the appropriate structures are in place for an impartial review of administrative decisions. This will require additional resources and expertise that the Government may need to seek from donors.

**Judicial Behavior and Practice**

One issue that is not addressed in the Judicial Reform Strategy and only referred to obliquely in a few of the previous studies and analyses reviewed as part of the Assessment’s desk review is the role that judicial behavior and practice plays in constraining the enforcement of contract, creditor or property rights. By judicial behavior, the Assessment team refers to the way judges “judge” or the practice and attitude that they bring to their jobs as judges. How a judge uses the procedures and powers given to her to control (or not control) proceedings before her, and how she tends to decide cases or motions in favor of one party (debtors) over another (creditors) has a significant impact on the enforcement of these rights. In reviewing contract, creditor and property right cases for the Assessment’s Case Analysis, the local consultant noted that in most of the cases the judges were not fulfilling their responsibilities – they were not enforcing time limits for certain actions; they did not enforce court tax or fee provisions; they did not follow procedural rules that would allow for the protection of assets or the use of authenticated documents; and they have not used the tools available under existing law to proactively manage their cases. In the consultant’s view the judges appeared passive and uninterested in taking control of the cases they heard.

In the one exception the Team observed, a judge’s attempt to exert control over the parties was overturned on appeal. In a dispute over rental payments where the plaintiff had disregarded the judge’s request to produce documentary evidence for three years, the judge finally fined the plaintiff. The plaintiff, a public entity, appealed the fine and it was overturned by the appeals court. As a result, even when a judge does try to exert herself and force the parties to obey court orders and procedures, there is a chance that these efforts will themselves not be enforced. Such a realization is disheartening to those

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38 See also, ABA CEELI, Judicial Reform Index, p. 13.
judges who are trying to improve the efficiency of their work. Over time, this experience could act as a disincentive for judges to continue to fully perform their judicial functions.

At the same time, the Assessment Team observed and met with judges who actively involved themselves in the cases before them – asking questions, requesting actions by a party, undertaking to bring in experts for opinions. Yet these same judges presided over cases with numerous continuances, postponements and delays. One assessment has posited that this seeming paradox in judicial practice is a result of a clash between changing expectations for judicial action as the economic transition progresses, and historical behaviors developed during the communist period as a way to avoid or undercut the state’s ability to carry out its (often unpopular) policies or to delay proceedings to benefit the state which was the largest delinquent debtor during those times.39

 Judicial behavior also is influenced by the perception and level of corruption within the judiciary. According to the UN Development Programme’s most recent “Early Warning Report” for Macedonia, 63% of citizens surveyed have no or only some confidence in the judiciary. This placed the judiciary between the President (55%) and the Parliament (66%).40 A large part of this lack of confidence is likely due to the fact that almost 90% of those surveyed felt that corruption existed in the judiciary in the form of the misuse of public funds or the abuse of position.41 These survey results (conducted in September 2004) are contradicted somewhat by the evidence collected by ABA CEELI in the preparation of the Macedonia Judicial Reform Index. CEELI found that while there may be a general belief that the judiciary is subject to political pressure and corruption, when questioning judges, lawyers and others involved with the judicial system there was general agreement that judges were less likely to be corrupt than other officials and that the level of corruption in the system was lower in reality.42 The Assessment Team’s limited observations of the system and review of cases tended to corroborate this more nuanced view: of 99 contract, creditor and property rights cases reviewed, possible political interference could be found in only 8 cases.43 While measuring the level of corruption in any particular institution is fraught with problems, as is trying to determine


41 Id., at p. 48.

42 ABA CEELI, Judicial Reform Index, p. 24-5.

43 A court observation project sponsored by the OSCE arrived at a similar conclusion: “While other observers such as ABA/CEELI have complained that Macedonian judges are open to influence by political parties, TON did not see any evidence of partiality in the trials that they observed.” See Trial Observation Network and Organization for Security and Cooperation in Europe, Countrywide Observation of the International Fair Trial Standards in Domestic Courts and Assessment of the Functioning of the Judiciary (September 2004), Draft Version.
the proper level of judicial “activism” in managing a case, it is clear that Macedonia needs to address the perception that its judicial system is corrupt and its judges are passive and ineffective, if there is to be true sustainable reform of the judicial system.

From the perspective of the Assessment, judicial behavior and practice are important because judges will be the ones to interpret, apply and implement Constitutional amendments as well as the new laws and regulations that will be enacted under the Judicial Reform Strategy. Changing judicial behavior is a long term concern. The Assessment Team supports the Judicial Reform Strategy’s proposal to begin to address these issues by increasing judicial independence through Constitutional changes that will change the composition and powers of the Republic Judicial Council (RJC) in order to decrease the role politics plays in judicial selection and increase the role judges will play in setting policy and disciplinary standards.

The Strategy should also include a requirement that the new RJC develop and actively enforce a strong, clear and fair disciplinary mechanism. During 2004, the RJC disciplined ten judges – eight were dismissed for “poor” work and two others had criminal charges brought against them for bribery and abuse of power. Three additional cases were pending as of May 2005 against judges who had not written a decision in over a year.\(^4\) Continued strong discipline and public acknowledgement of judicial misconduct will be required for improved independence to lead to better judging and an improved public perception of how judges operate and behave themselves. Judicial independence must mean more than freedom from control by other branches of government. An independent judiciary is one that earns the respect and deference of other branches and the public by taking seriously its responsibility to discipline itself.\(^5\)

Laws, regulations and procedures will be reformed as the Strategy is implemented. But it will require judges (as well as lawyers) to change how they fulfill their roles in litigation, their practice in the courtroom, and their behavior more generally if these changes are to have a positive impact on improving judicial efficiency. If all the judges in Macedonia were more assertive and managed their courts more proactively and consistently under the present laws and procedures, many of the existing problems in the system would have been less apparent. Changes in practice and behavior will be even more important under a reformed judicial system that shifts the burden of proof more fully on the parties, that frees the judge to mediate between the parties rather than search for “objective truth” and that provides judges with additional tools to control lawyers and parties through clear timetables and improved sanctioning authority. Experience has shown throughout the transition countries of Central and Eastern Europe that the impact of far-reaching legal and procedural changes is dependent on the willingness of judges and other participants in the judicial system to change practices and behavior.

One way to influence judicial practice and behavior is through a targeted training program. Efforts to improve judicial training such as the Judicial Reform Strategy’s

\(^4\) Statistics given to Assessment Team by the RJC President, interview May 5, 2005.

\(^5\) The Assessment Team thanks its colleague Judge Dory Reiling for providing this insight.
proposal to create a new judicial training institution and require training before judicial candidates can be selected for the bench is a start, but only the beginning of a long process of changing practice and behavior. Training for court staff in the new procedures and processes will also be important, possibly even more important than training judges since court staff will bear the burden of putting the new procedures into operation.

More active enforcement of evaluation and disciplinary procedures is one mechanism that can influence judicial performance. However, the Assessment Team also feels the incentives judges face should be reformed and improved in order to change judicial behavior. For example, the planned revision of the Judicial Salaries Law could include a pay system tied to new procedures and practices in the revised Civil Procedure Law. To focus judges and their staff on the new goal of improving judicial efficiency, the budget provided to courts and used to pay judges and staff could be tied to the number and type of cases they clear each year. Judges must be involved in the development of such a budgeting system which will also require a strong quality control system and properly functioning appeals mechanism. The Judicial Reform Strategy’s recognition that the judicial system is in need of additional resources is a good start, however, these resources should be carefully crafted so that they are used to create incentives for the judges to learn about and actively implement the new Constitutional amendments and legislative changes intended to improve judicial efficiency.

**Information Technology**

Over the past few years, Macedonia, with significant financial assistance from the European Commission, has begun to modernize the information technology (IT) used throughout the justice system. However, these initial moves have yet to produce the expected improvements in judicial and court administration efficiency. This is due in large part to the fact that neither judges, nor their assistants or court administrative staff have accepted the new systems and worked to integrate them into their daily work. Even where court staff has begun to use the IT systems, the staff feels that the computers and software have added to, rather than reduced, their workload. For instance, the Assessment Team’s Dutch judge observed that while judges in misdemeanor cases use computers networked to a central case administration, the administration staff using this system in Stip felt that it was too slow and simplistic, creating additional work because it did not pick up older cases and required re-entering information when cases moved to the execution phase.

With funding from the Phare 2000 and CARDS 2003 programs totaling approximately €4.5 million, Macedonia will be able to provide computers and other hardware

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47 The majority of information and analysis in this subsection is taken from report submitted by the court IT expert engaged by the Assessment Team. Hans Korb, *Macedonia: Mission Report, IT Modernization Efforts – Assessment and Recommendations* (February 21, 2005).

throughout the justice system— from judges and courts to prosecutors and penitentiaries— over the course of 2005. However, the equipment in some institutions is already more than five years old and has almost reached the end of its working life. According to the European Agency for Reconstruction and the Government, some of the €2.5 million from CARDS 20023 will be spent to fulfill the courts’ equipment needs. In order to make the best use of this funding the Ministry of Justice has recognized the need to undertake a hardware inventory to identify remaining needs and develop a connectivity protocol. In addition, based on the observation and recommendation of the Assessment Team’s IT expert, additional funding should be dedicated to providing ALL court employees with basic computer training (in addition to training on specific software applications described below).

The development of case management software is often seen as a panacea for backlog and inefficiency problems that plague judicial systems. However, software is only useful if it is used and it is most often used when it closely tracks judicial practices and procedures and when it has clear, user-friendly interfaces. Unfortunately, the existing case management software has yet to satisfy these conditions. From the beginning the development of case management and administration software was dogged with problems. Initially, the Macedonian Government committed its own resources (approximately $1.3 million) to contract directly (without use of a competitive procurement process) with a local company for the development of an “Integrated Court Information System” (ICIS). This system was designed as a replica of the existing manual system, without fully utilizing the benefits of the automation process. This funding was only sufficient to cover the development of the basic application. So the Government worked with EAR to fund the rollout of the software and training for users (using PHARE 2000 funds). Conflicts and disputes between local and international software developers delayed this work.

As the ICIS software has been installed in more courts, additional concerns have arisen. First, the application’s interface is not intuitive and users have found it difficult to pick up. Second, while ICIS does include a simple docket form, this form is not the central part of the application as is normal in other case management software. Third, training on the software has not been sufficient and, as a result, ICIS has a very low utilization rate in the courts. In fact, court staff in Stip were not aware of the ICIS system at the time the Dutch judge visited. Fourth, ICIS lacks a centralized data storage and retrieval system, and it is not possible to upload data to a central server, nor download summary information. Fifth, the program also was not designed to generate the detailed management reports that are necessary for the MoJ and judicial leadership to measure the efficiency of the courts. In addition, there is not an overall secure wide-area network for the judiciary as a whole. Network service currently depends on the staff working in the institutions; some are well organized, while others lack the sophistication of reliable local network services.

49 Currently, a USAID-funded project (the Court Modernization Project) is considering financing the development of a comprehensive accounting, payroll and human resource application for 10 pilot courts.
In general, these problems arise from the fact that the applications have been designed to automate a specific manual process rather than being designed to reach a specific, strategic outcome for judicial and court processes. The Government recognizes the need to enhance the current case and court management systems and provided the IT expert with its view of the short, medium and long term objectives and timeline for its enhancements plans. If fully implemented, these (ambitious) plans will go a long way to improving the usability and functionality of the ICIS software, but the MoJ will need donor and expert assistance to reach this goal. A key step in the process should be the creation of an IT unit in the Ministry that can be responsible for developing a strategic vision to guide the automation of judicial and court administration functions. This strategy and follow-on implementation actions should include:

- A functional analysis of court procedures and processes. This analysis should anticipate the adoption and implementation of the new procedures and processes contained in the draft Civil Procedure Law that is presently under consideration in the Government.
- Refinements and new modules for the ICIS system that should take into consideration the development of new standard forms, practices and processes (particularly those changes being developed under the USAID-funded Court Modernization Project).
- Plans for the redesign of the user interface based on close consultation with the ultimate users of the systems: court staff and judges.
- Development of an enhancement for data collection, data storage and data exchange that includes the generation of key statistical information for use by court and Ministry management.
- A clear, long-term training program for staff on all levels of the judiciary, covering general IT training as well as application-specific training. (This could perhaps be undertaken through the new judicial training institution.)
- Plans to standardize the quality of the expected network services, including maintenance, and back-up services.

In each of these areas the task should focus on using the best of what is currently available to produce a better, more efficient, management information system. The system should be enhanced to meet the needs of all stakeholders – MoJ, the courts, prosecutor office, penal institutions and the general legal community. To accomplish this, judges and court staff need to play a much expanded role in future software development to ensure that a workable user interface is designed – one that is easy for staff to learn and intuitive to use.

2. ENFORCEMENT OF JUDGMENTS

Much of the material in this section is derived from the Assessment desk reviews and two comprehensive and excellent studies of Macedonia's enforcement system. Angana R. Shah, and Antonio Kostanov, Enforcement of Judgments in Macedonia: Problems and Proposed Solutions with a Comparative Perspective, USAID- Macedonia Court Modernization Project (July 2003). Sinisa Rodin, Technical Assistance to Carry Out an Assessment of the Enforcement System in the Former Yugoslav Republic of Macedonia, European Agency for Reconstruction (July 2004).
Under existing Macedonian law, a wholly separate proceeding before an enforcement judge or agent must be initiated in order to enforce a court judgment. This proceeding allows the losing party in the earlier, substantive case, to reopen a range of ostensibly concluded issues and object to a number of actions that the court must take (e.g., inventory, valuation and sale of assets) and then file interlocutory appeals against adverse rulings in the execution proceeding. As a result, an action to enforce a judgment can take as long or longer to complete than the underlying case. At the end of 2003, the Macedonian courts were faced with approximately 210,000 un-enforced commercial and general civil cases. Ninety percent of the enforcement cases are based on “authenticated documents” or documents such as invoices, bounced checks or notarized papers which serve as prima facie evidence of an enforceable debt. A large proportion of these authenticated document enforcement cases are utility bills. In Skopje, for example, 90% of all enforcement cases are unpaid utility bills.

There is general consensus on the causes of Macedonia’s inefficient and ineffective enforcement procedure. Some causes such as inefficient service of process and excessive judicial deference to debtors apply across all judicial proceedings and have already been described above as systemic constraints. Commentators, lawyers and others that the Assessment Team met with identified the following additional causes:

- Inappropriate legal framework providing for a generous spectrum of legal remedies that in turn enable debtors to avoid payment through dilatory tactics;
- Weak and/or ill-defined powers of enforcement agents;
- A lack of appropriate public records and registers (discussed more fully in the next sub-section);
- Social and legal culture that lack awareness and expectations of due process of law; and
- The lack of technical and financial resources.

An example of the shortcomings of the existing Enforcement Law is that it has 13 provisions that provide for a hearing and each hearing typically takes from 15 days to one month to schedule. Enforcement judges have no power to demand identification of the debtor or to compel debtors to disclose assets and while they have authority to penalize debtors for non-compliance with requests, this power is rarely used in practice.

In response to these problems, the Ministry of Justice has developed a new Enforcement Law with the help of the USAID-funded Court Modernization Project. As presently drafted, the new law contains two major innovations in the enforcement procedure. First, it does away with the need to seek permission for enforcement through a second

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51 Judicial Reform Strategy, p. 15.
52 Rodin, supra.
53 Shah and Kostanov, Enforcement of Judgments in Macedonia, sections II C & D (July 2003).
54 At the time of drafting the Assessment in mid-April 2005, the new draft Law on Enforcement was under consideration in the Parliament following its second reading.
court proceeding. Instead, court judgments will become legally enforceable from the time they are issued. Second, enforcement will no longer be conducted by public employees under the direction of enforcement judges. The new Law will create an independent enforcement agent service regulated and licensed by the Ministry of Justice and assigned to a specific Basic Court jurisdiction. The Law goes into great detail providing for the creation of a self-regulating Chamber to supervise and discipline enforcement agents, describing the specific requirements for becoming an enforcement agent, proscribing how enforcement fees will be set (proposal from Chamber must be approved by MoJ), requiring professional liability insurance and laying out the regulations for deputy and assistant enforcement agents. Under the new Law, debtors can only object to enforcement procedures and not the substance of the enforcement action. (These appeals are strictly limited in time and would be directly to the Court President who must rule within 72 hours.) Only creditors, under the new Law, will be able to delay or suspend an enforcement procedure and then only under limited circumstances.

The new Law provides for a delay of one year before its provisions would become effective. During this period the Law will require that the necessary regulations and bylaws be prepared. An exam will be developed (based on an outline provided in the Law) and potential enforcement agents will be recruited and given time to prepare for the examination. (The MoJ expects that a number of existing enforcement judges will apply to become enforcement agents.) For a period of time after the new Law becomes effective, the Ministry is planning on maintaining a dual enforcement system with the existing enforcement judges continuing to oversee ongoing enforcement actions.

Throughout the Assessment, the Team was impressed with the generally positive response that the new Law received. Judges, lawyers and others felt that moving to a “private sector” solution through the creation of independent, but regulated, enforcement agents would have a major impact on improving the efficiency of judicial enforcement. It should also be noted that the new Law follows closely the requirements contained in the Council of Europe’s Recommendation on judicial enforcement. That said, it was also clear to the Assessment Team and those MoJ officials involved in the preparation of the new Law that significant efforts and resources will be needed to fully implement the Law’s provisions. USAID has agreed to continue to provide assistance with the drafting of implementing regulations but other donors will need to step in to help with institution and capacity building resources and advice. The MoJ has recognized that it is presently unprepared to take on the licensing and supervision role for the enforcement agents and will need training and additional resources if it is to improve on its experience with a similar supervisory role for the bar and notaries. The creation of a new institution or agency such as the Chamber of Enforcement Agents will likely take longer than the one-year implementation period provided for in the Law. In particular, the recruitment and training of enforcement agents who will wield significant enforcement powers will take care and close attention. The MoJ recognizes the need to prepare the public for the change to private enforcement agents. But the Assessment Team feels that the

psychological change that bankers, enterprises and other potential users of enforcement agents must undergo should not be underestimated.

**Box 4 – Abusing the Enforcement Process?**

This property rights case concerned a right of way dispute between two neighbors in Skopje. The Court duly awarded judgment and attorney costs in favor of one party ("A") against the other party ("B"). Immediately following the decision, A moved to enforce the judgment against B. In consideration of B’s financial situation, the Court allowed B to pay the amount owed in 12 equal installments. The court never specified the manner in which the payments should be made. B duly paid the entire judgment via 12 monthly payments, which were deposited in the post office for delivery to A. B kept full records of all the payments made, and his instructions to the post office, but none of this was recorded in the court case file.

The post office has a policy of only keeping records for 18 months. Just as 18 months after the last payment had expired, the attorney for A informally and falsely notified the enforcement judge that no payments were made. The enforcement judge, without any formal complaint or notification from A or his attorney, proceeded to enforce the “unpaid” judgment. The judge refused to accept the payment receipts from B as proof of payment to A and demanded that B prove that A actually received the payment. Upon inquiry to the post office, B was informed that the 18 month record keeping period had passed, and thus the post office would not be able to provide proof of receipt by the defendant. However, through informal channels B was able to locate the delivery receipts from the last two payments to A in the post office records. This too did not convince the judge that the whole amount had been paid. B then advised the post office that he will have no choice but to file a claim against the post office and against the delivery postman for the sums paid to the post office but not delivered to A. The delivery postman then on his own initiative obtained an affidavit from A that he in fact did receive all payments. In addition, the post office attorney executed an affidavit stating that based on the found records and on the affidavits of the delivery postman and other individuals who witnessed the delivery of certain payments, that the post office delivered all the payments to defendant.

The enforcement judge was shown all the records and affidavits and then found that B had satisfied the original judgment. B later learned from A’s attorney that it was the attorney who had asked the judge to enforce the judgment, even though A (and his attorney) were well aware that the judgment was paid in full. Their purpose was to obtain double payment. The informal contact with the judge, the initial lack of co-operation or interest from the post office, the need to resort to informal measures to obtain information and the co-operation of institutions, and the absence of any follow-up investigation of the actions of the parties all would seem to be abuses of the enforcement system. These problems contribute to the lack of confidence in the judicial enforcement system.

