

**Registering Small Business in Bosnia and Herzegovina: Implementation
of the EU Charter;**

T a b l e o f c o n t e n t s

Executive Summary	2
Introduction.....	4
Problem Description	7
Why registration matters?	7
Registration procedure in an ideal world	10
Background of the problem:	11
Legislative framework for registration of business entities	13
Current registration procedure	16
Registration procedure with functioning of electronic Main Book of Register	21
Policy Options.....	27
Conclusion and Recommendations	33
Bibliography	37

Executive Summary

Bosnia & Herzegovina endorsed the Charter for Small Enterprises together with the other countries of the Western Balkan region in 2003. Unlike the other countries of the region, which since then have improved their climate for the development of small businesses, Bosnia and Herzegovina has been lagging behind in all areas. The Charter outlines ten policy areas that are important to improving the climate for the development of small enterprises, of which one of them is the registration procedure.

This paper examines the current problems that surround the reform and modernization of the registration process in Bosnia and Herzegovina that started in 2002¹. Despite the fact that new Framework Law on Registration of Business Entities was passed in 2004 and harmonized entity laws on registration in 2005, the registration process in B&H is still conducted in accordance with the old regulations.

A close review of state and Federation B&H laws on registration and its procedures was conducted, giving an example of the registration procedure in Mostar municipal court where registration of business entities for Hercegovacko-Neretvanjski Canton is done. The aim of this was to describe and quantify the cost and time involved in completing the registration process, i.e. in getting to a point where a business could legally engage in business activity. This analysis looked at the current process of starting an ordinary limited liability company, the most simple registration procedure. Even though the registration procedure differs to some extent between entities and in the Federation B&H

¹ Official start of DfID project was taken as the year when the reform started and this is one year before the Charter was endorsed.

between cantons, the example of the registration procedure at Mostar Court describes well the complexity of the process.

Lack of policy towards this important reform, as well as lack of political will, have had a negative impact on the implementation of the new legislation for registration of business entities. The preparations for implementation of electronic Single Registry system, led by DiFD programme, have been delayed beyond the initial timeframe. Thanks to the kindness of DiFD personnel, the author of this paper has been familiarized with the electronic system and how it should function once it is installed in courts. In the second part of this study, and based on information received from DiFD, an evaluation of registration process at Mostar court with functioning Business Registry equipment is given, by explaining changes that will take place, but also underlining those that will not happen.

Policy options and recommendations are given at the end, but differentiating those that have to be done immediately and explaining its immediate benefits, while also setting longer term goals developed on the basis of best world practices and the Charter recommendations.

Introduction

Bosnia and Herzegovina, together with other countries of the Western Balkan region, endorsed the Charter for Small Enterprises at the European Union – Western Balkan summit of Thessaloniki (Greece) on 21st June 2003. The Charter outlines ten policy areas which are instrumental for the improvement of the small companies' business environment - these include regulatory reform, faster and cheaper start-up, entrepreneurship education, competitiveness, etc. In October 2005, Bosnia and Herzegovina, together with other countries of the Western Balkan region, reinforced its commitments to the Charter by signing the Belgrade Declaration on Future of the Charter Process, by which the countries herald the merits of the charter process and called on the EC to ensure its continuation.

The Charter gives the following recommendation in relation to business start up procedure:

2. The cost of companies' start up should evolve towards the most competitive in the world. Countries with the longest delays and most burdensome procedure for approving new companies should be encouraged to catch up with the fastest. Online access for registration should be increased.

3. New regulations at national level and Community level should be screened to assess their impact on small enterprises and entrepreneurs. Wherever possible, national EC rules should be simplified. Governments should adopt user friendly administrative documents.

Contrary to the other countries of the region, where the Charter process resulted in a number of SME related measures that have been introduced and adopted in the legislative agenda, in B&H the issue of SME policies has not been a priority and the whole process remains problematic. The current situation in Bosnia and Herzegovina therefore “remains very worrisome and the lack of a strategy and policy capacity will undermine the possibilities for the country to further proceed in the implementation of the European Charter for Small Enterprises”².

The aim of this paper is to analyse the process of reform of the registration procedure in Bosnia and Herzegovina, from the perspective of fulfilling recommendation of Chapter 3 of the Charter – the area where Bosnia and Herzegovina has been lagging behind other countries of the region.

Despite its recent trend of economic growth, Bosnia and Herzegovina is in 95th place, according to Doing Business Report for 2006. The report shows that an entrepreneur in B&H needs on average 54 days to register business at a cost equal to 37.0% of gross national income per capita³. Doing Business Report for B&H points out that one of the key areas that need reform in order to eliminate obstacles for doing business is registration process.