3. **SPECIFIC CONSTRAINTS IN JUDICIAL ENFORCEMENT OF CONTRACT, CREDITOR AND PROPERTY RIGHTS**

While each of the issues or problems discussed above can impact any case in a Macedonian court, there are some problems that are more likely to have a negative effect on the enforcement of contract, creditor and property rights that is the focus of this Assessment. These specific constraints tend to arise through the interaction between the specific institutions involved in enforcing these rights and the courts. (See Introduction, Figure 1.) Such institutional problems were found in 19% of the cases reviewed in the Assessment’s Case Analysis. In nearly all of these cases a government institution did not
cooperate fully with the court either by not appearing when requested or not providing requested information in a timely manner. As a result, at least a portion of the delay and backlog that presently characterize Macedonia’s judicial system is due not to shortcomings in the judiciary but to government agencies’ and institutions’ lack of deference to, and cooperation with the courts.

In one case, an expert from the State Department for Geodetic Matters (SDGM) was requested by the court to inspect property in dispute in a case. Upon completing the inspection the expert submitted its report to the court but then failed to appear to testify as to the findings in the report on two different occasions, delaying the case for over 4 months. In another case, a judge, exercising the court’s authority to preserve assets, issued a provisional order prohibiting the defendant from selling, disposing or encumbering the real property in dispute in the case. The judge ordered that this provisional decision be entered into the Public Cadastre book in order to provide notice to other interested parties. In response the SDGM informed the court that its order could not be put into the cadastre because the cadastre for that part of Macedonia had not yet been established. The Case Analysis found similar institutional obstacles arising in cases involving the Court Trade Registry (information incorrect or not updated), State Employment Bureau (requested information not delivered in a timely manner), Ministry of Labor (requested information not delivered), and the Ministry of Internal Affairs (information regarding a defendant’s address for service of notice not provided in a timely manner). While these examples arise from the review of a small sample (99) of cases, it is likely that similar problems can be found in other cases in Macedonia’s courts.

Part 4 of the Assessment will assess the operations of many of these institutions and will provide recommendations for overcoming the obstacles that they raise to the enforcement of creditor, contract and property rights. However, where these institutions intersect Macedonia’s judicial system, there are also specific judicial “solutions”. The Judicial Reform Strategy proposes that legislative changes be made to a series of laws governing these institutions (e.g., Law on Central Registry, Law on Cadastre, and Law on Court Registry) in order to make information on debtors more readily available. While such legislative changes are likely necessary to improve agency-court cooperation, additional steps could be taken within the judicial system to reduce these institutional constraints.

The lack of cooperation with government agencies and institutions is one manifestation of Macedonian judges’ lack of authority in the courtroom and their aversion to using the procedural tools and sanctions available to them. As discussed above, the changes in the Civil Procedure Law and other changes envisioned in the Strategy should provide judges with the necessary tools, including sanctions, to require recalcitrant institutions to provide requested information and produce necessary experts and evidence. However, as also discussed above, judges must be prepared to change their existing, passive practice too, if these new tools are to be useful. Expanded and more detailed training both within the judiciary, through the new judicial training institution, and in the government agencies themselves will also be required. It will be necessary for both judges and agency officials to understand better their respective roles once a dispute is in court. This will be particularly important for the effective enforcement of real property rights as the cadastre
is expanded and completed. In addition, adoption and implementation of the Strategy’s proposals to enhance the independence of the judiciary should increase the courts legitimacy in the eyes of the public and the other branches of government. This development could have the added benefit of changing the attitude of government agencies vis-à-vis the courts from one of disregard and neglect to one of deference and respect.

4. ALTERNATIVE DISPUTE RESOLUTION – ARBITRATION AND MEDIATION

Given the issues and constraints facing Macedonia’s judicial system, alternative dispute resolution (ADR) methods, such as arbitration and mediation, could provide an option to help reduce court backlogs and accelerate the resolution of commercial and other disputes. In fact, of the 23 cases the Assessment Team observed in two First Instance Courts, seven (7) or nearly one third were in some stage of settlement – from initial discussions between plaintiffs and defendants to try to negotiate a resolution to the submission by both parties of an agreed settlement to their dispute. However, in each of these cases the judges required additional information or evidence from the parties before he or she would be willing to recognize a negotiated end to the case. The Team’s observations verify the conclusion reached in a number of studies that touch on Macedonia’s experience with ADR: that arbitration and mediation are not used in any significant way to address commercial disputes in Macedonia. One study has noted that, “Macedonians use courts extensively for dispute resolution rather than settling cases outside of court on their own or with third-party assistance (such as mediation and arbitration). In most advanced economies, there is a much lower use of courts for dispute resolution – they are seen as the last resort, not the first resort.”

There appear to be a number of causes for the lack of use of ADR techniques. First, the legal underpinnings for arbitration and mediation do not presently exist in Macedonian law. A draft Arbitration Law has been prepared with donor assistance (primarily EAR and USAID) but this has not advanced very far in the Government and legislative processes. Without such a law, it is unclear whether and how arbitral awards would be enforced, particularly in light of the difficulties with enforcing a court judgment discussed above. Macedonia also does not have a Mediation Law. While mediations can take place without such a law, a formal structure for, and recognition of, mediation would be helpful in overcoming the inertia against using non-court procedures. Second, what arbitration that does take place is done exclusively by the Chamber of Commerce’s Arbitration Court, which is not well regarded among lawyers, businesses or judges. Third, Macedonia’s businesses are not well informed about the advantages in time and cost that could come with the use of ADR. Fourth, under existing court procedures and


57 Channel and Williamson, Judicial Specialization in Commercial Dispute Resolution, p. 15.
practice, Macedonia’s judges do not systematically manage cases; there is no filtering and referral mechanism that could promote alternative methods of dispute resolution at the early stages of a trial. Finally, up until the adoption of the Judicial Reform Strategy, there was little leadership from the Ministry of Justice for the introduction of changes to promote the use of ADR.

With the adoption of the Judicial Reform Strategy and the ongoing activities of a number of international donors, particularly the International Finance Corporation’s Southeastern Europe Development group (SEED), there are opportunities to address each of the issues listed above. The Strategy provides formal Government approval for the introduction of modern ADR techniques in Macedonia by proposing the development of a Law on Mediation during the third quarter of 2006. USAID’s Corporate Governance and Company Law and Financial Sector Projects, working with EAR, are prepared to revise and update the draft Arbitration Law and support its adoption. SEED and the Macedonian Business Lawyers Association have trained mediators and helped to organize a Macedonian Association of Mediators. SEED has also begun a public awareness campaign among the Macedonian Judges Association, businesses and others in order to promote the benefits of ADR throughout Macedonia’s professional and private sectors.

As a result of this activity by donors and the Ministry of Justice’s endorsement, the groundwork for the successful “supply” of ADR will come into place over time. The backlog and delay in adjudicating disputes through Macedonia’s court system would appear to evidence a need for such non-court dispute resolution techniques. It will be important however, to turn this apparent need into a clear “demand” for ADR services. Continued promotional work with Macedonian lawyers, judges and businesses by SEED and others will help. But in the Assessment Team’s view it is likely that a more formal court-annexed or court-recommended mediation process will be necessary in order to establish mediation on a broader scale. Given the Macedonian pre-disposition to look to the courts to resolve disputes in the first instance, a court-annexed mediation process whereby judges would be required or have the discretion to refer cases to mediation before a trial starts should be acceptable to Macedonian litigants. With a clear demand for ADR services, a commercial mediation service (used before filing suit) could also be established and have an even greater impact on reducing court delays.

58 Judicial Reform Strategy, p. 15. Through its ongoing work, SEED has begun to prepare an informal working draft of a Mediation Law.
Part 4: Other Constraints on the Enforcement of Creditor, Property and Contract Rights

Introduction

Heavier regulation is generally associated with more inefficiency in public institutions and worse economic outcomes. However, the legitimate need for regulation to deal with market failures is recognized, and two examples are credit rights — the legal rights of lenders to recover their investment if the borrower defaults — and the efficiency of enforcing property rights through the courts. A number of donors in Macedonia have provided assistance and analysis in the area of enforcement of creditor, property and contract rights, discussed in more detail in this section.

Overall, the Macedonia Corporate Governance and Company Law Project (CLIR) investigated the applicable commercial legislation, institutions and functioning of the courts in more detail. The CLIR diagnostic methodology measured seven areas of essential commercial laws across three dimensions of implementation while also examining the social dynamics involved in achieving progress and overcoming constraints. The areas of law examined were: bankruptcy, collateral, company, competition, contract, foreign direct investment (FDI) and trade. The examination focused on existing laws and regulations (Framework Laws), the government institutions responsible for implementing those laws (Implementing Institutions), and the civil society and private sector organizations that are essential for the system to function effectively (Supporting Institutions), providing quantitative scores for each area. The scores are based on hundreds of questions regarding compliance with emerging international standards in each area. In addition, the methodology examined the various forces supporting or undermining reform efforts, including cultural, social, and economic factors that bear upon the results desired. In all areas, Macedonia has shown significant progress. The scores for Framework Laws demonstrate a 7% overall improvement, with the greatest improvements in collateral, competition and trade. Implementing institutions did even better, with an overall increase of 10% - but only if the low scores for courts (bankruptcy and contract enforcement) are eliminated. In this regard it is important to note that bankruptcy proceedings and enforcement of commercial contracts which require unnecessarily high costs are associated with lower enterprise productivity, investment and greater informality.

The Assessment team found that additional work is still needed, particularly in the area of implementation and enforcement, as discussed in more detail in this Part. In Macedonia, as elsewhere in the Region, the legislative frameworks are increasingly considered by

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60 CLIR Assessment.

61 FIAS Report on Administrative Barriers and the Program for Stimulating Investment and Attracting Foreign Investment by the Ministry of Economy.
users to be adequate, but with implementation lagging and the supporting institutions underdeveloped. For example, the Bankruptcy Law received a high score of 87% under the CLIR evaluation.\textsuperscript{62} It is the considered opinion of the Assessment team that generally, further legal amendments should be enacted only once shown to be needed after practice and implementation. A recent example of such an amendment imposed a deadline for submission of claims. Previously, new creditors could appear at any time during the course of proceedings, creating substantial disruptions in the distribution of assets. Under the new amendment, creditors who do not meet the deadline for submission of claims lose their rights to the claim within the procedure. This has already begun to bring greater discipline to the proceedings.

The Courts remain to be one of the greatest weaknesses in the implementation and enforcement of creditor, property and contract rights. The perceived quality of the Courts actually declined since 2000.\textsuperscript{63} This finding is in keeping with problems noted in the FIAS Report on Administrative Barriers and the Program for Stimulating Investment and Attracting Foreign Investment by the Ministry of Economy. Moreover, members of the Macedonian Business Lawyers' Association identified court reform as their number one priority in a survey of problems encountered by these legal professionals. Another significant finding was that the existing laws – and thus the overall investment environment – are threatened by the system of drafting, adopting and amending laws, which would be vastly improved through greater transparency and involvement of stakeholders.

Non-governmental commercial associations are still developing in the role of supporting the enforcement of creditor, property and contract rights. Capacity and institution building needs to remain high, but overall the CLIR assessment rates them as follows:

- **Successful institutions** include the Macedonian Business Lawyers Association, the Macedonia Bankruptcy Association (funded through USAID), the Macedonian Competitiveness Council, the American Chamber of Commerce in Macedonia, and the International Council of Investors.
- **Institutions with a mixed record** include the Macedonian Bankruptcy Trustees Association, the Macedonian Bar Association, and the Macedonia Judges Association.
- **Poorly functioning institutions** include the Macedonian Chamber of Economy, which is under well-deserved attack.

\textsuperscript{62} Other assessments were more inclined to award a moderate rating to the legislative framework. \textit{See} footnote 59 below.

\textsuperscript{63} CLIR Assessment supra.
Creditor Rights

Background

The Macedonian parliament passed a modern Bankruptcy Law in late 1997; it came into force May 15, 1998. The law was based loosely on the German Insolvency Act of 1994, and more closely on the Croatian Bankruptcy Law, itself based on the German law, but adapted to the political and legal climate in the republics of the former Yugoslavia. Ironically, the Macedonian law came into force before either of the laws it was patterned on, which meant that there was no history of implementation of this particular model of law to draw on when it was being drafted. Since May 1998, the Macedonian bankruptcy law has been amended four times, and there is currently another amendment drafting process ongoing, discussed in more detail below. There is a strong argument that the original law did not contain any serious flaws, and that while the first two sets of amendments tended to clarify and improve certain articles, the more recent amendments have included provisions which impeded, rather than advancing the efficient application of the law. The latest round of amendments has been designed specifically to remove some of the "accretions" of previous amendments, and to incorporate the lessons of several years of implementation. The new draft has also benefited from the findings of the comparative EBRD Insolvency Assessment, as well as legislative developments in neighboring countries.

The law is regarded by many of the participants in the proceedings who were interviewed as practical and workable, and that routine bankruptcies are handled efficiently and reasonably quickly. In its recent assessment of the insolvency laws of 27 transition countries, the EBRD described the Macedonian bankruptcy law as "generally satisfactory and, in many areas, of a high quality". However, it is clear that when the debtor is large and/or politically well connected, or still socially or state owned (Macedonia has largely completed the privatization of socially owned enterprises) the process does not work nearly so well.

The obvious conclusion to be drawn is that the structure of the law is not really the main problem; rather it is the independence and competence of the court, as well as of the bankruptcy trustees who implement the law which requires considerable strengthening. As an example, the president of the basic court in Veles who has overseen what is easily the most complex bankruptcy in Macedonia, has advised that there are only two trustees in the whole of Macedonia who he considers competent to administer a large and difficult

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64 In terms of the Insolvency Law Assessment Project: Report on the Results of the Assessment of the Insolvency Laws of Countries in Transition (June 2003), Macedonia generally received a "medium" rating for the content of its insolvency laws. This conclusion is also confirmed in other studies, for example Administrative Procedures for Doing Business in Macedonia (June 2003). Foreign Investment Advisory Service ("FIAS"), a joint service of the International Finance Corporation and The World Bank. The preceding contrasts slightly with the rather high 87% rating achieved under the CLIR Assessment – see above.
file. Other bankruptcy judges suggested that there were between 20 and 30 competent trustees who could handle less complicated cases.

Although the bankruptcy law contains a number of provisions, which stipulate fines or even imprisonment for inappropriate behavior, the fines proposed, are nominal, and no one in Macedonia has ever been fined or gone to jail for a "bankruptcy offense". This should not be interpreted as meaning that all debtors and creditors are honest; what it means is that there are no negative consequences for inappropriate behavior, and as a result there is a lot of such behavior. Transparency International's Corruption Perception Index ranks Macedonia in 97th place amongst 145 countries, where it is tied with Nicaragua, and is just ahead of Eritrea and Papua New Guinea. Until there is a serious effort to combat corruption, state capture and other anti-social behavior, it is unrealistic to expect the administration of bankruptcy to exist as an island of virtue in an otherwise non-virtuous environment. But some of the suggestions contained herein should contribute to changing this situation. Unfortunately, the latest round of amendments to the law preserves the practice of stipulating largely nominal fines against individuals.

The World Bank 2004 Cost of Doing Business survey found that with regard to the results of bankruptcy proceedings, Macedonia performed significantly worse than other countries in the region and the OECD average, as demonstrated in the table below:

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Macedonia</th>
<th>Regional Average</th>
<th>OECD Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time to Complete a Bankruptcy (years)</td>
<td>3.7</td>
<td>3.3</td>
<td>1.7</td>
</tr>
<tr>
<td>Cost, as a % of the estate</td>
<td>38</td>
<td>13.1</td>
<td>6.8</td>
</tr>
<tr>
<td>Recovery rate (%)</td>
<td>7.9</td>
<td>30.5</td>
<td>72.1</td>
</tr>
</tbody>
</table>

The time taken to complete a bankruptcy seems to be gradually worsening, as comparable data from the 2004 Doing Business survey shows 3.6 years to complete a bankruptcy, as compared to the 3.7 years in 2005. The cost, as a % of the estate, remained unchanged at 38% over the two years.

The following discussion is based on a number of sources, including extensive interviews during missions, conclusions of the legal and creditor rights environment made as part of a World Bank Financial Sector Assessment Project (FSAP) in 2003, the assessment of the bankruptcy law made by the EBRD in 2003, the CLIR Assessment and other sources referenced herein.

65 See transparency International's website at http://www.transparency.org/
Number of Bankruptcies and the Capacity of the Judicial System

Based on statistics gathered annually by the Ministry of Justice, it appears that there is a revolving stock of some 2000 “unresolved” bankruptcy cases in the whole country. No breakdown is available as to the proportion of these which are petitions to open preliminary hearings, open preliminary hearings, and open bankruptcy cases. There is anecdotal evidence that suggests that a very high proportion of preliminary proceedings are in fact rejected, and that the number of open bankruptcies cases is not large. Between 2000 and the end of 2003, two unusual factors influenced the number and size of open bankruptcies. The first of these was the end of the Payment Operation Service (ZPP) on December 31, 2001, and the transfer of any bank accounts which were not “blocked” by unpaid payment orders to the commercial banks. Accounts which were not in good standing, and so could not be transferred, became the responsibility of the Agency for Blocked Accounts, part of the Ministry of Finance. This agency had the power to initiate applications to open bankruptcy proceedings on behalf of the holders of unpaid payment orders, which it did whenever it had sufficient funds to pay the required court deposit. This agency ceased to exist on December 31, 2003. Secondly, the World Bank FESAL 2 program required the government to resolve through sale or closure 30 large loss-making companies. After an initial attempt to restructure and sell these companies, the government decided to bankrupt a large number of them. Since the end of the FESAL 2 program on December 31, 2003, there have been no bankruptcies of large companies in Macedonia, although a medium sized bank has entered bankruptcy.

The Courts

Increasing the experience and competence of judges who hear bankruptcy matters. At present, there are 16 basic courts throughout Macedonia which can hear bankruptcy cases. In the past, only two of these, Skopje 1 and Skopje 2 have had dedicated judges who handled bankruptcy and liquidation cases; at present there are no such full time bankruptcy and liquidation judges elsewhere. In the other courts, judges have other responsibilities, including hearing other types of cases, company registration and administrative functions. It appears to be the practice in Macedonia that the court presidents regularly move the judges between court departments; in the case of Skopje 1 and Skopje 2, this rotation policy has meant that dedicated bankruptcy/liquidation judges with training and/or experience are regularly rotated out of the bankruptcy division. Where this happens, the new judge assigned to the bankruptcy section replaces the exiting judge in all the files he had been handling. If all the judges had equal training and experience, this would simply be inefficient, and time would be lost while the replacement judge became familiar with the details of each case. But this is not the situation; although there was a donor funded training course in 1998 and 1999 for judges who heard bankruptcy cases, there has been no consistent or comprehensive specialized bankruptcy training available since then. The result is that much of the value of the training described above has been lost, as judges are rotated to other duties. Rotation is a problem which particularly affects the two Skopje courts; where judges in smaller courts have other duties in addition to bankruptcy cases, they do not have the opportunity to build up the same experience in this very complex and technical area of the law as they
would if they heard only bankruptcy cases. In addition to the preceding comments of the Assessment team, it should be noted that in terms of a recent assessment, Courts have shown no improvement and even some regression in hearing bankruptcy cases; practitioners are even less satisfied with judicial capacity now than they were in 2000.\(^{68}\)

There is demand for specialized, better focused and better organized Commercial and Bankruptcy Divisions within the general courts.

**The Bankruptcy Trustees**

*Strengthening the Competence and Accountability of Bankruptcy Trustees;* One of the major innovations of the 1997 law, when compared to its predecessor, was that it imposed a number of strict requirements on who could be appointed as a bankruptcy trustee. One of the most important requirements was that trustees must have passed a qualifying examination, given by a Board of Examiners established by the Ministry of Justice. Initially, this process worked well; the first time the examination was held, only 50% of the applicants passed; those that did are amongst the people still considered to be the most competent by the bankruptcy judges. At present, some 180 people have been granted licenses, although many of them have never been appointed to a bankruptcy case.

The Examination Board regulation and rules clearly set out the "body of knowledge" that prospective license holders can be expected to be examined on; a fairly recent addition has been a Code of Ethics developed by the Ministry of Justice. Although the knowledge requirements are known, there is no training program available for a candidate to acquire this knowledge in a systematic way. And, more importantly, there is no formal mechanism other than supervision by the bankruptcy judge in individual cases, to monitor whether a trustee carries out his/her duties professionally and maintains his technical competence. There is an Association of Bankruptcy Trustees, which tries to fill these functions; but its membership is voluntary, and it includes only a small proportion of the people who have been granted licenses. The latest set of amendments propose a number of important improvements to the licensing regime; the most important of these are that licensees will be required to have taken a certain number of continuing education/professional development courses in order to renew their licenses. In addition, the license of a license holder who has not had an appointment as a trustee in the past two years will be cancelled. The Minister of Economy will specify National Standards (basic professional standards), similar to the National Standards used in Serbia. It is also proposed, in a separate process, that a Chamber of Bankruptcy Trustees will be formed to be the Self Regulating Organization for trustees, and when formed will replace the Macedonian Bankruptcy Association and the Macedonian Bankruptcy Trustees Association described below.

**Supporting Institutions**

The institutions which support the bankruptcy regime were also analyzed in the CLIR Assessment,\(^{69}\) and the findings are still valid, and can be summarized as follows:

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\(^{68}\) CLIR Assessment supra.

\(^{69}\) CLIR Assessment supra.
The Macedonian Bankruptcy Association (MBkA) was established in the late 1990s with assistance from USAID and ABA/CEELI, after a study tour of bankruptcy professionals to the US. The MBkA has been quite successful in leading legal reforms, providing CLE and other training, and providing public information. The Association helped to draft and lobby for the 2002 changes. The Association continues to request assistance in conducting events, in part because the low level of membership fees does not cover expenses effectively. As the bankruptcy courts are improved, however, demand for services is likely to go up, so that it should be possible to cover the costs of events through event fees. It may be several years before the local stakeholders can afford to cover the full price of events involving international experts.

The Macedonian Bankruptcy Trustees Association has been less successful. Originally, trustees were members of the MBkA, but were encouraged to form their own association due to their specialized interests. At the outset, there was an enthusiastic response, but perceptions today are that few meaningful services or activities are being offered. Some respondents felt that the leadership was taking advantage of the office for free study tours abroad, but not providing much in return. It is doubtful that many serious changes can take place until the demand for trustee services increases as the problems with courts are fixed. Oversupply of members with undersupply of work is unlikely to provide the necessary foundation for reforming the association.

The Macedonian Judges Association received mixed reviews with regard to bankruptcy issues. On the one hand, the MJA has actively and even spontaneously advocated changes in the law and practice. Like most other groups, the MJA complains that drafting is left too much in the hand of theoreticians from the law schools and too little grounding in reality and practice. At the very least, some additional work is needed in information and member services.

The Macedonian Bar Association also received low ratings by all members of the legal profession consulted. The MBA appears to suffer from problems encountered in other post-socialist economies in which the bar association is funded through mandatory fees by all practicing attorneys without regard to performance. In Macedonia, the gap in services is filled by a very active private voluntary association of in-house counsel, notaries, judges and lawyers, namely the Macedonian Business Lawyers Association (MBLA). The MBLA receives much higher reviews for publishing legal opinions and magazine articles on bankruptcy issues, providing some legal education, and advocating reforms.

Limited Case Analysis

The above situation in respect to the enforcement of creditor rights is further complicated by the systemic problems within the Court system. This is illustrated in the results of a limited case analysis, conducted by the Assessment team in Skopje 1 Court during March - April 2005. Thirty three (33) creditor rights cases were included in the sample. Some of the problems which hinder or prevent the efficient adjudication of these cases include:
Procedural problems, which were encountered in all 33 of the cases. Examples:

- Non-delivery of documents, present in almost all the cases at one time or another, which prevent or hinder efficient adjudication and enforcement. The delivery department is not efficient, accurate nor prompt. This is the most repeated ground for delaying the process.
- Repeated absence of parties, without any sanctioning from the Court.
- Court not enforcing the applicable procedural provisions, for instance in relation to urgent proceedings and time limits. The reasons for this appear to be mixed, including apparent insufficient knowledge. Overall, there appears to be a lack of urgency by the Courts to bring matters to finality.

- Institutional problems (5 cases), including the Court Trade Register (incorrect information on legal entities), and the State Employment Bureau (non-delivery of information required by the Court).

- Possible political interference (4 cases), related to one proceeding party being close to a political party or legal entity owned by the state, where the outcomes in the Court consistently favor that party. One example is the Court not proceeding with the case in favor of such a party, without any apparent justification.

Comments on the Bankruptcy Process

Initiating a bankruptcy

Although the bankruptcy law allows a debtor to initiate a bankruptcy on the basis of prospective of future insolvency, this virtually never happens in Macedonia. Article 47 of the bankruptcy law requires that a debtor initiate an application to open a proceeding within 30 days of the occurrence of a “reason for bankruptcy”, typically the failure to be able to service its obligations in a timely manner. Other articles in the law provide fines against the insolvent debtor and its management for failure to submit such an application. The logic of fining an insolvent debtor is unclear; the fines against the management of the debtor of between 1000 denars and 50,000 denars (roughly USD 20 to USD 1000) are trivial and are unlikely to change behavior as a result. In any event, no fine, and no damage lawsuits have been brought against managers who operate their business when insolvent. As in other countries, such behavior makes it extremely difficult to develop a reorganization plan to revive the debtor or its business operations; reorganization plans tend to involve the direct or indirect transfer of the debtor’s assets to its creditors, who can then use them or dispose of them on a timetable not driven by the requirements of the Bankruptcy Law.

Expediting the process through the direct opening of the bankruptcy without incurring the cost and delays inherent in a preliminary hearing. The bankruptcy law contains provisions which allow the bankruptcy panel to open a bankruptcy proceeding directly upon the application of the debtor, provided the required documents are submitted. More
importantly, Article 4(4) of the bankruptcy law stipulates that a presumption of both insolvency and indebtedness should be made where the petitioner holds an unexecuted judgment. This provision was specifically included in an early amendment to the law to speed up proceedings; perversely, it was interpreted by some judges as either permissive or worse, that it meant that a creditor petitioner was required to have an unexecuted judgment before it was entitled to petition the court; it was virtually never used as a tool to expedite proceedings. At the same time, creditors were facing delays as a result of frivolous defenses regarding invoiced amounts due, which resulted in the law being amended in 2002 to the effect that a previously obtained executive order cannot be contested. This treatment requires a creditor to exhaust all other remedies (a time consuming and expensive process in Macedonia), and is an effective barrier to access to the bankruptcy remedy. Anecdotal evidence suggests that there are few cases where a bankruptcy is opened directly on either of the bases described above. Article 4(4) is proposed to be removed in the latest set of proposed amendments.

Discretionary setting of the deposit required to fund the preliminary hearing can be used as an arbitrary barrier to access. Because the court has no resources to cover filing fees and advertising costs, or the fees of an interim trustee or other experts engaged by the court to determine whether or not the conditions to open a bankruptcy exist, the law requires that a petitioner, including the debtor, lodge with the court the estimated costs of the preliminary proceeding. There is no formal tariff, and while the judges have tended to agree amongst themselves on an informal tariff for different sized cases, there have been instances where the tariff appears to have been set prohibitively high, in order to discourage the petitioner from proceeding.

Exemption from Filing a Funding Deposit granted to the Tax Authorities. A recent amendment to the Bankruptcy Law has created another problem; this amendment stipulates that the tax department is exempted from the requirement to lodge a deposit with its petition; in such a case, it is completely unclear from what source the fees of the experts and interim trustee are to be paid. This exemption is proposed to be removed in the latest set of amendments.

Definition of Bankruptcy Cases as “urgent”. Article 7(2) of the law describes as a principle that a bankruptcy proceeding is “urgent”. Discussions with local experts indicate that “urgent” is a special expedited procedure set out in the Code on Civil Procedure which applies to cases involving labor disputes and trespass, but not bankruptcy. In practice, especially in a court where, there are no dedicated bankruptcy judges, this means that a petition to open a case joins the queue with all other commercial cases waiting to be heard, and may be delayed for several months. Even after a proceeding is opened, there does not seem to be a practice of treating bankruptcy related cases any differently from any other form of dispute before the courts. This results in long delays between hearings at all stages of the bankruptcy, and in practice, the complete disregard for the deadlines set out in the law which apply to the courts themselves.
Required Notice to the Tax Authorities of a Petition to Open a Bankruptcy Proceeding.

The requirement in the present law that the tax authorities receive notice of all petitions to open bankruptcy proceedings has been removed in the proposed amendments. The amendments require that a creditor file its claim within 30 days of the opening of the proceeding, or lose its right to participate. This may well result in the tax authority losing its right to file a claim at all, unless it can organize itself to routinely identify bankruptcy debtors and file protective claims while it develops an accurate claim. The amendments also propose that hearings and assemblies should pass decisions on the basis of a majority of the value of the established claims actually present and voting. This will also put considerable pressure on the tax authorities to respond quickly to the invitation to file its claim in a bankruptcy.

Use of recusal applications to delay proceedings. Until the passage of a recent amendment to the Bankruptcy Law, it was possible for a party to request during a hearing, the recusal not only of the presiding judge, but of other judges, including judges at a higher court level. There was no requirement that such applications be based on evidence. This tactic was used to great effect to delay the proceedings in the case of MHK Zletovo (see Case Study below). In response to the perceived abuses in this case, it is now possible to file a recusal request in a bankruptcy case only in advance of a hearing, only against the presiding judges, and only when supported by some form of evidence.

Preliminary Proceedings

Delays in opening a preliminary hearing. A recurring complaint from practitioners relates to the delays which occur from the time between when an application is filed, and when the hearing to open a preliminary proceeding is held. However, very little data is available in this regard. The CLIR Assessment made a similar observation. They were informed that detailed statistics on bankruptcy cases can only be obtained following a request from a Member of Parliament, and consequently the team was unable to obtain any meaningful information in this regard.70

No stay on key corporate activities during a Preliminary Proceeding. The law clearly sets out which court has jurisdiction; the basic rule is the court district in which the debtor is resident if an individual debtor, or where the debtor is entered in the company register, if a legal entity. But, as the case of the MHK Zletovo indicates (see Box 5), there are presently no prohibitions against the debtor removing the registered office (“seat”) of an incorporated debtor to another jurisdiction at any time before a bankruptcy is opened. At the very least, this presents the opportunity for a debtor to delay the proceedings; at worse, as in the case of MHK Zletovo, it provides the opportunity for an apparent fraud. The amendments currently under consideration include a proposal that will prevent a company from moving its registered seat after a preliminary proceeding has been started.

Strengthening the responsibility of the debtor and other knowledgeable parties to deliver all relevant information to the Court and to any temporary trustee or expert appointed by

70 CLIR Assessment supra.
the Court in a Preliminary Hearing. At present, the law describes the obligation of the debtor to provide information to these bodies, but does not contain any meaningful deadlines. In addition, the obligation does not extend to other parties who may have relevant information about the financial state of the debtor, including its auditors, financial advisors, legal and accounting department heads (unless the heads of these departments are members of the management or supervisory boards). Equally important, although the law contains provisions for the imposition of strong penalties for non-cooperation, the courts either chose not to impose them or consider that they do not have the adequate authority to actually put a person in detention. Such an action is a criminal sanction, and it is unclear to commercial bankruptcy judges as to their capacity to impose such a sanction on the basis of the Bankruptcy Law.

Opening the Proceedings

Taking Possession of the Debtor’s Assets. The trustee has an obligation to take possession of the debtor’s assets forthwith upon appointment. Where the debtor resists, the trustee can call on the regular police, but they are not always cooperative, and impose their own procedural requirement, including the presence of the bankruptcy judge. The problem is that the trustee apparently does not have incontrovertible right to possession of the assets, in the eyes of the enforcement authorities. This situation is compounded by the lack of any meaningful sanctions against a debtor that refuses to fulfill its legal obligations by cooperating with the trustee, including relinquishing its assets. While the law is clear regarding the obligation of the debtor to give possession of its assets to the trustee, the law does not impose the same obligation on third parties who may be holding assets of the debtor, and who are not entitled to a possessory lien. This omission will be addressed in the proposed amendments.

Notice to Creditors of the Opening of Proceeding. The Law specifies that adequate notice is given to creditors as a result of publication in the Official Gazette and by posting on the notice board of the court. This gives little comfort that creditors, especially foreign creditors will receive timely, or any, notice of the opening of a proceeding. This has practical consequences, as the creditor who files past the deadline for submission of claims must pay the costs of the additional hearing required to consider its claim.

Assessment of Claims

Disputed Claims are resolved as normal disputes in the civil section of the court. In some courts, lawsuits to resolve disputed claims are not heard within the bankruptcy section. The result is that these claims can take a very long time to resolve, which contributes unnecessarily to the time taken to complete a bankruptcy proceeding.

Sale of Assets

Unclear title to real property delays its sale. Virtually all the participants in the bankruptcy process interviewed, complained about the functioning of the cadastre. It is clearly extremely important, not only for bankruptcy purposes, but for many other
purposes as well, that the cadastre records are completed as soon as possible. Equally importantly, the cadastre needs to function as a service centre which is accessible to its users. Anecdotal evidence suggests that there have been occasions when the cadastre staff has refused to recognize a court judgment; this is clearly unacceptable, and must change.\textsuperscript{71}

Sale of shares in other companies owned by the debtor. A specific issue encountered during interviews was that the Securities Law apparently only gives the registered owner the right to sell shares. A trustee clearly has the power to act as the owner of the shares, but is not the owner itself. The references above to clarifying the authority of the trustee also apply in this context.

\textbf{Box 5 – MHK Zletovo: A Case Study}

The following case study illustrates some of the problems encountered during a particularly complex bankruptcy matter in Macedonia.

MHK Zletovo AD is a company that owned a lead/zinc smelter in Veles, about 45 kilometers south of Skopje. In the 1970s it was part of a group of companies which included a number of lead/zinc mines, the smelter and a battery factory. This group was separated into individual components in 1989-90 but each of the successor companies retained their business relationships with each other. MHK Zletovo was privatized through the issue of "internal shares" to the employees according to the Ante Markovic program of the late 1980s; the government sold its remaining 13\% holding in MHK Zletovo in 2001, at a nominal per share price of 1 denar. Because of its financial weakness, MHK sometimes engaged in tolling operations, where it would receive raw material owned by others, process it, and retain a portion of the output as its compensation.

On February 6, 2001 MHK fraudulently issued a mortgage on its assets as collateral to secure the payment for the raw material received in these tolling agreements with finished product. In 2001, the mortgagee, allegedly a sole proprietorship in Skopje owned by an offshore company, established by former management of MHK, confusingly also called "MHK", sought to enforce its mortgage to recover amounts allegedly unpaid. The management of MHK agreed to transfer the whole of the assets of the company to the mortgagee in direct negotiations, without any requirement to establish the legitimacy of the debt owing, or the value of the assets pledged. Oddly, the assets foreclosed, allegedly included current assets and the books and records of MHK. The management of MHK Zletovo was not dealing at arms length with the new "MHK"; a member of the Board of Directors of MHK Zletovo was the legal advisor and attorney of the new "MHK" The change in ownership of the assets was registered in the land registry in Veles, and the smelter continued to function under a new owner, but with unchanged management. Later new MHK changed its name into INVESTAS.

When news of this transfer of the ownership of the assets became public, in August 2001 Makpetrol, a major private sector creditor of MHK Zletovo, petitioned the Veles court to open a bankruptcy proceeding. This petition was rejected at the basic court level; Makpetrol appealed. During this process, the court president of the Veles court changed, and the judge who had been very close to the management of MHK Zletovo was removed. To respond to this loss of their protection in the Veles court, and after the petition to open a bankruptcy had been filed in Veles, the management of MHK Zletovo moved the registered office of the company to Probostip, a town in the court district of Stip. The Stip court was an obvious choice as in the previous year it had granted an instant foreclosure and transfer of ownership to a Panama based company (reputedly also owned by the MHK management) of the assets of the Probostip

\textsuperscript{71} See section below on the enforcement of Real Property rights and in particular, the planned World Bank project in this regard.
battery company referred to above. The management of MHK Zletovo immediately filed an application in Stip court to have the company declared bankrupt. The Stip court engaged an “expert” who duly found that MHK Zletovo had no assets to fund the cost of the bankruptcy proceedings. The Stip Court accordingly opened and closed the bankruptcy and struck the company from the record, all on the same day, an action which, if not overturned, would have left the creditors without any recourse at all.

Makpetrol appealed, and a lengthy (and expensive) court battle ensued. After much effort, the Supreme Court ordered that MHK Zletovo be restored to the company register and that Veles was the competent court to hear a bankruptcy application. Makpetrol together with Avioimpex, another private creditor, continued the petition to open a bankruptcy proceeding and to recover the assets. After considerable delay in serving documents on the management (the legal representatives of the company refused to accept service, and the management allegedly could not be located), a preliminary proceeding was opened. The first hearing set the pattern for all subsequent hearings; the defendant’s lawyer requested the recusal of the bankruptcy judge, the judges on the bankruptcy panel, the president of court and all the members of the Court of Appeal. Under Macedonian bankruptcy law at the time, such requests did not require any supporting documentation. The Supreme Court was required to resolve each application, which resulted in frequent long delays.

When the bankruptcy was eventually opened, the trustee was able to gain possession of the smelter assets as a result of a failure by the registered owner, Investas, to properly register all the assets in the land titles office. The bankruptcy trustee appointed was supported by a very strong creditors committee, who also provided working capital to keep the plant operating in the short term.

During this period, some of the MHK Zletovo creditors who had also become creditors of Investas started an action to bankrupt this company in the Skopje court. The case was originally assigned to the most senior and competent judge in the Skopje court; however, during the preliminary hearing held to determine the insolvency of Investas, this judge was summarily replaced by the Skopje court president, and his replacement rejected all four applications to bankrupt Investas. Then, to bring pressure on the MHK trustee in possession of the smelter assets, Investas persuaded the public prosecutors office in Veles to initiate a criminal investigation against the trustee on the alleged grounds that that the trustee had stolen what Investas claimed was its property. In fact, the trustee had sold production from the smelter where the raw material purchase had been financed by the creditors of MHK Zletovo. At the same time, Investas obtained an order from a second judge in Veles who had nothing to do with the bankruptcy, ordering that the trustee relinquish possession of the smelter assets to Investas representatives. Many months later, this criminal complaint is still in process.

Three and a half years after the assets were fraudulently transferred out of MHK Zletovo, the Veles court and the trustee of MHK Zletovo are finally in a position to offer the assets for sale. The trustee has recently advertised the assets for sale by international tender. Ironically, the trustee is concerned that a faction of the Board of Creditors will attempt to instruct the trustee to cancel the tender sale, and enter into direct negotiations with an identified investor. Based on the history of this bankruptcy to date, there are likely to be more difficulties in the future.

This case is unusual in a few important key aspects. One was that there were financially strong and determined private sector creditors who were prepared to support the trustee (at least up to the point where the assets are offered for sale). Importantly, the government had only minor claims against the company, and no ownership interests. However, the tax authority has a representative on the Board of Creditors. Another very important factor was that both the bankruptcy judge and the court president persevered in Veles against considerable odds (and temptations: the president advised that he had been offered a large bag of cash) in their efforts to apply their provisions of the Bankruptcy Law.

The problems encountered arise partly due to the structure of the laws in Macedonia. Mortgage foreclosures by direct negotiation between related, or the same party are still possible, and an infinite number of unsupported recusal requests are still fully within the scope of non-bankruptcy procedural law.

Other, more serious problems relate to the behavior of the judiciary; one of the Veles judges has been
dismissed, and a number of criminal investigations have been launched against judges in the Stip court. The Skopje court president acted within his powers to replace the bankruptcy judge in Skopje, although the timing of this particular replacement was unusual.