In post-Dayton Bosnia and Herzegovina, the problem of registration of business entities cannot be viewed independently from the country’s unique constitutional and administrative structure. Different levels of government with overlapping or ambiguous

² 2006 EC Report on the Implementation of the Charter for Small Enterprises in Moldova and the countries of the Western Balkan region: page 17

³ World Bank: Doing Business Report on Bosnia and Herzegovina in 2006; The report is based on information regarding the registration procedure at Sarajevo Registry Court; Estimated GNI per capita in B&H is 2440\$;

competencies, together with a problem related to the lack of policy and political will for reforms in this area represent situational variables.

The Framework Law on Registration of Business Entities that limits the registration procedure to 5 days was passed in 2004, while harmonized entity laws on registration of business entities were passed in 2005. These laws are still not implemented and according to the official stance of responsible entity ministries of justice the reason for this is that technical preconditions for implementation of those laws have not been met. This is also the reason why the registration procedure is still done in accordance to the old legislation.

In order to portray the difficulties that surround this process and show complexity of this area, this paper will give a short overview of the current process of registering an ordinary Limited liability company at Mostar Registry Court.

Furthermore, this paper attempts to predict the effects of new state and entity legislation on the registration process when implemented. Therefore, another example of registration process using the electronic Registry System will be explained, by predicting the procedure required for registering an ordinary Limited Liability company at Mostar Court.

Policy recommendations are given at the end by distinguishing long term goals and short term priorities that must be achieved if the country is to improve the competitiveness of its economy, reduce the size of the grey economy and encourage formal employment, while also fulfilling recommendations from the Charter.

This document is based on a combination of interviews and desk research. Qualitative research of all laws and bylaws that are related to registration process in the Federation of B&H was conducted together with most relevant documents written in the past on this subject. Open interviews were conducted with entrepreneurs that recently registered a company at Mostar Court, entrepreneurs that operate informally, civil servants working at all levels of government, solicitors and DiFD officials.

Problem Description

Why registration matters?

Even when registration procedures are complicated and time consuming, enterprises have to go through this process only once. Small and medium enterprises data compiled by the WB/IFC SME Department shows that there is a correlation between the number of SMEs per 1000 inhabitants and the cost to start a business⁴, meaning: as the cost of starting a business is lower, higher is number of SMEs. According to Doing Business 2006, 31 countries eased business entry in 2005. In six of these countries business entry increased after reforms. For instance in 2005 in Serbia and Montenegro number of newly registered companies rose by 42% compared to previous years. Furthermore, evidence shows that there is even a clear statistical correlation between the complexity of registration procedures and levels of corruption⁵ Therefore, decrease of registration costs and simplification of procedures is most likely to result in more businesses registering and job

⁴ <http://rru.worldbank.org/Themes/SmallMediumEnterprises/>

⁵ Liliana de Sa: Business Registration Start-Up: A Concept Note; page 15

creation. However, entrepreneurs usually look into overall regulatory cost when deciding to register a company; and registration costs and procedure are only one part of the overall costs. Nevertheless, there is evidence that easier business registration procedures can help generate more business ventures and with it create a more dynamic private sector.

From a small business perspective, business environment must permit sufficient revenues to cover costs and risks of doing business (here, risks are limited to market risks and not to unpredictable or refraining government interference). Registration of a business allows business owners to enjoy the rights normally intrinsic to operating within the legal system, including access to courts, access to finance and legal borrowing, licensing and permits, protection from unfair competition, and various other benefits offered to formal actors. It brings them also obligations to pay taxes, provide information and play by the rules. But more importantly, it brings opportunities to grow through better access to finance, access to formal customers and export markets. For an enterprise the fees and complexities of registration are sunk costs that will need to be recovered through long term profitable activity – the smaller the company the heavier the burden of registration cost and fee. In addition to this, if the process is too complex, business owners lose time that would have been better spent generating income. If these costs are too high, however, entrepreneurs either forego new business or pursue it through the informal economy. Small enterprises are the most sensitive of all to changes in the business environment. They are the first to suffer if weighed down with excessive bureaucracy, but they are the first to flourish from initiatives to cut red tape and reward success. Lengthy, expensive

and complex registration procedures that differ across the country is one of the main obstacles for establishment of small enterprises, whose investment is highly cost averse.

From a government perspective, registration is vital for taxation and regulation of economic activity. A well functioning system of registration also permits statistical analysis for setting policies, determining revenue collections and monitoring economic trends. It helps the government to broaden the tax base and make public policy and investment decision based on greater knowledge of private sector. In countries of developed world governments tend to regulate less and instead rely on a well established legal system to govern business behavior. In post socialist, transitional economies, where Bosnia and Herzegovina belongs, a significant ex ante screening of businesses is carried out. These countries are characterized by mistrust by government towards its private sector, especially towards small private enterprises.

The worse the business registration procedure the higher the potential gains from successful reforms. Improved registration procedure can help improve the overall environment for the private sector and raise standards of efficiency and transparency for other government agencies.