Criminal investigations were started against a number of the senior management of MHK Zletovo, but these were dropped by the public prosecutor with an explanation that there is not enough evidence. Criminal investigation has continued by private lawsuits by creditors of MHK against the former management of MHK Zletovo, and a new set of criminal investigations initiated, but have yet to produce any charges.

In conclusion, the following table summarizes some of the main legal, institutional and other problems which hinder or prevent effective enforcement of creditor rights in Macedonia. It should be noted that some specific comments to the Bankruptcy Law amendments presently under preparation are addressed in Annex 2:

Table 4-2:

<table>
<thead>
<tr>
<th>General</th>
<th>Legal</th>
<th>Institutional</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• New Code of Civil Proceedings with simplified notice provisions needed.</td>
<td>• Too many courts insufficient experience and expertise; judges with other duties.</td>
<td>• Court records may not be accessible, even to the parties. Publication or access to all judicial decisions could dramatically improve the performance of a number of judges.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• High caseloads lead to delays, especially where judges have other duties.</td>
<td>• No trustee training materials or practice manuals are available.</td>
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<tr>
<td></td>
<td></td>
<td>• Counterproductive judicial rotation policies; rotation may occur in mid-case.</td>
<td>• Lack of meaningful sanctions for inappropriate behavior; lack of enforcement for the sanctions which do exist.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Inadequate training of judges and trustee judges are not independent; at present, the Judicial Council is basically a political body.</td>
<td>• Very little information on the results of bankruptcy, in terms of duration, recoveries, successful reorganizations, etc.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Judges do not adhere to the deadlines set out in the law; there are no penalties for such repeated failures.</td>
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<tr>
<td></td>
<td></td>
<td>• Lack of competent trustees. Trustees not required to have professional liability insurance; confusion between asset insurance and professional liability insurance.</td>
<td></td>
</tr>
<tr>
<td>Application</td>
<td>• Art 4 was meant to allow</td>
<td>• Bankruptcy</td>
<td>• Creditors are largely</td>
</tr>
</tbody>
</table>

50
<table>
<thead>
<tr>
<th><strong>Legal</strong></th>
<th><strong>Institutional</strong></th>
<th><strong>Other</strong></th>
</tr>
</thead>
</table>
| to open a proceeding | a judge to make a presumption on the basis of an unsatisfied judgment; NOT require an unsatisfied judgment as a condition of filing a petition (barrier to access)  
- Notice to tax department of applications to open proceedings should be removed; such notice gives the tax authorities the opportunity to seize assets in advance of opening a proceeding (Art 51.2.2 only allows discretionary stay). | applications must be treated as “urgent” and not queued with other civil claims. However, “urgent” is not currently defined with regards to a bankruptcy case.  
- The present system where the bankruptcy judge has unfettered discretion to set the level of the deposit can be used as a barrier to access.  
- The amendment which exempts the tax administration from lodging a deposit does not solve the funding problem; who is to pay for publication, filing fees, expert and interim trustee fees. | passive, and do not want to incur the expense of initiating a proceeding. |

| **Preliminary proceedings** |  
- Forum shopping during preliminary proceedings  
- Inadequate explanation of what costs are included as costs of the temporary trustee. |  
- Enforcement of obligation on the debtor and others to provide all relevant information on a timely basis. |  |

| **Opening proceedings** |  
- Poor notice provisions; no direct notice to known creditors. |  
- Inadequate authority to take possession of the debtor’s assets. |  |

| **Assessment of claims** |  
- Resolution of disputed claims should be treated as urgent and undertaken by the bankruptcy judge/bankruptcy panel, not the normal commercial division. |  |

| **Sale of property** |  
- Securities law does not allow a trustee to easily sell shares in other companies owned by the debtor. |  
- Weak corporate governance culture prevents trustee from exercising rights on behalf of the debtor  
- Serious problems with the cadastre in establishing title and description of real property of the estate. |  |

There is an expectation that proposed changes in the Code of Civil Procedure and Bankruptcy Code will help to rectify some of the practical problems affecting bankruptcy
cases, especially with respect to delays in proceedings. A previous Assessment expressed
doubt that much will be achieved, without significant training of both judges and
practitioners.\textsuperscript{72} According to judges and lawyers, much of the training needed is not in
the legal aspects of bankruptcy, but rather in how to manage and conduct a bankruptcy
trial. Problems with legal knowledge are perceived as secondary to a lack of
management skills and practices, reflected in unnecessary delays. Presently, further
changes to the Code of Civil Procedure and Bankruptcy Code are being drafted,
discussed elsewhere in this Assessment. These are hopeful signs, provided that the
amendments can indeed be finalized and the necessary training and implementation can
take place. Clearly, some of the difficulties in implementation and negative perceptions
towards bankruptcy come from a limited understanding of the role and function of a
bankruptcy system in a market economy.

\textbf{Property Rights}

In this section, the enforcement of real property rights and shareholder rights in
Macedonia will be examined, with a few brief observations on the still developing area of
intellectual property rights enforcement in Macedonia.

\textit{Real Property Rights}

The overall situation in respect to real property rights was extensively analyzed by
different institutions, including FIAS,\textsuperscript{73} the World Bank (for purposes of preparing a
project),\textsuperscript{74} the European Union,\textsuperscript{75} and the United Nations.\textsuperscript{76}

The existing reports discuss the legal framework, institutional framework, registration of
titles, surveying and construction, and also detail the relevant procedures associated with
acquisition and transfer of real estate rights (denationalization, land surveying,
registration of real estate rights in the Cadastre, various leasing and sales procedures of
state-owned properties), as well as the issuance of a construction permit and connection
to infrastructure and utilities (such as municipal services in Skopje, water/sewage,
telephone/telecommunications, electricity, heating). The results of the FIAS Survey
indicate that the purchase of real estate and construction are the single largest
administrative obstacles for businesses in Macedonia.\textsuperscript{77}

\textsuperscript{72} See CLIR Assessment.
\textsuperscript{73} FIAS supra.
\textsuperscript{74} Real Estate and Cadastre and Registration Project, World Bank (2005).
\textsuperscript{75} Cadastre and Property Registration System in the Western Balkan Countries, European Union (2004).
\textsuperscript{76} Renee Giovarelli, David Bledsoe, Land Reform in Eastern Europe (Western CIS, Transcaucuses,
Balkans, and EU Accession Countries), Seattle, Washington (October 2001), Paper prepared for the Food
and Agriculture Organization of the United Nations.
\textsuperscript{77} FIAS supra.
The main findings include that secure and respected land titles depend on the creation of a reliable and efficient title registry, and that the problems impeding the completion of the cadastre and consolidations of the mortgage data in the cadastre or the Central Registry, must therefore be resolved. Confidence in the registration and cadastre records is low, as the records are significantly out-of-date, and 60-70% of privately owned land and apartments are not registered at all. Property ownership is currently not registered consistently in any central place: notaries maintain a record of transactions they are involved in, but this information is not publicly available; municipal courts are only used to record mortgages, and rarely for recording property transactions; the cadastre agency maintains a land cadastre and is in the process of establishing a real estate cadastre. The lack of confidence and difficulty caused by incomplete records has a negative effect on private sector investment and development of the economy overall: many land transactions are not registered, and cadastre and other records (courts, notaries) are incomplete and out-of-date leading to uncertainty and a lack of trust in the property markets. Another direct consequence of unclear property rights is the constraints on collateral and mortgage financing, making it difficult for citizens to mortgage and transact property.

The GoM has recognized the importance of a secure property rights system for economic growth and broadening economic prosperity. The GoM has begun to address the problems in this sector by establishing a single agency for cadastre and property registration – the State Authority for Geodetic Works (SAGW). The current Law on Land Survey, Cadastre, and Registration of Real Estate Rights of 1986 (LSCR law), amended in 1991, forms the basis of land ownership and title registration, and includes most functions necessary for a viable and secure cadastre and real property registration system. The LSCR Law allows for the formation of a real estate cadastre encompassing the records of the cadastre, other legal registries, and information provided by owners themselves. The LSCR law now also provides for the constitutive approach to registration, whereby the owner of the land acquires the title after registration in the cadastre. Previously the title was transferred with the conclusion of the title transfer agreement. The State Bureau for Geodesy Affairs started the registration of titles in 1993. Prior to that, the Institute only recorded the physical dimensions of the property and the use rights to land. This practice shows the importance of correct registration in the cadastre.

Several other laws have been adopted related to land ownership and registration including laws on denationalization, urban construction land, and agricultural land. However, the

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78 Real Estate, Cadastre and Registration Project, World Bank (2005), Project Information Document.
79 FIAS supra.
legislative framework for land ownership and use, needs further improvements. The
general consensus from the reports appears to be that the improvements should largely be
developed through implementation, although some specific proposals are made for
amendments to the law on LSCR, and also for passing a law on Real Estate Cadastre and
Geodetic Activity.\footnote{Cadastre and Property Registration System in the Western Balkan Countries, European Union (2004). See also, Part 5 “Recommendations” infra.}

The supporting institutions are underdeveloped, and a substantial problem in relation to
the enforcement of real property rights. The resolution of the unclear property issues and
the creation of secure and respected land titles depend much upon the creation of a clear
and efficient title registry, and capacity building in these institutions. The real estate part
of the Central Registry is not yet fully operational. The two major problems identified by
the Central Registry were: (1) the Central Registry database is not compatible with the
cadastre database, and therefore the technical transfer of data was not possible; and (2)
the registration of mortgages in courts was and continued to be performed manually, and
the funding for the Central Registry did not foresee this scale of the work.\footnote{FIAS supra.} An EU report strongly recommends supporting the State Agency for Geodetic Works, the one
agency with the responsibility for cadastre and legal real estate registration. This will
require funds from the World Bank and other donors.\footnote{Cadastre and Property Registration System in the Western Balkan Countries, European Union (2004). See discussion below on the World Bank Cadastre project.}

The lower courts continue to be involved in the process in most cases, first of all as the
institutions registering mortgages on the real estate, and secondly as the repositories of
previously concluded title transfer and mortgage agreements. For those real properties
that are located in municipalities whose entry into the Cadastre has been completed, the
mortgage registration has also been transferred from courts to the Cadastre along with all
the previously registered mortgages. For owners whose property is located in these
municipalities the lower courts are no longer involved in the real estate registration
process.\footnote{The central institution responsible for survey of land and registration of real estate rights is the State Bureau for Geodesy Affairs.}

Based on the “Doing Business” data, and compared to the broader regional and OECD
averages, Macedonia presents a mixed picture in respect to registering real property, but
appears to be performing better than the regional average in terms of time taken for
registration:\footnote{Doing Business in 2005: Removing Obstacles to Growth, World Bank Group (2005).}
When compared with selected countries in the region, Macedonia appears to be substantially better off in respect to the time taken for registration (except for the Slovak Republic), but worse in terms of cost. Only Serbia and Montenegro is worse off in terms of cost:

Overall, the above reports show that the lack of clarity, predictability and certainty are the biggest problems in enforcing real property rights. In the FIAS study, representatives of the companies were asked to indicate the extent of agreement with several statements relating to regulation of property rights in Macedonia. The results are shown in Diagram 1 below, which indicates that for the most part, businesses find that identifying the legal status of the real estate, in particular the land can be difficult and that the ownership issues are often not clear.

Diagram 1. Disagreement with statements regarding the legal status of real estate

Note: Base (mean), those who have premises and have given a particular answer, excluding Hard to say/DK.

Source: FIAS

The above is also not the full picture. Although purchase and sale is a significant contributor to total transactions in Macedonia, inheritance is the primary type of
transaction affecting real property rights. Anecdotal evidence collected by the Assessment team suggests that the same, if not more, uncertainty exists in respect to ownership of private property when inherited.

In order to supplement the understanding of property rights adjudication and enforcement in the Courts, the Assessment team undertook a case analysis of 33 property rights cases opened in 2000 and 2001 in Skopje 1 Court (see Box 1 above and also Box 6 below). The approach of the Court in relation to security of title is important and also how other problems in the judicial system and supporting institutions (such as the Cadastre), are impacting on the adjudication and enforcement of real property rights. A European Union report points out that as a result of these shortcomings, 20-30% of appellate cases deal with land disputes.

<table>
<thead>
<tr>
<th>Box 6 – Worthwhile going to Court?</th>
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<tbody>
<tr>
<td>This lawsuit concerns a dispute over the ownership of a house. The parties are relatives. The plaintiff asserts that she is the owner of the house, which she constructed with the knowledge and permission of the defendant, who is the owner of the land. The plaintiff now seeks a court order declaring that she is the owner of the house and for this order to be recorded in the Public Cadastre Book. Together with the lawsuit, the plaintiff requests a temporary provisional measure (i.e. interdict) that the property not be sold, disposed of or encumbered in any way, and this measure also be written in the Public Cadastral Book. The case is submitted to the Court on 20 June, 2000.</td>
</tr>
<tr>
<td>As the request for the interdict is urgent in terms of the relevant procedural law, the court on 7 August, 2000 proceeded without conducting a hearing and granted the interdict, thereby restricting the defendant not to sell, dispose of, or in any way encumbering the real property, subject to the lawsuit and also for this measure to be written in the Public Cadastral Book. The defendant appealed this decision within the time limit, on 31 August 2000, fifteen days after receiving the decision of the court.</td>
</tr>
<tr>
<td>On 14 September, 2000 the State Department for Geodetic Matters informs the court that the interdict cannot be written in the Public Cadastral Book, because the register is not established for that part of territory yet.</td>
</tr>
<tr>
<td>The first hearing is scheduled and held on 1 November 2000, after almost five months. This hearing was adjourned, as the defendant was not in court and there was no regular delivery to him.</td>
</tr>
<tr>
<td>The second hearing was held on 4 December 2000, all parties being present in court. The defendant argued that as there was an appeal filed against the Decision for the interdict granted on 7 August, 2000 and that the case should be sent to the Appeal Court for adjudication. This request is granted, and on 14 December 2000, the Appeal Court grants the appeal, the interdict is set aside and the case is returned to the first instance court for adjudication. The interdict was set aside; as the Appeal Court found procedural breaches and also that the facts were not properly canvassed.</td>
</tr>
<tr>
<td>The third hearing was held on 13 March 2001, again to hear the case for granting an interdict. All the parties were present in court. Again, the court grants the interdict, prohibiting the defendant from selling, disposing of or in any way encumbering the real property which is the subject of the lawsuit.</td>
</tr>
</tbody>
</table>


87 *Cadastre and Property Registration System in the Western Balkan Countries*, European Union (2004).
and for this measure to be recorded in the Public Cadastral Book and Public Notaries register. This decision was delivered to the parties in mid March 2001.

Again, the defendant submits a timely appeal to the Appeal Court, on 26 March 2001, fifteen days after receiving the decision. On 18 July, 2001 the Appeal Court rejects the appeal and confirms the first instance decision.

The fourth hearing is held on 31 October 2001, which was adjourned as the case was not delivered to the presiding judge by the court administration.

The fifth hearing was held on 30 January 2002, where all the parties and some of the witnesses were present, and adjudication on the merits of the case can start for the first time, i.e. after a period of one year and six months from the filing of the case.

The sixth hearing is held on 27 March 2002, all the parties being present and the questioning of witnesses starts. However, one witness is ill and the court postpones the matter to 29 March 2002, requesting another court to question the ill witness.

The seventh hearing is held on 31 May 2002, all the parties being present, but the hearing was adjourned because the court noted that there was no answer from the other court on the sick witness, and also another necessary witness was not in court. On 3 June 2002, the requested court delivered the notes from the witness questioning, i.e. after two months and one adjourned hearing.

The eighth hearing was held on 30 September 2002, all the parties being present, but the hearing was adjourned again, as the defendant’s witness was not in court and there was also no record of a “delivery of invitation for the hearing” for the witness.

The plaintiff then submitted an application to the Court for another interdict, this time to prevent the defendant or third parties from conducting any construction activities over the real property which is the subject of the lawsuit. Without conducting a hearing, the court on 1 October 2002, grants the interdict. The defendant submits an appeal to the Appeal Court, i.e. fifteen days after receiving the decision.

The ninth hearing was held on 27 November 2002, which was adjourned, as the court decided that the Appeal Court should hear the matter, on account of the pending appeal. On 20 February 2003 the Appeal Court rejects the appeal, on the basis that it was filed out of time.

The tenth hearing was held on 2 June 2003, which was adjourned again because the witness was again not in court.

The eleventh hearing was held on 19 September 2003, when the witness again was not in court. It appears that the judge at this stage was reluctant to grant another postponement. However, on 29 September 2003 the defendant submitted a request in writing for another postponement, which was submitted to the President of the Court, along with the statement of the presiding judge. On 21 October 2003, the President of the Court decided that the request of the defendant should be rejected. On 13 January 2004, the attorney of the plaintiff informs the court that the plaintiff is withdrawing the suit. The reason for this is uncertain, but presumably the matter was settled between the parties at that point, or perhaps the plaintiff just gave up. On 30 January 2004 the court delivers the formal Decision that the suit is withdrawn by the plaintiff and the previous decisions for granting the interdicts are rescinded. The decision becomes final on 18 March 2004.

Source: Case Register, Skopje I First Instance Court

The EU has emphasized that the consideration of specific land policy reforms should be viewed in the context of securing the broad objectives of social justice and economic
development. Overall, the Republic of Macedonia has no comprehensive national land policy. There are a variety of reasons for this situation, but the principal reasons are a clear lack of coordination, cooperation and information sharing among the government ministries that should be responsible for developing a policy. The most significant finding from a policy development standpoint is that there appears to be no effective mechanism in place to produce an integrated approach. Other key issues facing Macedonia are that land is not treated as a whole, local control over land is minimal and changes in land use are difficult to accomplish. Furthermore, it appears that little consideration has been given to how change will be stimulated and monitored or how sustainability is defined and determined. Land policy is a complex area and will not be developed over the short term. It must be evolutionary, inclusive, transparent and feasible.

Among some of the other problems that have reportedly impeded the State Bureau for Geodesy Affairs to complete the new Cadastre, and therefore are contributing to the problems in implementation and enforcement of real property rights, are the lack of financing, high volume of work, lack of planning and cooperation among the state institutions, unclear legislation and unclear policy directions. Problems related to the volume of surveying work could be addressed by introducing private surveyor practice and eliminating the monopoly of the State Bureau for Geodesy Affairs.

Access to information is another important issue. Representatives of companies were asked about the availability of relevant information for real estate and construction regarding the operation and growth of their business and whether they are obstacles or not. 27.1% of respondents claim that availability of information about existing procedures and regulations is an obstacle, and for 53.2% of them it is a major (40.5%) or very severe (12.7%) obstacle. 31.3% of respondents claim that availability of information about changes and updates of existing procedures and regulations is an obstacle, and for 51.4% of them it is a major (41.5%) or very severe (9.9%) obstacle.

The lack of secure collateral on real estate presents a significant constraint to the development of the economy and is especially acute for the agricultural sector. As discussed previously, for the majority of properties the mortgages continue to be registered by the local courts. In the 1998 Report, FIAS concluded that the records are so disorganized that it is virtually impossible to determine what mortgages exist on any particular piece of property. The information received in early 2002 confirmed this assessment. Upon completion of the Cadastre for a municipality, the registration of mortgages is also transferred from courts to the State Bureau for Geodesy Affairs, where

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88 Cadastre and Property Registration System in the Western Balkan Countries, European Union (2004).
90 FIAS supra.
91 FIAS supra.
the mortgage is finally linked to the title. Therefore, completion of the Cadastre is also critical for creation of a secure mortgage registration system.92 Macedonia has placed a high priority on integration with the European Union. This will require fair and efficient property markets and a functioning property registration system.

A World Bank project, with involvement from Norway and Sweden, is designed to address many of the above problems.93 The project documents were signed on 6 June 2005 and the components are:

a. **Completing the Real Estate Cadastre.** This component will support the completion of real estate cadastre and registration of rights in all urban and peri-urban areas in the country by the end of 2009. The component will include two subcomponents: (i) operational support for completion of the REC, including base mapping, cadastral resurvey, support for systematic adjudication and registration of real rights, and rationalization of registration procedures; and (ii) public awareness campaign for REC (systematic registration).

b. **Institutional Development and Improving Service Delivery.** The objective of this component is to transform SAGW into a modern and efficient national cadastre and registration agency, and improve service delivery of all local and regional offices with a goal to complete the registration of transactions in 1 day by the end of the project. This component includes the following sub-components: (i) institutional development of SAGW which will focus on developing SAGW as an efficient and public service oriented agency with the goal of self-financing; (ii) promoting transparency and accountability through the issuance of “customer bill of rights”, establishment of a hotline for customer complaints, and strengthening internal investigation of corruption and misconduct.; (iii) improving registration services for the public which will focus on SAGW local offices and customer service for secondary transactions; (iv) development of automated registration and cadastre system; and (v) education and training for SAGW staff, as well as the nascent private sector surveyors.

c. **Development of Land Policy** This component will support the government’s capacity to formulate and develop policies that needed to ensure the completion of the real estate cadastre and the full functioning of the land and real estate markets through: (i) development of government capacity to coordinate the formulation of land and real estate policies through consultative processes; and (ii) formulation of specific land and real estate policies that is necessary to complete the real estate cadastre and the full functioning of land and real estate markets.. The component will also provide resources for drafting of regulations once the policies are adopted.

When comparing the recommendations and concerns identified in the reports completed to date with the intended assistance under the World Bank project, it is not possible to

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92 FIAS supra.
fully identify all the areas which will require additional donor assistance. This is a work in progress. However, it is clear that judicial capacity building for the adjudication of real property rights will not be fully covered in the World Bank loan, and this is an area which clearly can benefit from additional donor assistance. Furthermore, assistance under the World Bank project is planned for US $15 million. However, the SAGW states that it needs €8 million more in financing to meet its goal of a 100% real estate cadastre by 2010.  

Shareholder Rights

The main reports reviewed for this section include the Macedonia Corporate Governance and Company Law Project (CGCL), the Macedonia Financial Sector Strengthening Project, (both USAID funded), the Doing Business database, the World Bank Financial Sector Assessment, and fieldwork done by the Assessment team. 

The legal framework for corporate governance and shareholder rights has been significantly improved recently with the enactment of a new Company Law, effective in May 2004. The law was prepared with the assistance of USAID. Among other things, the Company Law substantially revised the voting procedures at shareholders’ meetings and limited the ability of company managers and directors to vote on behalf of employees, which represent the largest group of shareholders. However, the securities legislation remains weak, particularly with regard to public disclosure of significant direct and indirect shareholders of publicly traded companies. It is anticipated that the Securities Law will also be revised and a drafting committee has been formed to revise

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95 CLIR Assessment supra.
98 Financial Sector Assessment, FYR Macedonia, Europe & Central Asia Region Vice Presidency; Financial Sector Vice Presidency; based on the Joint IMF-World Bank Financial Sector Assessment Program (March 2004).
100 CLIR Assessment supra.
the current Securities Law, with assistance from USAID through the Financial Sector Project.\textsuperscript{101}

Even though, the overall legal framework for protection and enforcement of shareholder rights is improving with the adoption of the new Company Law and the drafting of the new Securities Law, the supporting institutions need substantial strengthening. The CGCL\textsuperscript{102} recently conducted two surveys: a general awareness survey of the general population and an exhaustive survey of active joint stock companies. Each contained interesting information related to the commercial sector. The general awareness survey revealed that Macedonians have a very low level of trust in large Macedonian corporations even when compared with certain government offices and agencies. Only 38% of respondents indicated that they trusted large Macedonian corporations. This ranked below government institutions such as the Prime Minister's Office and government agencies such as the Pension Fund and Health Funds. Moreover, a majority of respondents consider corruption very commonplace by both public officials and managers of large private corporations (although most respondents consider public officials' corruption as a greater hindrance to the development of Macedonia).

A subset of respondents in the general awareness survey was shareholders in Macedonian companies. These shareholders were asked to identify three of the most important rights they have as shareholders. This was an open-ended question, in that the shareholder was not given a list of rights to select from. The respondent had to determine the shareholder rights and self-assess the level of importance of the rights so determined. Of the shareholder group, only 29% were able to mention three rights. The following 3 rights were mentioned: (i) Right to sell my shares; (ii) The right to vote and participate in decision making, receive an annual report and financial statements of the company; (iii) The right to elect the directors of the company, to be notified of material changes in the operation of the company; right to elect an outside auditor for the company. The low level of shareholder awareness of their rights suggests that they can be easily misled or manipulated.\textsuperscript{103} It shows that there is a strong demand for shareholder information and protection.

A follow-up survey was conducted in 2004.\textsuperscript{104} The sample was constructed using data held by the Central Securities Depository. Respondents were randomly selected from this database. Overall, 1480 personal interviews were conducted between October 22 and

\textsuperscript{101} It is envisioned that the same process will be followed for the drafting of the new Securities Law.

\textsuperscript{102} CLIR Assessment supra.

\textsuperscript{103} CLIR Assessment supra.

November 4, 2004. The response rate for this survey was 89%. Summary results are as follows:

- 27.7% of all shareholders could not mention any of the important rights they have;
- 43.9% mention 1 or 2 of the most important rights;
- 28.3% mention at least 3 of the most important rights.

**Most frequently mentioned shareholder rights:**

- To receive dividends 53%
- To sell their shares 30%
- To use their shares 23%
- To take part in decision making 25%

When looking closer at enforcement of shareholder rights in Macedonia, four types of institutions provide some enforcement of shareholder rights. They are:

- The Macedonia Securities and Exchange Commission (SEC) and related stock market supervisory bodies,
- The central registry,
- The courts, and
- The press.

**SEC** - The Assessment team found the enforcement capacity of the SEC to be weak, even by the standards of corporate governance in transition economies. A number of factors contribute to the ineffectiveness of the SEC.

- None of the commissioners, or even the president of the SEC, is a full-time staff-member. It transpires that the president is also a professor in the university and one of the commissioners is also head of trading for the Macedonian stock exchange.
- The SEC lacks sufficient legal authority. As a government institution, the commission cannot levy fines directly and thus rely on the slow process of the courts for processing of fines.

However, despite a lack of authority to even open investigations, the mission found that the SEC had opened at least one investigation—into the company, MakPetrol. According to market participants, the directors of MakPetrol had encouraged the employee-shareholders to sign a shareholders’ agreement that limited the transferability of the shares, so that shares could only be sold to members of the existing shareholder group. According to market participants, the SEC instructed the central securities depository not to accept the shareholders’ agreement and then went to court to request that the agreement be cancelled. The court duly cancelled the agreement but according to market participants, a form of informal agreement remained in place and no “outsiders” have been able to purchase MakPetrol shares, even though the company is publicly listed on the Macedonian stock exchange.
A greater source of concern was the complaints over "illegal privatizations". According to market participants, it was not unheard-of for employees (or more likely company directors) with as little as 10 percent of the company’s equity to use the shares as collateral for a bank loan that was then used to buy company shares—a process that was illegal at the time. According to the Anti-Corruption Commission, where this occurred in the case of Fersped, the SEC blocked the shares but no court decision was taken. According to the head of the Anti-Corruption Commission, no investigations in this regard have been made by the SEC, the police or the Ministry of Interior. Only the Anti-Corruption Commission initiated a case, but the Commission expressed concern over the legal process. They noted that of the cases submitted to the office of the Prosecutor-General, only five percent eventually go to court. The Commission complained that allegations of corruption in the prosecutor’s office prevented adequate investigations of possible wrong-doing.

Local lawyers also complained about the Macedonian SEC. One noted that in the case of EMO of Ohrid, the SEC cancelled a share transaction conducted by a foreign investor holding majority ownership of the company. Apparently the SEC alleged suspicion that the origin of capital was not legitimate. The lawyer noted that the SEC had no legal authority to investigate the case.

Other securities markets institutions play some role in enforcement of shareholder rights. The central securities depository is also a central share registry, which eliminated the prior practice of allowing Macedonian companies to maintain their own share registries—or to establish “pocket” share registrars that follow the instructions of their company-owner rather than the rules of the SEC. Thus, the common practice of company managers wiping troublesome shareholders off the share registries is not among the corporate governance abuses in Macedonia.

An examination of the Macedonian securities legislation (Law on Securities, Law on Investment Funds and Law on Takeovers), in relation to the principles issued by the International Organization of Securities Commissions (IOSCO), reveals similar deficiencies in respect to the enforcement powers of the SEC. The Macedonian Securities and Exchange Commission (SEC) is found to be seriously deficient in regards to its enforcement powers. This report also recognizes that the SEC is understaffed, that it has no clearly recognized investigative or adjudicative powers, no power to compel production of documents or testimony or to provide for witness interviews and only limited power to conduct on-site inspections of regulated entities (permitted only in the case of brokerage houses and investment funds). In sum, enforcement powers are weak.

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105 Additional stories of government corruption are documented in the 2002 report of the International Crisis Group. A copy can be found at http://www.icg.org/home/index.cfm?id=1693&l=1

106 Macedonia Financial Sector Strengthening Project supra.

and generally confined to quasi-administrative penalties. The limited enforcement powers available to the SEC are underutilized anyway, due to insufficient resources.

*The Central Securities Depository* -- The Company Law allows for shareholders to visit the central securities depository to verify their own shareholdings, but it does not permit shareholders to obtain a list of the other shareholders in the company.

*Central Registry* -- The central registry provides valuable information to the public, including copies of the company statutes, a listing of official representatives and a list of the company's founders. In Macedonia, the information in the company registry is accessible by the public, but not easily and certainly not online. In addition, previous problems with company registrations ensure that the data in the company registry is less than completely accurate.

*Courts* -- According to market participants, a leading problem are the delays experienced in the courts. The largest bank, KB, estimates a minimum period of four years to obtain a court decision, even where the case appears to be very clear. KB noted that they have about 300 cases pending, and with such slowness in the courts, they only present cases that they are 100 percent certain of winning. The SEC estimates that most court cases take about two years to come to trial—the same period for which a statute of limitations applies to many securities violations. In general, the Assessment team found that the courts were held in weak regard. The perception of market participants is that oligarchs control three-quarters of the economy, also control parliament and that parliament appoints the judges. The office of the prosecutor-general is also not considered to be an effective enforcer of shareholder rights. The Anti-Corruption Commission complains that of all cases referred to the prosecutor's office; fewer than five percent are pursued.

Bankruptcy courts were also singled out for complaints by market participants, who noted that the "politicians" abused the bankruptcy courts to illegally gain control of companies. Politicians are considered to be members of parliament and the ruling elite of the dominant political parties.

In the limited case analysis undertaken by the Assessment team in Skopje 1 Municipal Court, two of the selected cases pertain to enforcement of shareholder rights. In both cases the plaintiffs are foreign Joint Stock Companies and the defendants Joint Stock Companies with their seats in Skopje. Broadly speaking, both claims relate to the determination of ownership over the share capital. The interesting fact is that in both cases the merits have not even been discussed yet, due to a plethora of procedural problems related to non-delivery of documents, bad organization in the court proceedings, the parties not showing up for proceedings on several occasions without being sanctioned by the Court, non payment of court taxes — again without any sanctioning from the Court. Both records appear to show a very low level of interest from the Court to dispose of the matter one way or the other. In the second case, the proceedings have been, thus delayed for over 5 years, without the merits even having been canvassed yet.
Press – In most transition economies, the press (particularly local newspapers) plays an important role in making the public aware of some of the most serious corporate governance abuses. The stories eventually find their way into the international press. This is true of Russia, Ukraine, Romania and other large countries. However, in Macedonia, both the domestic and international press have largely ignored what are substantial corporate governance abuses, even on such fundamental issues as security guards blocking the access of legitimate shareholders to the shareholders’ meeting. The famous cases of EMO of Ohrid, MakPetrol and others are hardly mentioned. Only the report of the International Crisis Group (for which the author is unnamed), provides some insight into corporate governance abuses, particularly those that occurred during the period of 1998-2002 when the VRMO was in power. For its report, the ICG largely relied on its own interviews with senior officials, including the resident staff of the World Bank.

Shareholder Associations – Shareholder associations and other corporate governance groups are often also important enforcers of shareholder rights. However such shareholder associations are generally seen where the legacy privatization funds have established an association to defend their minority shareholder rights, as is seen for example in Romania. However in Macedonia, the privatization process did not rely on the use of vouchers or privatization investment funds for privatization. However, one shareholder association, an NGO by the name of “Akcioner”, does exist. Over the course of the past three years, Akcioner has made significant strides in raising the level of its services to meet the needs of its membership, which represent an estimated 10 percent of all shareholders in Macedonia. The Center for International Private Enterprise (CIPE) has subsidized its activities and operational expenses, as well as provided technical assistance on core Company Law topics. Akcioner has successfully attracted additional financing. This grant has been used to organize and implement workshops with judges on shareholder protection, hold shareholder town hall meetings and other educational outreach activities. Although Akcioner is making a concerted effort to self-finance, it has yet to become self-sustainable. Akcioner continues to need funding to finance a secretariat, its operational expenses, its outreach and advocacy programs and to obtain continued technical assistance. A still greater problem is that the law does not give minority shareholders the right to directly elect even one member of the board of directors. (For this, the law should require mandatory “cumulative voting” for board members, as is seen in many EU countries.)

Institute of Directors -- Most EU countries benefit from the presence of specialized institutions focused on providing training and guidance for members of boards of directors. The institutes are also often involved in preparing a corporate governance code that establishes an accepted level of industry practice—and provides a benchmark against which a court of law can determine if directors have fulfilled their director duties.

Despite the problems in relation to the enforcement of shareholder rights discussed above, Macedonia performs better than the regional average on an index comparing disclosure of ownership and disclosure of financial information. The degree to which

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investors are protected through disclosure of ownership and financial information is measured below. The Disclosure Index captures seven ways of enhancing disclosure: information on family; indirect ownership; beneficial ownership; voting agreements between shareholders; audit committees reporting to the board of directors; use of external auditors; and public availability of ownership and financial information to current and potential investors. The index varies between 0 and 7, with higher values indicating more disclosure. Macedonia, FYR has a score of 4, compared with the regional average of 3.6 and OECD score of 5.6.

Table 4-4

<table>
<thead>
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<th>Protecting Investors Data (2004)</th>
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<tbody>
<tr>
<td>Is family ownership disclosed?</td>
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</tr>
<tr>
<td>Is indirect ownership disclosed?</td>
<td>Yes</td>
</tr>
<tr>
<td>Is beneficial ownership disclosed?</td>
<td>Yes</td>
</tr>
<tr>
<td>Is information on voting agreements between shareholders disclosed?</td>
<td>No</td>
</tr>
<tr>
<td>Are internal audits required before releasing financial statements?</td>
<td>Yes</td>
</tr>
<tr>
<td>Is an external auditor required?</td>
<td>Yes</td>
</tr>
<tr>
<td>Is ownership and financial information publicly available to investors?</td>
<td>No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Macedonia, FYR</th>
<th>Regional Average</th>
<th>OECD Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disclosure Index</td>
<td>4</td>
<td>3.6</td>
<td>5.6</td>
</tr>
</tbody>
</table>

Note: The Disclosure Index is calculated using the above data (one point for each "Yes"). The index varies between 0 and 7, with higher values indicating more disclosure.

A key recommendation of the recent World Bank Financial Sector Assessment was to improve the protection of shareholder rights and to enforce directors' duties. Unfortunately, it can not be said that this goal has yet been achieved, in spite of improvements in the regulatory framework. There is still a great need for improved capacity building and resources at the SEC, and likewise a need for improved capacity building in the Judiciary.

Intellectual Property Rights (IPR)

Black's Law Dictionary defines "intellectual property" as "(a) category of intangible rights protecting commercially valuable products of the human intellect. The category comprises primarily trademark, copyright, and patent rights, but also includes trade-secret developing a corporate governance code that will require the disclosure of additional information to shareholders and investors.

109 World Bank Financial Sector Assessment, FYR Macedonia: Europe & Central Asia Region Vice-Presidency; Financial Sector Vice-Presidency (March 2004).
Macedonia’s IPR system is still developing with assistance from donors, including from the European Agency for Reconstruction (EAR), the US Department of State, and UNESCO, which sponsored a Copyright Training Programme for officials in Sofia, Bulgaria.

The EAR correctly highlights the importance and need for a proper IPR enforcement framework for Macedonia, particularly in light of Macedonia’s accession to the World Trade Organization (WTO) in September 2002. This created obligations to provide for an effective system for enforcement of IPR. Development of a proper legal environment that will comply with the European standards is needed to achieve this goal. It is also necessary to establish mechanisms for prudent enforcement of these laws. The Industrial Property Protection Office (IPPO) within the MoE is responsible for industrial property rights, while a department within the Ministry of Culture is responsible for the protection of copyrights and other related rights. The Assessment team was informed that at present there are 24 staff and some 11 independent contractors working in the IPPO and that cooperation with international counterparts is improving, particularly the European Patent Office. The office is well equipped with IT and other infrastructure, but there is still a great need for continued staff capacity building.

The new Law on Industrial Property was enacted in June 2003 and entered into force in 2004. The main purpose of this new law is to modernize the country’s legislation in line with the WTO and to approximate the national legislation with the related EU Directives. In terms of this law the IPPO is to be transformed to a State Office for Industrial Property Rights. Amendments to this law are ongoing, including incorporating EU Directive 98/44/EC and the Council Regulation (EEC) No. 3295. In addition to this important law, the legal framework for enforcement of IPR include the Law on Copyright and Related Rights and certain sections of the Criminal Code (47/96, 3/98, 98/02) also apply. A new law on Customs Measures for Protection of Intellectual Property Rights is also planned to introduce new customs measures for the purpose of protection of intellectual property rights.

The EAR project is focused on addressing the following problems:

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110 See: http://www.llrx.com/features/iplaw.htm
111 See: http://www.training.ipr.gov/index
112 To view details of this training see:
113 See Macedonia Annual Programme 2004: http://www.ear.eu.int/macedonia/main/fyrom-a1e2g3b4e5.htm. It should be noted that USAID also has a regional “Commercial Law Development Program” assisting in different areas, including IPR.
114 EAR supra.
115 CLIR Assessment supra.
• lack of secondary legislation necessary for efficient enforcement of the new Law on Industrial Property Rights and the new Law against Unfair Competition;
• lack of proper enforcement mechanisms for legislation on competition and intellectual property rights;
• limited skills and knowledge of the institutions involved in enforcement of competition and intellectual property legal provisions;
• limited skills in correct understanding and using of the new legislation by key actors (lawyers, firms, action groups) and the general public;
• limited awareness about the existence and implications of legislation on competition and intellectual property rights.

It is planned to design this project in June 2005 and to start activities in September 2005.

The CLIR Assessment points out that protection of intellectual property rights require specialization in the courts. Because of the unique nature of the problem, it is sometimes necessary to take urgent, preventive action such as the issuance of interim injunctions, seizure of goods pending a full hearing of the issue, extended authorization for repeated seizures of goods pending a full hearing of individual cases, etc. There must be amendments to the Code of Criminal Proceedings and the Law on Litigation Proceedings to allow for preventive actions within the judicial process. Further, judges, businesses and NGOs require training on rights and obligations under the law and the function of the Bureau for the Protection of Industrial Property.

In the opinion of the Assessment team it is unlikely that the assistance rendered to date will satisfy the necessary capacity and institution building needs. IPR is therefore an area where donors can perhaps render more assistance.

Contract Rights

The enforcement of contract rights in Macedonia has been examined in depth, primarily in the CLIR Assessment. This section will therefore summarize the main observations and findings from that report, supplemented by a number of other sources and the limited case analysis undertaken by the Assessment team in Skopje 1 Court.