Also, fast and simple registration procedures can contribute to a shrinking of the informal sector. It is estimated that the size of informal sector in Bosnia and Herzegovina is approximately 40% of economy⁶. The end result of such a large proportion of an informal economy are distortions in the economy with formal companies facing informal competitors with lower cost structures, violations of basic labor, health and safety

⁶ This estimate is used by government;

regulations. This threatens not only social well being, but also significantly lowers tax revenues. It is generally assumed that informal business is on average less productive than formal companies and face barriers to growth. In order to create more jobs and increase growth, business registration might be a good entry point to break this vicious circle in which Bosnia and Herzegovina has been for some time.

Registration procedure in an ideal world

It has been proven that the most efficient registration procedures are the ones that take place outside courts. Those could be one-stop-shops, agencies, ministries, etc. In most countries of developed world registration procedure takes 5 days or less, and in some cases one day only (like in Canada, Australia). The common features of every efficient and fast registration procedure is that registrants interact with only one or two institutions, while one of them, the main registration body, automatically forwards necessary company information to the other relevant institutions. Also, registrants are required to complete only 3 to 4 procedures all of which can be accomplished online or sent via email or fax in one or two days.

This is how the ideal process works:

1. Check for uniqueness of name: Registrant checks the online searchable database that contains all existing business names to ensure uniqueness. If the same name exists, a different name must be proposed. Registrant reserves a name.

2. File for registration: Registrant fills in and submits to the registration body (online or via fax or email) a single registration form which captures the entire data set needed by every government institution requiring company information.
3. Registration body issues to the business a single identification number to be used for all interactions with the government henceforth. Also, the registration body sends relevant data to each government body on behalf of registrant. Upon receiving registration certificate, the registrant is made aware of his or her legal obligations as a business operator, such as registering employees, registering for health and pension insurance, etc. Instructions are provided for how to fulfil necessary obligations.

Background of the problem:

The present system of registration in Bosnia and Herzegovina was designed in socialist times, when a private business was considered an ideological enemy of the system. Therefore, the legal framework was set in the way to generate as many obstacles as possible in order to discourage private entrepreneurship and generally to impede the profitability of private businesses. The current state administration inherited the same legal framework and more importantly has maintained the same attitudes and mentality when it comes to treatment of private businesses. Under the Yugoslav regime, large government owned industrial corporations were responsible for providing employment, and small independent operations were looked with suspicion. Many business owners

find that many officials and fellow citizens are biased against private enterprises because they do not understand their importance or function in the economy.

At the moment there are too many levels of government that are involved both in lawmaking and administrative jurisdiction over the registration process. As a result, it is almost impossible to identify an accurate number of laws that affect the domain of business start up. Those laws are also subject to ongoing change. The sheer number of these laws and regulations make them difficult to compile. Additionally, the application of these laws varies according to company circumstances. Government departments often fail to see the aggregate burden of government regulation on business and spend time and energy on defending the procedures rather than facilitating entrepreneurial activity. It could be said that the current system represents an unplanned growth of local and national requirements based in part on the need for government revenues, which has been built over the years.

Negative attitudes tend to influence the behaviour of officials and the general public, of whom many still expect the state to provide employment by securing large investments. In order to change, they need to understand that small private companies are the lifeblood of a healthy, developed economy, and are the foundation for larger scale investments. Such understanding is essential in moving officials toward a public service mentality instead of the current control mentality.

Legislative framework for registration of business entities

The quality of the legal and regulatory environment depends on many factors, but none more so than the type and quality of government. The registration procedure in Bosnia and Herzegovina cannot be disentangled from the functioning of the court system – the set up inherited from the old socialist state. Today, this area is regulated by entity laws and many bylaws. The registration procedure in both entities is still done in accordance with old regulations and practices that were passed in 1999 and 2000 and were subject to some changes in subsequent years. The new Framework Law on Registration of Business Entities passed in 2004 and harmonised entity laws on registration passed in 2005 are not being implemented because technical requirements have not been met yet, or in other words because entity ministries of justice have not approved the installation of the electronic Registry System that these laws are envisaging. Implementation of new regulations and the introduction and implementation of the new system have been delayed beyond original timeframes due to various consultative debates.

Laws and bylaws that currently regulate the process of court registration in the Federation of Bosnia and Herzegovina up to the point of obtaining Customs Number and registering for VAT are the following:

- Law on Entry of Legal Entities into the Court Register, Official Gazette FB&H 04/00, 19/00, 49/00, 32/01, 14/02, 13/03, 50/03;
- Decree on Entry to the Court Register Legal Subjects Doing Business Activity, Official Gazette FB&H 12/00, 16/00, 38/00, 58/01;

- Law on Business Entities, Official Gazette FB&H 23/09, 45/00, 02/02, 06/06, 29/03;
- Law on Tax Authority, Official Gazette FB&H 33/02;
- Law on Standard Classification, Official Gazette FB&H 06/95
- Rulebook on Obtaining Identification Number and Tax Registration of Business Subjects, Official Gazette FB&H 39/02
- Instruction No. FPU-1 issued by FB&H Tax Authority, Official Gazette 04/2000
- Cantonal laws on Court Taxes;
- Cantonal laws on Administrative Taxes;

In 2001, following the FIAS Report⁷ the registration procedure was identified as a problem and in need of streamlining. In short, the report recognised that the registration procedure represents an obstacle to the economic development of the country and to foreign direct investment. DfID funded programme “Reform of Business Registration, Project in B&H” was approved on the basis of those findings and commenced working in 2002. Members of this project together with state and entity ministries of judiciary during 2003 developed a draft Framework Law on Registration of Business Entities, which was subsequently adopted by B&H parliamentary assemblies in 2004. It is important to note here that this new regulation deals only with one part of the regulatory web that dictates the registration procedure. All other laws and bylaws have stayed unchanged.

The state Framework Law on Registration of Business Entities was developed by working groups nominated by entity government, notably Ministry of Justice of which 7

⁷ FIAS Report: Bosnia and Herzegovina: Commercial Legal Framework and Administrative Barriers to Investment, March 2001;

were from the RS, 1 from FB&H, 1 from Breko District and 1 from state Ministry of Justice. It is clear from the former mentioned that the FB&H government was not approaching this issue with the same interest as the RS government. The composition of working groups drawn mainly from entity ministries of justice, without a single member representing a business community, or MoFTER's Department for Entrepreneurship (who officially coordinate all issues with regard to the Charter) determined the substance of the law. According to DFID personnel, the Working Group had rejected every possibility of taking the registration process out of the court system from the start. The framework law, as we have it now, came as a compromise between different competing political interests to maintain the competencies for regulating the registration process at entity and Breko District level, and despite argumentation offered by DfID in favour of transferring it to the state level. Obviously the only thing compromised was to allow information sharing on registered business subjects between entities and making the uniformed registration procedure by respecting insignia of every responsible court (which embeds corresponding entity or cantonal insignia). The new law also stipulates a time limit of 5 days for registry court to process registration, but upon submitting full and completed registration documents. According to the old registration law, registry courts are supposed to process the registration in two weeks time, but the practice has been different. There has been a significant difference in time needed for processing registration applications between different courts. At certain times, Mostar registry court needed 6 months to process registration. Whether courts process registration applications in time or with delay often depends on number of available court personnel, its equipment, as well as its workload. However, as it will be explained later, the successful

implementation of time limit of 5 days that the new law envisages is largely dependant on simplification of the system and procedures, and on the training of receiving clerks to judge the completeness of applications.

Current registration procedure:

The process of registration in Bosnia and Herzegovina is everything but not simple and straightforward. Looking from a general perspective, the system is fragmented, fees are high and vary from court to court, while filling requirements are confusing and can differ significantly between entities. The below example shows steps that registrant needs to pass in order to register an ordinary Limited Liability Company in Hercegovacko Neretvanjski Canon. The competent court is Mostar municipal registry court, whose court officials permit visits only on Mondays and Thursdays from 11.00 a.m. to 13.00. The court does not provide any written information to potential registrants and according to information received from those that have registered a company there recently, court officials are generally unwilling to provide information about registration process, but always advise clients that the best would be if a person hires a solicitor. Solicitor's fee for this type of service where solicitor prepares documentation for registration usually vary between 400KM and 1000KM.