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116 EAR Supra.
117 CLIR Assessment supra.
118 CLIR Assessment supra.
119 It is acknowledged that courts are really only the tip of the iceberg when it comes to contract enforcement in any market economy. The vast majority of contracts are enforced through non-judicial means. The operation of other systems, including informal means, business standards and norms, information (e.g. credit rating services), and social/reputational mechanisms, are not discussed in detail in this part of the Assessment, due to the already broad scope of the subject matter. The Team has focused on the formal institutions and enforcement in the courts.
The Doing Business data reflects the ease or difficulty of enforcing commercial contracts in Macedonia, using three indicators: (i) the number of procedures counted from the moment the plaintiff files a lawsuit until actual payment; (ii) the associated time; and (iii) the cost (in court and attorney fees), expressed as a percentage of debt value. Macedonia performs worse than the regional and OECD averages:

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Macedonia, FYR</th>
<th>Croatia</th>
<th>Serbia and Montenegro</th>
<th>Slovak Republic</th>
<th>Slovenia</th>
<th>Regional Average</th>
<th>OECD Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of procedures</td>
<td>27</td>
<td>22</td>
<td>36</td>
<td>27</td>
<td>25</td>
<td>29</td>
<td>19</td>
</tr>
<tr>
<td>Time (days)</td>
<td>509</td>
<td>415</td>
<td>1,028</td>
<td>565</td>
<td>1,003</td>
<td>412</td>
<td>229</td>
</tr>
<tr>
<td>Cost (% of debt)</td>
<td>32.8</td>
<td>10</td>
<td>23</td>
<td>15</td>
<td>16.3</td>
<td>17.7</td>
<td>10.8</td>
</tr>
</tbody>
</table>

When compared with selected countries in the region, Macedonia appears to be reasonably similar in respect to the number of procedures, but taking substantially less enforcement time than Serbia and Montenegro, and Slovenia. However, Macedonia appears to be worse off than all the other countries in terms of cost, as a % of the underlying debt:

While the Law on Obligations is the primary law applicable to contract formation, the CLIR assessment points out that the Company Law also contains provisions in relation to representation, agency, partnership, guarantees, assignment, and limitation periods. In addition, the Law on Obligations itself also covers such diverse topics as pledge, securities, leasing, franchising and licensing. The CGCL intends to conduct compliance reviews of the applicable legislation, including the Law on Obligations, following the recent passage of the Company Law.

It should be noted that the 1978 Law on Obligations underwent several amendments during the 1980’s and 1990’s, with the new Law on Obligations adopted on February 20, 2001 and becoming effective on March 13, 2001. While the legal framework for contract law is considered adequate by users, as confirmed in the CLIR Assessment and also during interviews of practitioners by the Assessment team, the process of development of the contractual legal regime is ongoing and in the considered opinion of the Assessment team will benefit greatly when based on actual implementation experience and a more transparent process employed during the drafting of amendments.

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121 CLIR Assessment supra.
122 The substance of the Law on Obligations is discussed in the CLIR assessment and will not be repeated here.
However, the weakest link in Macedonia's poor record of enforcing contract rights remains the courts. The CLIR Assessment reveals the following (some of these factors are discussed in more detail elsewhere in this Assessment):

- Practitioners felt that courts' performance to resolve commercial disputes in a timely manner with predictable outcomes has actually worsened, with a CLIR score of 63% in 2000 slipping to 57% in 2003.
- Both judges and lawyers would like to see more education for the judges, especially on new contract laws. Judicial education should focus on practical education with materials that include forms, checklists, and explanations of the situations they commonly face, such as joint stock companies.
- Public education is also needed to correct historical orientations to limit or avoid the power of the state through using delaying or obfuscation tactics in the courts. Increasing efficiency will require amending the Civil Procedure code, increasing the management ability of judges to enforce deadlines, and broad reform of current legal practices.
- Enforcement of judgments is very weak and needs to be addressed through a better court administration, a better bailiff system, and reform of the auction and sales systems.
- Specialization in the Courts is a high priority.
- The weakness of the courts has increased interest in alternative dispute resolution, with a rise in the use of arbitrators and mediators.\(^{123}\)

One of the principal complaints from the legal and business communities relate to management of the courts. In addition to the formal case and document management systems which need improvement, the need for judges to run their courts and trials in a more professional manner is particularly emphasized. The limited case analysis undertaken by the Assessment team during April/ May 2005 confirmed this, where inter alia 33 cases related to contract enforcement were reviewed. Two specific cases are discussed below, which clearly show the problems encountered during relatively simple contact enforcement proceedings in the Courts. Particularly notable is the frequent abuse of the process by litigants, the passivity of the judges and the resulting frustration for litigants.

**Box 7 – A Breach of Justice: Judicial Obstacles to Contract Enforcement**

The first case study below concerns debt collection for goods delivered and the second case study the cancellation of a lease contract (for a business premises), on account of non-payment of the rent.

**Debt Collection**
The plaintiff and defendant are both limited liability companies in Skopje. The plaintiff avers that upon oral agreement certain goods were designed, produced and delivered to the defendant, but in spite of invoices submitted the goods are still not paid for.

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\(^{123}\) CLIR Assessment supra.
The lawsuit was submitted to the court on 13 March, 2001. The process then developed as follows:

The first hearing was scheduled and held on 26 April 2001, both parties being present and adjudication on the merits started. The defendant opposed the claim, stating that the goods were never received. The plaintiff requested to question the witness who according to the plaintiff received the goods.

The second hearing was held on 30 May 2001, which was adjourned, because there was no regular delivery of the “invitation for hearing” to the witness.

The third hearing was held on 29 June 2001, when the court decided to obtain certain expert evidence. This process takes three months.

The fourth hearing was held on 28 September 2001, which was also adjourned, because there was no regular delivery of notice to the plaintiff.

The fifth hearing was held on 16 October 2001, for which the witness was regularly notified, but did not appear in court. The defendant then undertook the obligation to bring the witness, who happens to be an employee of the defendant, before the court.

The sixth hearing was held on 1 November 2001, where the defendant informed the court that the witness did not want to appear in court in relation to this case. The plaintiff then withdrew his request to question this witness. The court then closed the hearing to prepare its decision.

At the beginning of December 2001 the court hands down its decision, and finds in favor of the plaintiff. The defendant then lodges a timely appeal to the Appeal Court.

On 3 April 2002 the Appeal Court allows the appeal, and sets the decision of the first instance court aside. It returns the case to the first instance court for a second adjudication. The Appeal Court’s reasoning is not very clear, but it appears that it orders the first instance court to question the witness who did not want to attend the court proceedings, to determine the correct facts.

The seventh hearing was held on 21 May 2002 before another court council, and the procedure starts from the beginning. The court, based on the directives issued by the Appeal Court, sets out to question the witness who allegedly received the goods on behalf of the defendant.

The eighth hearing was held on 28 June 2002, which was adjourned, because the witness did not appear in court, although there was regular delivery of the “notice to appear”.

The ninth hearing was held on 5 September 2002, when the hearing was again adjourned because this time the court did not make any delivery of the notice to the witness. The plaintiff then informed the court that he has met the witness, who informed him that he did not want to come in court, as he worked for the defendant. The plaintiff furthermore informed the court that the defendant is changing his name, seat, founder and manager. The court then decides that the witness must be delivered through police assistance, and that the official information on the witness’s employment must be obtained from the Employment Bureau.

On the 17 September 2002, the court officially requested the status of the witness’s employment with the defendant from the State Employment Bureau.

The tenth hearing was held on 10 October 2002, which was adjourned, as the State Employment Bureau did not deliver the required information to court. The plaintiff then undertook to obtain the evidence from the State Employment Bureau himself, in order to submit the info to court.

However, on 16 October 2002 the court again officially requests from the State Employment Bureau whether the witness is in employment with the defendant.
On 20 November 2002 the plaintiff submitted the evidence from the State Employment Bureau on the employment status of the witness, and also evidence that the defendant again is changing his name, seat, founder and manager.

The eleventh hearing is held on 26 November 2002, when the court noted that the State Employment Bureau still did not deliver the required information on the witness. However, it allows the plaintiff to provide evidence on the employment status of the witness obtained from the State Employment Bureau and also evidence that the defendant again is changing his name, seat, founder and manager. The court then decides this evidence should be delivered to the defendant in order to give his statement in this regard.

The twelfth hearing is held on 19 December 2002, but the defendant is not present in court. The court then proceeded to close the hearing and to hand down its decision.

On 19 December 2002 the court finds in favor of the plaintiff. This Decision was delivered to the parties in the end of April 2003. The defendant then submitted a timely appeal on the basis that the defendant is now under Bankruptcy proceedings. The first instance court then requested official information from the bankruptcy and liquidation court and from the trade register. The bankruptcy and liquidation court informed the court hearing the debt enforcement claim that that the Bankruptcy Procedure was opened and closed without conducting a full procedure. The trade register also informed the court that the defendant was erased from the trade register. The court then decides to close the case, on account of the completed Bankruptcy Procedure over the defendant, and it being erased from the trade register.

Lease Cancellation
This lawsuit was submitted to the court on 1 March, 2000 by the plaintiff, which is a Public Company owned by the State, with a seat in Skopje. The defendant is a natural person from Skopje.

The legal ground set out in the lawsuit is the canceling of an agreement for the lease of business offices. In the lawsuit, the plaintiff is averring that the defendant did not comply with the agreement by not paying rent. So, in the petition the plaintiff wants to cancel the lease agreement and requests that the leased property be returned to him, empty of people and assets.

The first hearing was scheduled and held on 20 June 2000, which was adjourned, as there was no regular delivery of notice to the defendant. The plaintiff suggests another address.

The second hearing (17 October 2000), third hearing (19 December 2000), fourth hearing (9 March 2001), fifth hearing (7 June 2001) and sixth hearing (4 October 2001) were all also adjourned, as again there were no delivery of notice to the defendant, at either of the two addresses.

The seventh hearing was held on 20 November 2001, which was also adjourned, as on this occasion the presiding judge was absent.

Again the eighth hearing, (19 February 2002) and ninth hearings (23 April 2002) were also adjourned, as there was no regular delivery to the defendant. The plaintiff undertakes to request the exact address of the defendant from the Ministry of Internal Affairs. On 11 June 2002 the plaintiff submitted the address of the defendant to the Court. This leads to the tenth hearing on 10 September 2002, which was also adjourned, where the court places on record that the plaintiff has submitted information on the address of the defendant, and orders that delivery be made to this address.

The eleventh hearing was held on 31 October 2002, which was adjourned, because again there was no evidence of notice given to the defendant at the new address. This leads to the twelfth hearing on 24 December 2002, which was also adjourned, as the proceeding judge was absent.

The thirteenth hearing was held on 18 March 2003, which was also adjourned, again on account of no delivery of the notice to the defendant. This time the return indicated that the defendant had moved
out from the new address. However, on 25 March 2003 the plaintiff submitted information to the court that the defendant is still living at the last provided address.

This leads to the fourteenth hearing on 8 May 2003, which was also adjourned, as again there was no regular delivery to the defendant. The court orders that delivery of the notice be made to the same address again, on the basis of the information provided by the plaintiff. The fifteen hearing is consequently held on 13 June 2003, which was also adjourned, because again there was no regular delivery to the defendant. On the return it is noted that at the given address there is no such person.

The sixteenth hearing (25 September 2003), and seventeenth hearing (18 November 2003), were likewise adjourned, as the presiding judge was again absent.

The eighteenth hearing was held on 22 January 2004, which was adjourned, as again there was no delivery of notice to the defendant. At the nineteenth hearing (23 April 2004), the plaintiff informed the court that the defendant has closed his business, but his assets were still inside. The plaintiff requests that delivery be made to the last provided living address of the defendant, which the court refuses as the return shows that the defendant has moved out. The plaintiff then submits that the court officially requests the exact address of the defendant from the Ministry of Internal Affairs. Furthermore, the plaintiff requests that if the Ministry of Internal Affairs does not provide the court with the exact address of the defendant, that the plaintiff be appointed a temporary representative to the defendant. The hearing was adjourned.

On 26 April 2004, the court sent an official request to the Ministry of Internal Affairs to provide the court with the exact address of the defendant. The Ministry of Internal Affairs (on 20th May 2004), informs the court that it cannot provide the court with the exact address of the defendant, because they need additional data on the defendant. This leads to the twentieth hearing (9 September 2004), which was adjourned at the request of the plaintiff. On 12 October 2004, the plaintiff withdraws the suit in writing.

Source: Case Register, Skopje I First Instance Court

Other supporting institutions for contract enforcement include the Notary profession, which has a formal role in the drafting and execution of documents and the enforcement of executive titles, and the Macedonian Business Lawyers Association, which acts as a lobby group and a forum for exchanging ideas and provides training.

The Notaries have an important role in ensuring the quality of the documents subject to enforcement, and as pointed out in the CLIR Assessment, the present execution law has established them as the actual implementers of the enforcement process. Notaries now also have the mandate to enforce executive titles. However, they do not have the power to obtain the pledged property, which must still be voluntarily turned over or taken with police assistance. The system appears to be working well, in spite of some judges questioning the propriety of notaries serving this role, as it makes them advocates of the creditor in the enforcement process instead of neutral arbiters in the transaction. The Assessment team found the Notaries to be largely positive and in support of this system, which is not surprising given the realities of the underlying financial incentive structure.

124 CLIR Assessment supra.
Secured Transactions

The enforcement of secured transactions is closely linked to the enforcement of contract rights generally, and therefore the legal frameworks and institutions regulating collateral and mortgage in Macedonia will be briefly reviewed. A secured transaction is created by means of a security agreement in which a lender (the secured party) may take specified collateral owned by the borrower if he or she should default on the loan. By creating a security interest, the secured party is also assured that if the debtor should go bankrupt he or she may be able to recover the value of the loan by taking possession of the specified collateral instead of receiving only a portion of the borrower’s property after it is divided among all creditors.\(^{125}\)

This area has been exhaustively assessed in Macedonia.\(^{126}\) Macedonia’s secured transactions regime functions relatively well, in terms of both the legal and institutional frameworks. (See Box 8). Based on the CLIR Assessment, Macedonia’s collateral registry system has among the strongest ratings of the 11 countries assessed to date in the Europe and Eurasia region.\(^{127}\) There is still room for further improvement, however, as pointed out in the various reports and based on the fieldwork of the Assessment team—both in terms of the legal framework and in the overall registry system. Generally, however, it was reported that the registry operated in an efficient and open manner and users seemed to be satisfied.\(^{128}\)

The new Macedonian Law on Contractual Pledges and Contractual Mortgages replaced the 1998 Law on Pledges of Movable Property and Rights, in January 2003.\(^{129}\) The 2003 Law regulates: (i) charges over movable property, securities, claims and other rights; and (ii) mortgages over immovable property.\(^{130}\) The new law determines that pledge agreements can have executive force, which facilitates enforcement. Although this was possible under previous law, the new law more clearly establishes the use of notarized agreements to permit lenders to execute against collateral without a court procedure. The

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\(^{127}\) For a full description of the process and steps when registering a pledge, see, Analysis of the Macedonian Pledge Registry, May 2004; European Bank for Reconstruction and Development; and also: New Legal Indicators Survey, Enforcement of Security Right, Country Report – FYR Macedonia, EBRD (2003).


\(^{129}\) Official Gazette (May 2003).

\(^{130}\) This approach is not standard, but makes good sense as many of the issues of pledge registration apply equally to all types of non-possessory pledges. See discussion in CLIR Assessment.
preceding should help to avoid delays inherent in the current court system and to lower the overall burden on the courts, thus improving court performance. The system is still in the trial stages, however, and will probably need refinement as utilization increases.\textsuperscript{131}

\begin{center}
\textbf{Box 8 - Improving the Collateral System}
\end{center}

The 2003 Collateral Law, regulating charges over movable property and mortgages over immovable property, was passed with support from the World Bank under the Second Financial and Enterprise Sector Adjustment Loan. This law clarified and consolidated the option of enforcing collateral by circumventing the court system, through notarial execution. Before the new collateral enforcement system was established, all enforcement cases had to go to court. The process suffered from all the systemic judicial constraints discussed in this Assessment. All collateral contracts entered into before the introduction of the new system, still have to be enforced through the courts. Anecdotal evidence confirms that the most frequent users of the new system, particularly commercial banks, are generally satisfied with the functioning of the new system. According to Central Bank data, lending has increased by 23\% from 2003-2004, in all probability at least partially due to the new collateral system. Further refinement of the system is possible, including addressing the generic problem of abusing the appeal process to the courts.

One significant point still to be addressed in this law is the provision that a pledge contract is not legal or binding if it is not registered. The preferred position would be if the registration created the \textit{priority}, not the \textit{legality} of the underlying pledge agreement; that is, failure to register would result in a loss of priority to any other registered creditors. Lenders who failed to protect themselves would lose their priority claim, but would still have a valid pledge contract subject to the prior claims of registered creditors.\textsuperscript{132}

A key implementing institution is the computerized Central Registry, which includes inter alia the pledge registry and the registry of rights to real estate. The registries which are part of the Central Registry are interconnected, although each registry has a separate database. A Registry of Rights in Real Estate exists within the Central Registry but it seems that mortgages are not yet registered there, but in the state office for geodesic rights. With World Bank assistance under the Real Estate and Cadastre project presently under implementation, the database on the land and real estate property and rights will be established. There is a registry for ships, for aircraft and for intellectual property rights, but it seems that pledges are not registered there, but in the pledge registry. Further, a Central Depository for Shares exists, which is notified (it seems by the Registrar) in case a share is pledged.\textsuperscript{133}

\textsuperscript{131} CLIR Assessment supra.

\textsuperscript{132} CLIR Assessment supra. This position also has a cost implication, in that the fees for notarization (about $\$50$) and registration (also about $\$40$) are significant as a percentage of total cost on loans under $\$5,000$. In other countries, where registration provides only priority, not legality, lenders often decide to avoid such expenses for low risk customers and thus, can lend on better terms. Second, people make mistakes. Sometimes a lender may inadvertently fail to register the pledge, which should not result in a complete forfeiture of claims, but only in the loss of protection.

\textsuperscript{133} See Registry Analysis of the Registration system in the FYR of Macedonia, EBRD/LTT (May 2004), working document.
The Registry's central office is located in Skopje and it has some 30 other offices across Macedonia. The Macedonian Central Registry, and especially the Pledge Registry, has been seen as a model for other countries in the region, with a national computerized database and public access (for a fee) to all records. User satisfaction with the Registry is generally very high. The one complaint reflected in the analyses relate to costs. The lenders and other stakeholders dealing with SME lending feel that registration costs are too high, especially when combined with notarial fees for executive documents. The current registration fee (2000 dinars - about $40) is high compared to fees charged in Albania (less than $5) and even most U.S. registries ($10-15). The reason for this appears to be the requirement to submit a number of documents, including the notarized pledge document, corporate documentation, and other papers. More efficient systems register only a simple form giving the basic facts with few or no background documents. The upside is that registry records provide substantial credit information not currently available from any other source. Furthermore, it seems that bureaucratic requirements cause problems (e.g. the need to produce the tax number of the company whose records are being searched or the personal ID number of an individual, neither of which is readily available to the public).

However, the enforcement role of the Courts in this area is seen as problematic, similarly to other areas described in this Assessment. The CLIR Assessment notes that the general public is still highly dissatisfied with the performance of Macedonia's courts in the enforcement of pledge contracts. It is interesting to note a practitioner's remark that it is possible to obtain relatively rapid decisions in simple cases with a motivated judge, despite the general impression that once a claim goes to court, delays will be extensive. This confirms one of the main findings of the limited Case Analysis performed by a local Macedonian lawyer for the Assessment team, that often the delays and other problems within the judicial system are due to Judges not being active in their approach when resolving cases, including allowing unnecessary delays, tolerating parties being absent from court proceedings, and other procedural delays which could be more easily resolved if better managed – even within the present legal and institutional framework.

Other institutions which are involved in enforcement of secured transactions include:

- The Notaries (seen as effective, if expensive);
- The Association of Notaries (not seen as very effective);

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134 Analysis of the Macedonian Pledge Registry, EBRD (May 2004).
135 CLIR Assessment supra.
136 CLIR Assessment supra.
137 CLIR Assessment supra.
138 CLIR Assessment supra.
• Enforcement Agents (not seen as very effective, as discussed elsewhere in this Assessment. Once a debtor resists repossession, however, the lender must use the police, who are reportedly unavailable in most situations.)
• The Macedonian Bar Association (limited capacity, including no specialized committee in relation to the collateral law regime);
• Macedonian Business Lawyers Association (seen as potentially effective, but underutilized in the consultation process);
• The Macedonian Bankruptcy Association (potentially effective, but probably also underutilized);
• Credit Information Bureaus and Collection Agencies (potentially very important, but Macedonia currently has no such bureau. The National Bank of the Republic of Macedonia (MBM) has taken a decision to establish a Credit Registry.\textsuperscript{139}

The Assessment team would again like to emphasize the need for increased transparency during the process of drafting any further legal amendments, and also that further changes to the legal framework and institutions as far as possible be based on actual implementation practice and experience. The greatest need in the area of enforcement of secured transactions is again in the area of institution and capacity building, including at Universities, where theoretical and practical training needs to be scaled up.\textsuperscript{140}

\textsuperscript{139} Decision on the content and operation of the Credit Registry, National Bank of the Republic of Macedonia (September 2004).

\textsuperscript{140} CLIR Assessment supra.
Part 5: Recommendations

With the adoption of the Judicial Reform Strategy, Macedonia has set a specific course for a second, comprehensive reform of its judicial system. The objective of this reform is “to put in place a functional and efficient justice system based on European legal standards.” This objective in turn is motivated by the Government’s desire to continue along the path to accession to the European Union. Throughout this Assessment, which focused more narrowly on the judicial and institutional enforcement of contract, creditor and property rights, the World Bank has identified a number of steps that Macedonia could take in order to enhance its Judicial Reform Strategy and more closely to European standards. These recommendations are presented below.

Implementation of Judicial Reform Strategy

1. The Government should ensure the operation of an effective Judicial Reform Council (as envisioned in the Judicial Reform Strategy) with a proper secretariat so that it can serve as the focal point of the implementation of the Strategy. The Council should have full authority to monitor implementation, provide feedback to the Government, and propose adjustments to the Strategy’s implementation.

2. The Assessment Team welcomes the Ministry of Justice’s efforts to determine the financial implications of implementing the Reform Strategy. The Ministry also should develop and publish its preferred sequencing of the various legislative reforms contained in the Strategy and provide a clear set of priority actions that it will undertake.

3. The Ministry of Justice should develop an action plan and timetable for the full implementation of the numerous laws and regulations contemplated by the Strategy. The impact of the Judicial Reform Strategy will primarily be felt as the new laws listed in Table 2-2 above are implemented and institutionalized. The Ministry of Justice and the Macedonian Government more generally, will need to allocate human resources, time and funding for the drafting of sub-laws or regulations, institution and capacity building within the Government and outside it, and training of judges, lawyers, businesses and the public more generally. Special attention should be paid to the implementation of the new Enforcement Law, revised Civil Procedure and future changes to the Law on Courts and Misdemeanor Law.

4. Legislative and Regulatory Drafting Process
   • The implementation of the Strategy requires the preparation and adoption of a significant number of Constitutional amendments, laws and implementing regulations. In order to reduce opportunities for arbitrary or subjective decision making, the Assessment Team suggest that the Ministry of Justice and other

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141 Judicial Reform Strategy, p. 4.
ministries involved in this process make their draft and final decisions publicly available; and

- Laws are being adopted swiftly and without any time for comments. The FIAS Administrative and Regulatory Costs Survey reveals that 68.2% of respondent firms find that frequent changes in laws and regulations is a problem. An ill-considered legislative act that negatively affects the business community but whose drafters have not taken into account the views of businesses will very often require subsequent and substantial amendments over time. This is often much more burdensome than getting it right the first time. In this context, it is important for the Macedonian Government to institutionalize a structured dialogue with the business community and other stakeholders on existing legislation and administrative procedures, as well as to seek input from interested groups as draft laws are being considered, giving the business community enough time to respond (for example, no less than one month). The open and inclusive drafting process used to develop the new Company Law provides a useful example that can be replicated.

5. The Government should use the opportunity presented by the Judicial Reform Strategy and the need to improve minority representation in the justice system as required by the Ohrid Agreement to “right staff” the judiciary. This can be accomplished by reorganizing and retraining staff to meet specialization needs and match administrative skills with new responsibilities in the courts. Improving the legitimacy of Macedonia’s courts by increasing minority representation and improving court efficiency will require that action be taken on these staffing issues as soon as possible.

Addressing Systemic Judicial Constraints

1. Enhancing Judicial Efficiency

- **Adapting European Standards** – In order to improve the efficiency of Macedonia’s courts in line with European standards, the Government and the judiciary could refer to standards developed by the Council of Europe’s Commission for the Efficiency of Justice (CEPEJ) as a guide. These European standards, while not specific to Macedonia, lay out general guidelines to reduce the length of judicial proceedings. Three “essential principles” should be adopted: (i) balancing the quality of justice with the efficient use of the resources allocated to justice; (ii) development of uniform, efficient, measuring and analysis tools to measure judicial activity; (iii) reconciling all the requirements contributing to a fair trial, such as procedural safeguards, with the need for prompt justice.

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142 A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe, European Commission for the Efficiency of Justice (June 11, 2004).
• **Judicial Specialization** - The Government’s proposal to promote judicial specialization has widespread support. The Judicial Reform Strategy recommends that the specialization be re-introduced within the existing court system by creating specialized departments with jurisdiction over specific types of cases (e.g., misdemeanors, commercial and civil disputes over a certain value, organized crime and corruption, etc.). The Assessment Team cautions the Ministry of Justice to consider the financial implications of pursuing an alternative option of creating a new system of specialized courts. The World Bank will work with the Ministry of Justice to help reorganize existing courthouses as needed to accommodate this specialization but the Assessment Team suggests that an initial inventory of existing courts and courtrooms be undertaken as soon as possible. In addition, the Government should prepare specific plans to provide additional training for judges and judicial staff that will be necessary to make specialization work.

• **Adopting Case Management Techniques** – Neither the Strategy nor the proposed revisions to the Civil Procedure or Litigation Law contemplate the adoption of modern case management techniques such as setting case processing time standards, providing for early case screening and settlement discussions, creating caseflow management procedures. The Assessment Team encourages the Ministry of Justice and the judiciary to review the work being done by USAID’s consultants in seven pilot courts and adopt these changes throughout the judicial system.

• **Improving Service of Summons** – The Ministry of Justice should decide on a preferred method for improving the delivery of summons and notices – creation of court units or use of private delivery services – and move to adopt and implement it quickly.

2. Administrative Disputes – The backlog of administrative disputes in the Supreme Court should be addressed at its root cause – through reforms in administrative procedures, practices and appeal processes. The Government should focus on the effective implementation of the draft Law on General Administrative Procedure to ensure that administrative decisions (including those made at the municipal level) are transparent, supported with written reasons, and subject to a fair and impartial review process before they reach a court.

3. Judicial Behavior and Temperament – In order to begin the process of getting judges to fully implement all the procedural and legislative changes contained in the Judicial Reform Strategy, it will be critical to simultaneously reform the incentives that judges face. Proposed changes to the Law on Judicial Salaries should be closely coordinated with the objective of improving judicial efficiency and eliminating the case backlog and delays. This can be done by aligning judicial pay with the objective of increasing the rate cases are processed through Macedonia’s courts and linking pay to the removal of backlogged cases.
4. Advance the Alternate Dispute Resolution Agenda – Currently there is neither a Law on Arbitration nor a Law on Mediation, although drafts of both laws have been in development. The completion of these laws in collaboration with stakeholders; and the strengthening of the supporting institutions; as well as capacity building to practitioners and the initiation of suitable public awareness campaigns, will do a great deal to advance use of these dispute resolution tools.

5. Information Technology – The development of a Judicial Information Technology strategy and follow-on implementation actions should include:
   - A functional analysis of court procedures and processes. This analysis should anticipate the adoption and implementation of the new procedures and processes contained in the draft Civil Procedure Law that is presently under consideration in the Government.
   - Refinements and new modules for the ICIS system that should take into consideration the development of new, standard forms, practices and processes (particularly those changes being developed under the USAID-funded Court Modernization Project).
   - Plans for the redesign of the user interface based on close consultation with the ultimate users of the systems: court staff and judges.
   - Development of an enhancement for data collection, data storage and data exchange that includes the generation of key statistical information for use by court and Ministry management.
   - A clear, long-term training program for staff on all levels of the judiciary, covering general IT training as well as application-specific training. (This could perhaps be undertaken through the new judicial training institution.)
   - Plans to standardize the quality of the expected network services, including maintenance, and back-up services.

Creditor Rights

1. A survey should be undertaken in order to better understand the characteristics of the body of unresolved cases. At a minimum, this study would include an assessment of the number of cases, the size, industry and ownership pattern of the debtors, duration of each step in the process, who was the initiating party, and geographical distribution. The study should also examine the “backlog” of cases handled by bankruptcy/liquidation judges. In the past, individual courts have refused to cooperate in data collection and analysis, on the basis that this compromised their “judicial independence.”

2. The Skopje, Bitola and Stip courts should be the sole courts with the authority to hear bankruptcy cases. Liquidation cases would remain the responsibility of the 16 basic level courts which hear commercial matters. The cachement area of these three courts (possibly 4, if Skopje 1 and 2 each retain the authority to hear bankruptcy

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143 These recommendations follow from the Assessment team’s analysis.
cases) would be the same court districts as are covered by the Appeals Courts in these three cities. In conjunction with this concentration, specialized departments should be set up in the Bitola and Stip courts, similar to the specialized divisions which already exist in the two Skopje courts, staffed by judges who would hear only bankruptcy cases. Further, these judges should not be rotated to other departments as a matter of policy, but only on the basis of inadequate performance or an expressed desire on the part of a judge to move to another department. Where a judge hearing a bankruptcy case is transferred, he should remain "seized" of his bankruptcy cases until their conclusion, regardless that he/she has been transferred to another part of the court.

3. The implementation of a formal on-going training program for judges who hear bankruptcy matters is essential, and urgent. Other participants in the bankruptcy process complain loudly about the widespread lack of understanding on the part of the judges of either the Bankruptcy Law, or basic commercial concepts (see also the section on judicial capacity building below).

4. Developing a Profession of Bankruptcy Trustees, including:
   - A pre-exam training program, and an ongoing professional education program should be established for trustees, possibly with donor assistance.
   - A monitoring and disciplinary mechanism to determine whether a trustee maintains professional standards is essential. In order to be effective, this mechanism must be able to impose sanctions on a trustee, ranging from compulsory professional education to the suspension or removal of the person’s license to act as a trustee.
   - Part of this mechanism should ensure that all trustees maintain their formal and practical knowledge; licenses should lapse where the license holder has not been appointed to a new file in, say, the previous 2 years.

5. There is no formal tariff, and while the judges have tended to agree amongst themselves on an informal tariff for different sized cases, there have been instances where the tariff appears to have been set prohibitively high, in order to discourage the petitioner from proceeding. A tariff should be developed which will apply to all petitions to open a bankruptcy proceeding.

6. In order to correct the recent amendment to the Bankruptcy Law which stipulates that the tax department is exempted from the requirement to lodge a deposit with its petition, and from identifying the source of funds to pay the fees of experts and interim trustees, it is recommended to either stipulate that a tax assessment has the force of an unpaid judgment on which a bankruptcy must be opened directly, or to create a mechanism within the government whereby the costs of the preliminary proceedings can be funded in exactly the same way as private creditors fund their petitions.
7. The Bankruptcy Law is amended to restore and clarify the original intent of article 4(4), which was to accelerate a proceeding by eliminating the need for a preliminary proceeding in certain circumstances.

8. “Urgent” in the Code on Civil Procedure is defined in a more precise way to ensure bankruptcy cases always move to the head of any queue of cases waiting to be heard. All lawsuits ancillary to the main bankruptcy proceedings, such as the resolution of disputed claims, are heard by the bankruptcy division of the court, and are treated as urgent.

9. Future amendments to the Bankruptcy Law and/or the Companies Law should include a stay on any attempt by the company to remove itself from the court district which has jurisdiction to hear a bankruptcy application at the day that the petition was filed.

10. Although the Bankruptcy law contains some provisions for the imposition of penalties for non-cooperation of parties, the courts either chose not to impose them or consider that they do not have the adequate authority to actually put a person in detention. Such an action is a criminal sanction, and it is unclear to commercial bankruptcy judges as to their capacity to impose such a sanction on the basis of the Bankruptcy Law. Bankruptcy judges must have a clear mechanism, understanding and authority to impose effective sanctions for failure to cooperate on the part of any party with knowledge of the debtor.

11. The law should be amended to clarify and strengthen the trustee’s right to possession of the assets of the debtor, including assets in the hands of third parties.

12. The Law specifies that adequate notice is given to creditors as a result of publication in the Official Gazette and by posting on the notice board of the court. The court or the trustee should be required to give direct notice to all known creditors of a debtor of the opening of the bankruptcy.

13. All legal proceedings ancillary to the main bankruptcy proceeding should be heard as an integral part of the bankruptcy proceeding, and treated as urgent.

**Property Rights**

1. Confidence in real estate title remains weak. The resolution of unclear property issues and the creation of secure and respected land titles depend much upon the creation of clear and efficient title registry. It is therefore necessary to create a clear and efficient title registry. The Government might consider establishing a formal coordinating unit that would be responsible for proposing a workable timeline and

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144 These recommendations are taken from the comprehensive discussion of FIAS, the WB project preparation work and the observations of the Assessment Team.
the resources required for resolution of the problems that impede the completion of the Cadastre and consolidations of the mortgage data in the Cadastre or the Central Registry.

2. The adoption and entry into force of the Law on Construction Land in 2001 was welcomed by the business community as a tool for clarifying and settling the title issues by transferring the right of use into the right of ownership. The repeal of a number of articles of the Law has essentially invalidated the Law and there is now unease and confusion on its legal status. The government is urged to initiate adoption of the relevant legislation to clarify the future route of transformation of the right for use into the right of ownership.

3. Approximately 60% of the land in private tenure is not recorded in the new Cadastre database (which means that the title and border issues are not resolved). The Government of Macedonia should accelerate the process of surveying and title registration for these lands both through continuing the “systematic” registration and encouraging the “non-systematic” (or priority) registration of titles. The Government might introduce provisions that require all new real estate transfers of the property not yet registered in the Cadastre to be recorded in the Cadastre.

4. Problems exist relating to the capacity of the State Bureau for Geodesy Affairs to complete the new Cadastre. It is necessary to address the issues of lack of financing, high volume of work, lack of planning and cooperation among the state institutions, unclear legislation and unclear policy directions for the State Bureau for Geodesy Affairs.

5. Real estate registration remains slow, and there is a backlog of survey work at the State Bureau for Geodesy Affairs. The government should introduce private surveying of the land, paying close attention to the design of the licensing and oversight system so as to ensure open and transparent decision-making.

6. Increase the protection of shareholder rights and enforcement of directors’ duties.

7. An additional problem that has a direct impact on shareholder rights is the inability to engage in class action law suits. Without this capability, shareholders who challenge a company in court, for example, on a share buy-out arising from opposition to a fundamental change, may be paid a different amount for their shares than shareholders in the same position who did not participate in the court process. There should be a mechanism available whereby a court decision can be applied across a shareholder group without each shareholder having to be a party to the court challenge.145

8. Strengthen the effectiveness of the SEC. 1) Revise securities legislation to strengthen the enforcement powers of the SEC. 2) SEC should prepare a work plan to strengthen the transparency and accountability of the SEC, particularly with regard to public disclosure of decisions made. 3) The Securities Law should meet the standards of EU Transparency Directive. 4) Harmonize the entire securities framework with the new Company Law and Listing Rules. 5) Securities Law should state that any restrictions in the transferability of shares should be null and void.

9. Strengthen shareholder associations. 1) Revise the securities legislation to require that publicly-traded companies use “cumulative voting” in the election of members of boards of directors. 2) Establish an institute of directors and prepare a corporate governance code.

10. Improve Company Law. 1) Remove the possibility for legal entities to sit on boards (which weakens accountability and liability of board members). 2) Provide some basic “whistleblower” protection to employees who report fraud or shareholder abuse.

Contract Enforcement

1. The resolution of the systemic and specific judicial problems discussed in the Assessment, particularly in relation to enforcement of judgments, is necessary for any improvement to contract enforcement. Therefore, it is strongly recommended that the implementation of the new Enforcement Law receive absolute priority, with emphasis on the necessary capacity and institution building.

2. In addition, the Assessment team was informed that no plan was presented (or even contemplated) to educate private sector users (creditors) on the implementation of the new enforcement system. A comprehensive reform of the enforcement process will not be effective without the awareness and engagement of the private sector users. There is a need to implement a multi-faceted education program – one that extends beyond the new enforcement agents and judges and to those most affected by the inadequacies of the present system.

3. The costs of registering a small loan are too high. The Central Registry should consider lowering the fee from its current level of approximately $40 USD.


147 Id.

148 These recommendations are based on the CLIR analysis and the observations of the Assessment team.
4. The Law on Contractual Pledge deems a pledge that has not been registered as not legal and binding. A more appropriate provision would be for an unregistered pledge to rank lower in priority to pledges that are registered, but not be deemed illegal.

Donor assistance needed to implement recommendations.
When mapping the above recommendations to the ongoing and planned donor activities set out in Annex 1, the following areas appear to be in need of donor assistance. This list is indicative, and in no way meant to be exhaustive:

1. Assistance to the Judicial Reform Council, possibly in the form of technical assistance for a secretariat (including an international expert), to ensure technical expertise in costing, coordinating, providing continued feedback to the responsible implementing entities, etc.

2. Assistance in the implementation of the various activities as set out in Table 2-2 of the Assessment. Specific examples include:

   a. Capacity building to the Judicial Council, to ensure effective functioning after re-definition of its role, composition and competence. Assistance may include study tours for the members to view best practice examples elsewhere in the world, or to bring international judges/experts to Macedonia, drafting of procedural manuals etc.

   b. Training to judges and other personnel in the Magistrates school, to the extent not covered by the EAR. This may include specialized training and capacity building in specific, more specialized areas. For instance, assistance in the development and training of specialized commercial, economic and financial law courses may be rendered under the World Bank project, presently under preparation.

   c. Assistance to conduct the human resources study or studies needed in the light of legislative and organizational changes.

   d. Assistance to implement the reorganization of the court system (specialization etc) and capacity building of personnel to effectively implement the new system. First, there is a critical need for specialized training for judges and court staff that will need to adjust to new specialized divisions. In particular, court staff should be provided with opportunities to try to address the existing backlog of misdemeanor and utility cases through “non-judicial” mean as is now being done in the Veles First Instance Court. This could be done through training on debt collection techniques and mediation. Second, the physical courthouse structures will need to be reorganized to varying degrees.

   e. Assistance to implement the revamped General Administrative Procedure Law. In addition, as set out in the Assessment, it is recommended to follow a holistic approach to this problem. Rather than treat the issue of administrative disputes as a backlog and delay problem affecting the Supreme Court, the Assessment Team recommends that Macedonia focus efforts on reforming administrative procedures, practices and appeal processes. An ideal
solution would include a focus on administrative decision making process and administrative procedures so that cases are decided transparently, decisions are provided in writing and with clear reasons, and parties have the right to a fair and impartial review of agency decisions before getting to court.

3. Assistance in the roll-out of the case management system after the USAID funded work in the pilot courts are completed, to the extent this roll-out is not funded by USAID.

4. Assistance in completing a legal drafting study to assist in providing options to the Government for improving the way in which laws are drafted. Recent more interactive, consultative examples in the legal drafting process (such as the drafting of the Company Law) should form part of the study, and the study should also include systemic measures for the Government to better evaluate the economic and financial impact of implementing legislation.

5. Assistance in capacity and institution building for alternate dispute professionals and the judges, to the extent that SEED will not cover these activities.

6. Assistance in making judicial decisions publicly available on a wider scale, particularly once the case management system allows for the easier publication of cases, in both electronic and hard copy format.

7. Assistance for the funding of a survey/detailed case analysis, to better understand the body of unresolved bankruptcy cases.

8. Assistance in finalizing and updating historic information in the Cadastre, including completing surveying and title registration, to the extent that the World Bank project will not cover this. For instance, one estimate is that 8 Million Euro will be needed in addition to the US$15 being provided under the World Bank project.