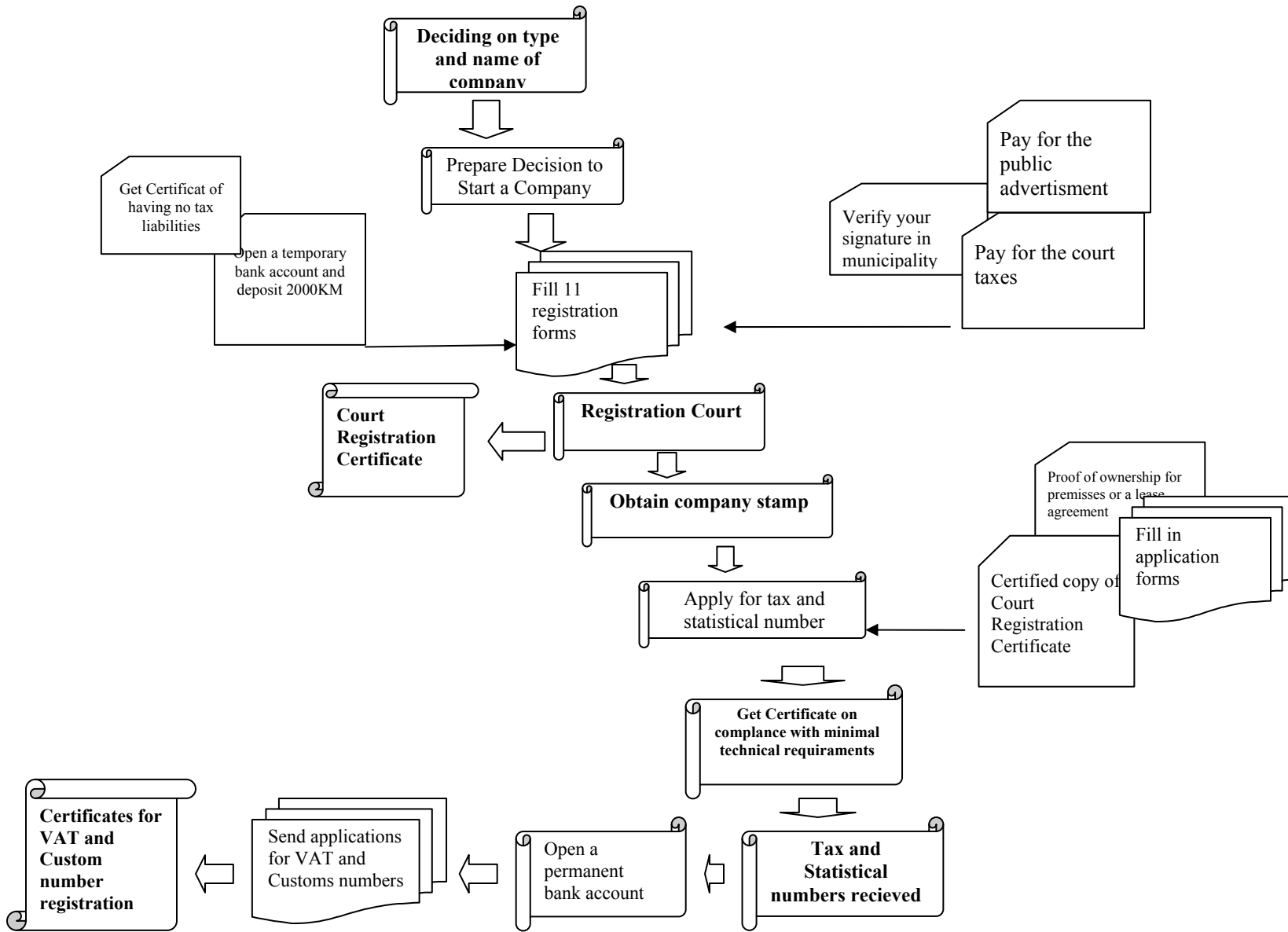
Mostar Municipal Registry Court:

1. Decide on name and type of the company and check for uniqueness of the name at the competent court (the court keeps information on companies registered only in

- that canton; the checking can be done only on Mondays and Thursdays from 11a.m. to 1 p.m., since the registry court is closed for visitors at other time)
2. Prepare Decision to Start a Company (in accordance to the Law on Business Subjects FB&H)
 3. Go to the Tax Authority to obtain Proof of having no tax liabilities;
 4. Deposit 2000KM in a temporary account of a business bank (in order to open deposit account, the bank requires Proof of having no tax liabilities – requirement imposed by FB&H Tax Authority)
 5. Fill 11 company registration forms with attachments, Disclosure Statement of the Founder, Statement of acceptance of Duties of MD, Appraisal, Decision / Contract on Company Foundation and submit it to the Registration Court together with Prove of paid taxes, Proof of paid in Deposit, Proof of payment for public advertisement, Verified Signature (done in municipality)

- Registration Certificate received

6. Obtain Stamp
7. Apply for Statistical number
8. Apply for Tax number
9. Get Certificate on compliance with Minimal Technical Requirements (takes on average 7 days as it require field visit by Tax Inspector);
10. Statistical and Tax Number received
11. Open permanent bank account
12. Register for VAT and apply for customs number



Process of registering a simple Ltd. company

As it can be seen from the above example, the registration process is burdened with requirements that are actually under jurisdiction of other state institutions, namely the tax authority. According to the Instruction for Banks from 2000 issued by the Tax Authority, banks are not allowed to open a temporary deposit account to somebody who does not have a Proof of having no tax liabilities issued by the Tax Office. Therefore business registration is withheld from anyone who has even a small interest in an enterprise that has been delinquent with tax payments. The question is why the state puts indirect burdens onto starting up businesses rather than using, other, direct mechanisms such as enforcing tax obligations directly through Tax Authority, institution responsible for this. This requirement will remain unchanged in the future under functioning of electronic Single Registry.

Furthermore, the Certificate of compliance with minimum technical requirements for business premises, imposed again by the Tax Authority, is required even when premises are rented from specialised company, who had to obtain this certificate for its own registration. This certificate is prerequisite for obtaining tax and statistical number. The process of obtaining the certificate involves site visit by the responsible cantonal inspector, which takes on average 7 days, while the costs differ between cantons. In addition to this, a company cannot be registered at a home address of owner – a measure apparently introduced in order to suppress existence of fictitious companies. Again, this is a requirement that will remain unchanged under functioning of the Single Register.

The capitalisation requirement of 2000KM (or approximately 1000Euros) for a Limited Liability Company, is imposed allegedly to ensure that the business entity has funds with

which to meet liabilities. Practice shows that the existence of such requirement may do little to ensure compensation for those who might be seeking damages from such a company. Even though these funds can be used as soon as company becomes operational, the capital requirement represents a burden for most entrepreneurs.

In addition to the above, entrepreneurs are usually faced with additional costs related to solicitor's fee that can vary between 400 and 1000KM. When asking for information, court personnel usually suggests to entrepreneurs to hire a solicitor, who will prepare documents for submission to the court. It appears that enquires made by entrepreneurs are considered as waist of time by court personnel. In addition to this, there is no place where entrepreneurs could find all information about registration procedure. Moreover, this practice is far from recommendations of the Charter relating to simplification of administrative procedures and using user friendly administrative forms.

It appears that the registration procedure is considered as a source of revenue and is left to individual courts to determine the registration fee independently. In addition to court fees, different types of administrative taxes are levied on registrants, which are determined by different cantonal, entity and state laws. In general, different competing authorities require different forms and levy fees with each form. The problem is that this area has been completely neglected so far. One of the reasons is that these different types of administrative taxes represent the so called *non tax revenue* for public institutions involved and different levels of government. In order to remedy this situation, further research needs to be done which would be a basis for developing a wider national strategic framework for rationalising costs in relation to business needs.

Registration procedure with functioning of electronic Main Book of Register;

According to the Framework Law on Registration of Business Entities and corresponding entity laws, registration process for companies has remained in the courts⁸. At the time of writing this document, DfID's project has been almost completed, i.e. its waiting for the final approval by entity ministries of justice for installation of registry equipment in all registry courts⁹. Furthermore, the precondition for putting the system in use is to develop the Rule Book on Use of Electronic Main Book of Registry System and approve it by the responsible entity ministries. The draft Rule Book has already been developed by DfID project, but it is possible that it might need some minor alterations. Now, only political will is needed for this to happen, since everything else has been prepared.

Once the system of electronic Business Registry becomes operational, it should result in a reduction of judicial involvement to expedite business registration. Courts will be required by law to approve every application form with attached documents of incorporation that meet legally established criteria in terms of form and content; in those cases courts will not be able to request additional documentation or ask for background checks. Registration information will be computerised as well.

The system will function on three servers – one in Banja Luka, one in Sarajevo and one in Brcko District (already existing) – that will be connected. Registry courts in the Federation will be directly connected to Sarajevo server, while registry courts in the RS

⁸ Registration process for craft shops and sole proprietors is done in municipalities;

⁹ HJPC have approved the installation on 14.Nov. 2006 and was delivered to DfID project on 23rd Nov. 2006, after 2 and a half months waiting.

to Banja Luka server. The filled information into these servers is supposed to be replicated at the end of every working day, thus every registry court in the country will be able to see information about registered companies from any other part of the country. Also, registration certificates will be valid in all parts of Bosnia and Herzegovina.

Furthermore, in accordance to the Law on Free Access to Information everyone will be able to enquire and receive publicly accessible information on any company (full name the company, its seat, proprietor, authorised employees, size of company's capital). The system's website search engine will give search options on the basis of company name or company's unique Registration Number. However, courts will need to transfer information from existing registry paper database into the new electronic database. The required time estimated for this process, in case that courts dedicate personnel for this task, is approximately a year. But, once this is done, this alone will simplify the process of registration by making the first step of checking uniqueness of the name easier. Registrants will be able to check for the uniqueness of the name online, by searching a database that will contain all existing business names.

Registration procedure for Ltd stipulated under the new legislation, notably the FBiH

Law on Registration of Business Entities will look as following:

1. Decide on name and type of the company and check for uniqueness of the name at the competent court or using the official website search engine;
2. Prepare Decision to Start a Company (in accordance to the Law on Business Subjects FB&H)

3. Deposit 2000KM in a temporary account of a business bank (in order to open deposit account, bank requires Proof of having no tax liabilities – requirement imposed by FB&H Tax Authority)
4. Fill company registration forms with attachments, Disclosure Statement of the Founder, Statement of acceptance of Duties of MD, Appraisal, Decision / Contract on Company Foundation and submit it to the Registration Court together with Prove of paid taxes, Proof of paid in Deposit, Proof of payment for public advertisement, Verified Signature (done in municipality)

Court registration certificate received in maximum 5 days time

5. Obtain Stamp
6. Register with Tax Authority and Agency for Statistics
7. Get Certificate on compliance with Minimal Technical Requirements (takes on average 7 days as it require field visit by Tax Inspector);
8. Open permanent bank account
9. Register with Indirect Taxation Agency and obtain VAT;