9. Assistance in educating private sector users, and creditors in particular, on the new measures and implementation under the new enforcement system.
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<tr>
<th>Completed projects</th>
<th>Ongoing projects</th>
<th>Planned projects</th>
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<td><strong>USAID/Court Modernization Project</strong></td>
<td>legislative assistance (Changes and amendments to the Law on Civil Procedure, Law on Courts, Law on Misdemeanor, Implementation on the National Strategy for reform on the justice system, (ongoing since November 2003))</td>
<td>increase access to justice for the general public</td>
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<tr>
<td>Legislative assistance (Law on independent Court Budget and Law on Enforcement)</td>
<td>funding to develop and improve court administration and management</td>
<td>developing Methodology for uniform ways of collecting Court Statistics</td>
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<td>Roundtables to introduce the new laws - completed</td>
<td>assisting in the work of the Administrative Office of the Independent Court Budget within the Supreme Court:</td>
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<tr>
<td>Criminal Closed and Pending Case Survey;</td>
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<tr>
<td>Civil Closed and Pending Case Survey and</td>
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<tr>
<td>Commercial Closed and Pending Case Survey.</td>
<td>technical support</td>
<td></td>
</tr>
<tr>
<td>Macedonia Pilot Courts Civil Litigation Case flow Management Project (December, 2003)</td>
<td>implementation of ICIS</td>
<td></td>
</tr>
<tr>
<td>Court management:</td>
<td>“Feasibility Study Concerning the Future of the Judicial Branch Education in Macedonia” (August 2004)</td>
<td>“Support to the Reform of Judiciary” Project</td>
</tr>
<tr>
<td></td>
<td>“Support to the Reform of Judiciary” Project</td>
<td>training for all legal professional and administrative staff</td>
</tr>
<tr>
<td></td>
<td></td>
<td>legislative assistance on laws relating to the status of judges, courts, independent court budget and civil procedure</td>
</tr>
<tr>
<td><strong>USAID/Corporate Governance and Company Law Project</strong></td>
<td>legislative assistance</td>
<td>judicial training on commercial law issues (Company Law &amp; possibly bankruptcy)</td>
</tr>
<tr>
<td>Company Law (adopted)</td>
<td>intermediary assistance</td>
<td>Still attempting to promote ADR — working on initiatives with Min Justice and</td>
</tr>
<tr>
<td></td>
<td>enterprise assistance</td>
<td></td>
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</tbody>
</table>

149 Integrated Court Information System.
<table>
<thead>
<tr>
<th>Completed projects</th>
<th>Ongoing projects</th>
<th>Planned projects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Sector strengthening Project</td>
<td></td>
<td>Min Econ</td>
</tr>
<tr>
<td>* report on the Macedonian Securities Legislation and its Compliance with the IOSCO(^{150}) principles of Securities Regulation</td>
<td></td>
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<tr>
<td><strong>USAID/ ABA/CEELI</strong></td>
<td></td>
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<tr>
<td>Judicial Reform Index for Macedonia, November 2003 (assessment of Macedonian judiciary)</td>
<td>Promotion of development of ROL development of an independent, efficient, well trained and respected judiciary</td>
<td>Focus on ROMA registration process</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Project is extended to April 2006</td>
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<tr>
<td>Legal Profession Reform Index for Macedonia, June 2004 (assessment of Macedonian legal professionals)</td>
<td>Workshop on Effective anti-corruption structures (supported by OSCE)</td>
<td></td>
</tr>
<tr>
<td>Minority Participation in the Legal Profession in Macedonia, December 2004</td>
<td>Institution building support to MJA, PPA and other associations of legal professionals</td>
<td></td>
</tr>
<tr>
<td>Survey of Legal Frameworks for Enforcement of Judgments in the CCE, 2004</td>
<td></td>
<td></td>
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<tr>
<td>Assistance to MJA(^{151}) on drafting Laws on Independent Court Budget and on Judicial Salaries</td>
<td></td>
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<tr>
<td>Technical and financial assistance for development of CCE(^{152})</td>
<td></td>
<td></td>
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<tr>
<td>Study tour in Italy for PPA(^{153}) on &quot;New Techniques for Fighting Organized Crime and Corruption&quot;, April 2004</td>
<td></td>
<td></td>
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<tr>
<td>Establishment of MLRC(^{154}), creation of electronic database containing court opinions, laws and other relevant legal information, 2000</td>
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<tr>
<td><strong>IOM</strong></td>
<td></td>
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<tr>
<td>Counter Trafficking Case Management Training for Macedonian Experts funded by the Government of Norway. Completed December 2004. (Case Management Training for lawyers,</td>
<td>Measures to Counteract Trafficking in Human Beings, in Particular Women and Minors, from/via the Balkans and the Adriatic</td>
<td>Capacity building on counter trafficking training program for the members of the judiciary and students of law.</td>
</tr>
</tbody>
</table>

\(^{150}\) International Organization of Securities Commissions.

\(^{151}\) Macedonian Judges Association.

\(^{152}\) Center for Continuing Education.

\(^{153}\) Association of Public Prosecutors of Macedonia.

\(^{154}\) Macedonian Legal Resource Center.
### Completed projects

- public prosecutors, judges and police officers from the border police and anti-organized crime unit.

### Ongoing projects

- Regions. Founded by Italian Government
- Duration until March 2005
- (Case management Training with members of the Judiciary, Police trainings with members of the Judiciary as ToT; Preparation of the Publication of the Specialized booklet: Towards the Practicum - for PP and Investigative Judges in combating THB, smuggling and illegal migration;)

### Planned projects

- Duration until December 2005
- Continuation of the project: Measures to Counteract Trafficking in Human Beings, in Particular Women and Minors, from/via the Balkans and the Adriatic Regions until the end of 2005 (Exchange visits for trainings)

<table>
<thead>
<tr>
<th>USAID - FSVC(^{155})</th>
</tr>
</thead>
<tbody>
<tr>
<td>* promotion and development of ADR</td>
</tr>
<tr>
<td>* activation of arbitrage systems for the stock exchanges</td>
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<table>
<thead>
<tr>
<th>EC/EU - CARDS(^{156})</th>
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</thead>
<tbody>
<tr>
<td><strong>CARDS 2001</strong></td>
</tr>
<tr>
<td>- EC Justice and Home Affairs Mission. The project provided assistance to the Ministry of Justice and the Interior to develop comprehensive reform</td>
</tr>
<tr>
<td>- needs analysis and project design pertaining to the training of Judges</td>
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<tr>
<td>- technical assistance to carry out an assessment of the enforcement system</td>
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<tr>
<td>- advanced training course to fight against organized crime</td>
</tr>
<tr>
<td>* technical assistance to support the creation of the training institute for Judiciary</td>
</tr>
<tr>
<td>* police reform project</td>
</tr>
</tbody>
</table>

| **CARDS 2002** |
| * technical assistance to fight against money laundering |
| * support to the reform of the court system and Judicial Administration |

| **CARDS 2003** |
| * computerization (equipments and software for courts) |
| * harmonization of Macedonian laws with EU legislation |
| * combating money laundering |
| * further development of the Administrative and processing capacity of courts an prosecutors |

| **CARDS 2004** |
| * technical assistance to support the creation of the training institute for Judiciary |
| * police reform project |
| * professional selection and training for the judiciary |
| * technical assistance to the police reform process |

| **CARDS 2005** |
| * reforming of public prosecution sector. |

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155 Financial Services Volunteers Corp.

156 PHARE projects are listed under CARDS' completed projects.
<table>
<thead>
<tr>
<th>Completed projects</th>
<th>Ongoing projects</th>
<th>Planned projects</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>education</td>
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<td></td>
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<td>technical assistance</td>
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<tr>
<td></td>
<td></td>
<td>(supply equipment)</td>
</tr>
</tbody>
</table>

**EC/EAR - European Commission Justice and Home Affairs Taskforces**

- support of legal reform in the area of recruitment and training of Judges and Prosecutors, establishment of PITJ\(^{157}\)
- technical assistance to support the creation of a training institute for the judiciary
- development of current CCE\(^{158}\) capacity into a PJI\(^{159}\)
- education:
  - training of judges
  - court computerization project
- Assessment of the system for the Enforcement of Judgments

**OSCE**

- Criminal Law reform
- publication of a Magazine on Rule of Law Issues
- seminar on Parliamentary Control of the Security Sector
- basic court's access to the higher court decisions
- trial observation network "All for Fair Trials"
- anti-trafficking training for prosecutors and judges
- basic court's access to the higher court decisions
- decreasing the backlog of unresolved court cases
- equitable representation in the judiciary
- efforts at coordination of donor activities (Judicial Reform Information Group)
- cooperation with MoJ in reform implementation (focus on disciplinary proceeding, creation of a judicial auditing/inspection unit, appointment process for judges, establishment of specialized departments for high profile criminal cases)
- support of special prosecutor's unit for organized crime
- assessment of access to legal information for judges and prosecutors
- follow up on implementing the Law on Witness protection.

**SEED**

157 Public Institute for the Training of the Judiciary.
158 Center for Continuing Education.
159 Public Judicial Institute.
<table>
<thead>
<tr>
<th>Completed projects</th>
<th>Ongoing projects</th>
<th>Planned projects</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ADR - Mediation</strong></td>
<td><strong>ADR - Mediation</strong></td>
<td><strong>ADR - Mediation</strong></td>
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<tr>
<td>- Public awareness campaign to increase awareness and efficiency of mediation as a method for commercial ADR</td>
<td>- public awareness campaign (round tables and media appearances)</td>
<td>- capacity Building of the Association of Mediators</td>
</tr>
<tr>
<td>- two sets of basic and advanced level trainings completed</td>
<td>- Advanced Mediation training for Judges</td>
<td>- pilot cases with court(s) in Macedonia</td>
</tr>
<tr>
<td>- basic level Mediation training for Judges</td>
<td>- drafting legislation (Draft Law on Mediation)</td>
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<tr>
<td></td>
<td>- initiated establishment of Association of Mediators</td>
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</tbody>
</table>

**World Bank**

- Real Estate and Cadastre registration project
- Business Environment Project (BERIS)

**World Bank/IFC – FIAS**

- report on “Administrative Procedures for Doing Business in Macedonia” (June 2003)

**CoE**

- training courses for judges and prosecutors
- developing Macedonian School of Magistrates

**HELLENIC AID**

- scientific cooperation (Greece – F.Y.R.O. Macedonia) in the Field of Constitutional Institutions
- interactive scientific cooperation in the field of justice

**GERMANY**

- assistance in legislative and justice reform

**LUXEMBURG**

- technical assistance project in training for FYROM judges in EU Law

**UNITED KINGDOM/DFID**

- seminars on ADR (2003 - 2004)
- monitoring criminal procedures of corruption related cases

**IFOS/COLPI**

- Macedonia Corruption Free Coalition

**FOSIM**

- Center for Clinical Legal Education
- Criminal justice reform: alternative strategies and policies
<table>
<thead>
<tr>
<th>Completed projects</th>
<th>Ongoing projects</th>
<th>Planned projects</th>
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<tr>
<td></td>
<td>sentencing</td>
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<td></td>
<td>Promoting freedom of information (drafting legislation, and implementation of legislation)</td>
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<td></td>
<td>judicial reform assistance (raise of confidence of public in judiciary; raise of domestic trial standards; problem identification)</td>
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<td></td>
<td>legislative approximation</td>
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<td></td>
<td>support for anti-corruption initiatives</td>
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<tr>
<td></td>
<td>support for the Centre for Continuing Education of Judges</td>
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<tr>
<td><strong>Office of the Special Representative of the European Union in Skopje (EUSR)</strong></td>
<td></td>
<td>Interested in judicial reform in general</td>
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<tr>
<td><strong>EBRD</strong></td>
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<tr>
<td></td>
<td>Analysis of pledge and collateral registry</td>
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<td>Analysis of Insolvency Legislation.</td>
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</table>
Commentary on the Working Draft of the Macedonian Bankruptcy Law
March 9, 2005

The Process to Date

The World Bank was provided with the first Working Draft of the Bankruptcy Law by the USAID Corporate Governance Project on February 24, 2005. As its title clearly describes, it represents an initial draft. This draft has now been distributed by the three judge drafting group to the broader working group membership for comment, which was followed by a multi-day drafting session in Ohrid, Macedonia in mid-April. A revised draft will then be released for public comment, possibly in mid-June 2005.

Observations on the Working Draft

The working group has sought input from a wide range of users of the bankruptcy law, including judges, trustees, the Chamber of Commerce, academics and government representatives. The concept is to fix known problems, ensure that the many amendments made since the law was originally passed in 1997 have been incorporated consistently, and to make the law more accessible by reordering its structure so it more closely follows the process of an administration. Overall responsibility for bankruptcy is proposed to be transferred from the Minister of Justice to the Minister of Economy.

Positive substantive changes proposed include:

- A reduction in the competency of the Bankruptcy Panel, so that it is proposed to function almost exclusively as a first level of appeal against the actions of the bankruptcy trustee or bankruptcy judge. Its other functions will be transferred to the bankruptcy judge.
- Better advertising and notice requirements.
- Limitations to the time period in which a creditor can submit a claim and still participate in the proceedings.
- Requirements for a corporate trustee to carry professional liability insurance. This should be extended to natural person trustees as well.
- Standards for the sale of property to be set by the Ministry of Economy.
- Issuance of National Standards to govern trustees by the Ministry of Economy.
- Formation of a Chamber of Bankruptcy Trustees.

Less helpful proposals, which hopefully will be removed in subsequent drafts, include:

- That a temporary trustee should assess the likelihood of continuing the debtor’s business. This is unnecessary to determine whether a historical reason for bankruptcy has occurred, and is an important task of a trustee once a proceeding is opened.
Areas where more work is required include

- The proposed right of a creditor with a disputed claim to participate in the creditors assembly is so narrow as to lend itself to abuse. More thought needs to be given as to how such creditors can participate, even if provisionally.
- It should be possible to introduce more stringent deadlines on actions by the bankruptcy judge and bankruptcy panel.
- The proposed fines in the draft continue previous legal tradition in imposing trivial fines against the individuals who are responsible for the misconduct in question. It makes little sense to impose a large (an uncollectible) fine on the debtor, and nominal fines on its management, as such treatment will not deter or change behavior. There should be meaningful fines against the natural people responsible for the improper behavior.

The following proposals for further improvement of the Bankruptcy Law can be added to the above analysis. Comment from the Assessment Team is included between brackets:

- No application of the insolvency law to state-owned enterprises (SOE’s). (SOE’s can and do go bankrupt, therefore the Law should be applicable).
- The Law does not permit a case to be opened and fully administered when the assets are insufficient to meet the costs and expenses of the administration. (It does leave the question open of whom is supposed to pay for the administration in such a case. The state has insufficient funds, or at least insufficient interest to pay these costs. Perhaps this recommendation is not fully appropriate for transition countries. The present drafting group is also working on a solution to a problem specific to Macedonia, where companies did not re-register under the Enterprise law of 1996, or subsequently).
- After opening a proceeding, the staying of enforcement actions and proceedings does not extend to secured creditors, owners of property used by the debtor, or a supplier under retention of title terms. These parties do not have a formal right to apply for relief of the stay.
- The law does not require the debtor or third parties in possession to deliver all assets to the relevant functionary. (An amendment has been proposed to correct this in the second draft of the present amendments, and hopefully it will be included).
- Third parties are not required to provide financial information concerning the assets and financial affairs of the debtor. (An amendment has been proposed to correct this in the second draft of the present amendments, and hopefully it will be included).
- Independent analyses of a reorganization plans are not required to be made available to creditors; and reorganization plans do not have to comply with any

minimum protective requirements to ensure that creditors receive a return equal or greater than liquidation. (Independent analysis is a good idea, but at the stage of development of Macedonia with regard to reorganization plans, and the extremely low volume of reorganization plans, is perhaps not a practical suggestion. The present amendments contain a proposal that the bankruptcy judge before approving an accepted plan, has to ensure that no creditor or group is worse off under the plan than in the liquidations. The judge will also check the plan for other basic tests of equity, such as adherence to the absolute priority principle (except for voluntary subordination), equal treatment of all members of a group, and no breach of any national laws).

- The law does not provide for a process of financing for reorganization plans. (An amendment has been proposed to correct this in the second draft of the present amendments, and hopefully it will be included).
- Changes are needed in the overall system so that disputes between creditors and debtors are maintained within the bankruptcy proceeding for urgent handling rather than holding the bankruptcy procedure hostage to the schedule of another court.\textsuperscript{161}
- Statistics on bankruptcy are not readily available to the general public. A previous assessment team was informed in order to obtain information; a request from a Member of Parliament is required.\textsuperscript{162} This overall situation needs to be reviewed.

An interesting perspective on the implementation and enforcement of bankruptcy in Macedonia comes from a bankruptcy practice survey.\textsuperscript{163} This survey consists of two detailed bankruptcy hypotheticals with a total of forty questions answered by a Macedonian law firm. The practical lessons gleaned from these hypotheticals are summarized below:

\textsuperscript{161} The 1998 law permitted the commencement of a claim upon presentation of proof that a debtor was 45 days in arrears. This could be shown through presentation of invoices or other reliable documents. Debtors, however, took advantage of a systemic weakness in the bankruptcy regime in order to disable the process with delays. Upon presentation of invoices, debtors would frequently dispute the claim. This caused the disputed claim to be transferred from the bankruptcy court to a court for commercial claims, and halted the bankruptcy proceeding for as much as two years until the claim could be heard and decided. On the other hand, creditors were using the simple process to enforce payment by bringing suit against solvent debtors who were late in payment or who had refused to pay because of a dispute in order to use the threat of bankruptcy to force the debtor to pay. In order to stabilize the situation, provisions were enacted in 2002 that required bankruptcy claims to be based upon an executive title – that is, either an unsatisfied court judgment or an executive clause within a notarized contract. Because the terms of such titles are not disputable, debtors are prevented from challenging the basis of the claim in order to delay the bankruptcy proceeding and creditors are prevented from initiating a bankruptcy proceeding in the absence of proof of default. Unfortunately, this has also limited legitimate claims by creditors who are suing on an account instead of a notarized contract; hence it is not an adequate solution (see CLIR Assessment).

\textsuperscript{162} See CLIR Assessment.

\textsuperscript{163} Macedonian Law Firm Assessment of Bankruptcy Practice in Macedonia, Legal Indicator Survey 2004 (2 detailed hypotheticals).
To open bankruptcy proceedings, it is first necessary to obtain an enforceable document. An enforceable document is essentially a final court decision for payment of a monetary obligation, and can be obtained by a notarized statement that the debtor is in default. Alternatively, it would take on average of 12 months to obtain an enforceable document through litigation.

There is no special bankruptcy court, only the bankruptcy department of a general jurisdiction court. These judges are “moderately” competent and experienced.

The bankruptcy process through the courts is slow and expensive, and is as follows:

- Initial filing of the bankruptcy petition.
- Pre-bankruptcy hearing to determine whether the terms and conditions for opening a bankruptcy procedure are met (such as the enforceable document), usually 2 months after the initial filing.
- If accepted, the court makes public notice of the bankruptcy, appoints a bankruptcy administrator, and gives creditors 30 days to file their claims.
- Hearing and administrator’s report on filed claims. The company is either reorganized or liquidated. The average time between the initial filing of proceedings and time of court approval of a reorganization plan is between 6 to 8 months. (This is actually quite reasonable; it could hardly be less than 6 months)
- The debtor and creditors may appeal throughout the process, which can slow the process down further. Additionally, all procedural expenses are payable by the creditors until final termination of the bankruptcy procedure.
- The average amount of court fees for a bankruptcy process is € 500, and a creditor would also expect to pay an average amount of legal fees of € 270. (There is a fee regulation issued by the Ministry of Justice which is patterned after the German fee regulation. The trustee is paid on a sliding scale, based on the amount he generates for the benefit of the creditors).
- The law firm makes the generalization that very often the bankruptcy trustees are corrupted, incompetent, inexperienced, and take action only for the benefit of one or a few of the creditors. For example, trustees do not report to all creditors, but only the Board of creditors (several creditors elected by the Creditor’s assembly), which results in no information for some of the creditors. (Reporting obligations are specified in the law; the trustee does indeed report to the Board of Creditors more than to the Creditors Assembly, as set out in the law. The correspondent may not be completely familiar with bankruptcy proceedings).

Because of these difficulties in bankruptcy proceedings, the law firm does not recommend pursuing a bankruptcy as the odds of receiving a significant part of the claim are very low.
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