When the court receives complete application they will process the application electronically. The system is designed in such a way to send a clients Request for Registration to the Tax Authority, Agency for Statistics and Agency for Indirect Taxation in case that company requires Customs Number (not compulsory). These agencies are required to respond in three days time providing the tax and customs number. In case that the Tax Authority cannot provide Tax Number, the Tax Administration must provide an

explanation to the relevant court, who than, depending on the reason, might decline the registration or issue a Conclusion ordering the registrant to eliminate issues that prevent the Tax Administration from issuing the Tax Number. When the court receives the information from the Tax Authority and ITA, the registration will be finalised by issuing Registration Certificate (signed by Registration Judge) where the company's tax and customs number will be stated. The system is designed in such way that limits the whole process to 5 working days. Once the Registration Certificate is received, the entrepreneur will need to obtain official stamp and than register fully with the Tax Authority and Statistics Agency. However, since these agencies already received information about the company from the Registry Court, they will be able to make an advanced appointment for inspector's visit to check if business premises complying with technical requirements.

Law on Classification of Business Activity and Decision on Classification of Business Activity (*Zakon o klasifikaciji djelatnosti, Službeni glasnik BiH 76/06 and Odluka o klasifikaciji djelatnosti, Službeni glasnik BiH 84/06*) adopted at the state level is in use by the State Agency for Statistics from 1st of January 2007, and should be applicable for the whole country¹⁰. This standard classification will be downloaded at the registry system which should save the time for court official during the process of registration. At present, registrants are usually registering for all sorts of different types of activities. This is used as a strategy by entrepreneur - if the time comes when he / she will need to switch its activity, from for instance trade to some kind of production, the law requires company to report new activity to the court and all other relevant agencies in case that they don't

¹⁰ Entities have had separate and different Standard Classifications for Business Activities;

have that activity listed. Changes in the court register cost almost the same as process of registration. With the new system this procedure for the court officials will be very simple and we can hope that it will be charged on cost recovery basis in the future. This, of course, will require changes in the Law on Court Taxes and Law on Administrative Taxes. The current practice also represents problem for Statistic Agencies whose activity should be to keep statistical information of types of company's activity, while activities that companies report are very diverse and numerous.

The cost of registration will remain the same. Every canton has its law on court taxes which regulates court fee for business registration. The minimum capital requirement of 2000KM will also remain the same.

Because of the fact that all administrative and court forms will remain the same, it can be assumed that entrepreneurs will require solicitor's services. Court officials claim that applications for registration prepared by solicitors are usually done without mistakes and these applications go through the system much faster. Also, another reason why it is advisable for entrepreneur to hire a solicitor is that they have, unlike entrepreneurs, a very good communication with court officials.

Therefore, the time needed for registering a company at court should be drastically reduced. An entrepreneur will be able to start working soon after he / she receives court Certificate of Registration as it will have the Tax and Customs number. After this, one day is needed to obtain official stamp, after which entrepreneur needs to pay visits to the Tax Authority, Agency for Statistic and Indirect Taxation Agency in order to provide

further required information about the business. But, considering the fact that all other government agencies involved in this process will have an elementary information about newly registered business, it could be assumed that entrepreneur will not be required to provide the same information that was already provided to courts.

Effective completion of this reform, however, will require training of registry personnel, training of lawyers and notaries¹¹, public education on new rights and procedures, and monitoring to ensure adoption and implementation. However, the attitude of the local stakeholders showed so far raises concerns and indicate that they do not have sufficient understanding or resources to meet these needs. Once the new laws are implemented a great deal of explanatory material and detailed regulations will be needed to ensure uniform application of the laws. Education and practical materials, such as handbook on procedures will be needed for registrars, notaries, lawyers, court officials and the general public to ensure sustainability.

Online registration

Online registration is still not possible in Bosnia and Herzegovina despite the fact that the Council of Ministers approved the “*Action Plan on Development of IT society in B&H*” on 16th November 2004. According to this document, which is already two years old, the government’s priority in this field is passing Law on Electronic Business, Law on Electronic Signature and the Law on Certified Body in B&H¹². These laws should enable business exchange of information, documents and messages in electronic form and use of

¹¹ Law on Notaries is effective from 1st January 2007

¹² In June 2002, the RS passed the Law on Electronic Business and Electronic Signatrure (RS Official Gazzette 36/02)

electronic signature for legal purposes, court, administrative and other procedures and electronic data protection. Unfortunately, at the time of writing this document only the Law on Electronic Signature 91/06 was passed at the end of last year.

New entity laws on registration of business entities already envisage the possibility of sending application for registration via email if technical preconditions are met and control of electronic signature can be assured.¹³ However, this provisions alone is not sufficient for the introduction of registration via email or online. The above mentioned legislation on the state level, together with adequate amending of the Law on Administrative Procedure, is necessary in order to introduce the system of online business registration or applying for registration via email. Introduction and implementation of these laws would also enable exchange of information electronically between different government institutions.

¹³ Law on Entry of Business Subjects in FbiH, Official Gazzete, 27/05, Article 48

Policy Options

The policy options are summarized in table below:

	P O L I C Y O P T I O N S		
Evaluation criteria	No change	Implementation of new legislation from 2004 / 2005	State agency for registration with a number of regional offices;
Number of days required for registration	52 days	5 days for court registration and 5 days for VAT	1-2
Number of steps	At least 12	No change (but steps are made much easier)	3 - 4
Total cost	Deposit: 2000KM Taxes: different across the country Solicitors fee: approx 800KM	No change	Taxes charged on cost recovery basis; eliminate deposit requirement; no solicitors assistance required;
Simplification of procedure	11 forms are required only for the court registration;	No change	Simple registration forms accompanied by instructions;
Online registration	Not possible	Not possible	Possible, if complete set of e-legislation is passed;
Accessibility of information required	Courts are unwilling to provide information;	Basic information will be available of the Single Registry's website;	All information required for registration and starting up a business in one place and on the agency's website
Educational campaign about SMEs	None	Information and educational campaign about SMEs	Information and educational campaign about SMEs.

The registration process as it is now at its best is described as inefficient. In case that the process of business registration stays as it is, unchanged, by ignoring laws on registration passed in 2004 and 2005, it can be expected that many companies will remain in the informal sector, in which they find it difficult to grow. Even though the informal sector provides jobs and income for those involved and offsets the general poverty level, this alone should be of a serious concern for the government for the reasons of taxation and regulation of economic activity. The current general policy towards small enterprises, of which one of the most important one is the registration process, have resulted in a narrow tax base and government's inability to make informed public policy or investment decisions. A better functioning system of registration would permit statistical analysis for setting policies, determining revenue collections and monitoring economic trends. An improved registration procedure can help improve the overall environment for the private sector and raise standards of efficiency and transparency for other government agencies. In a country like Bosnia and Herzegovina where public perception about corruption in government is high, measures that help increase transparency and efficiency of government services would contribute in changing this negative perception that citizens have towards government institutions.

Therefore, it is of utmost importance to implement the Framework Law on Registration of Business Entities and enable functioning of electronic Registry System. The implementation of the electronic system would not only reduce the time for the court registration, make information about registration more accessible through its website, but it would also result in streamlining the procedures to some extent and compiling all

information on court registered companies in one place. The process of transferring data from hardcopy register into the electronic database will also be a good opportunity for courts to find out which companies that have been registered in the past are still active and which ones are not. This new system will also give good preconditions for better organizing all statistical data on companies, especially for entity and state agencies for statistics, providing that charged fees for changes in court register are reduced. Despite the fact that implementation of the new legislation and functioning of electronic business register will not have any effect on high and diverse court and administrative fees and other requirements that are burdensome for entrepreneurs, it will bring benefits to both the government and to entrepreneurs.

According to international best practices the registration process have been consistently removed from the courts, recognizing that registration is ministerial act, not a judicial one. This would be preferable for B&H as well, but political sensitivities are such that governments are not prepared for such a big move yet. This issue should be considered once it becomes clear to the government that they do not need court involvement. One of the ways to achieve this is to insist immediately that court and administrative taxes for registration are reduced, unified and charged on cost recovery basis. Business registration should not be viewed as a revenue generating mechanism. At the most it should cover costs. As the Single Registry system becomes operational it will be possible to estimate the real cost, which is expected to be negligible, and thus charge it accordingly. It would be advisable to harmonise the court taxes across the country or prescribe a maximum amount that could be charged. Entity and state ministries of justice together with state

Ministry of Foreign Trade and Economic Relation, which is responsible for implementation of the Charter, should lead this process.

In the future, the registration process should be taken away from the court system. Ideally the agency for registration should be formed on the state level with regional/ entity or cantonal field office that would be accepting and processing applications as the main registrant body. The registration process should be unified and should incorporate also the craft shops and single proprietors that are currently being registered in municipalities. Two or three forms should be developed so to capture information needed for all government institutions. Once the registration agency receives the application all necessary information should be automatically forwarded to other relevant institutions. This process should be made available to accomplish online or sent via email or fax in one or two days. This would reduce number of procedures and thus the costs of registration can also be reduced by having a simpler process in place.

New entity laws on registration of business entities already envisage the possibility of sending applications for registration via email if technical preconditions are met and control of electronic signature can be assured.¹⁴ However, these provisions alone are not sufficient for the introduction of registrations via email or online. Apart from the Law on Electronic Signature, which has been passed recently, Law on Electronic Business, and Law on Certified Body in B&H also need to be passed together with amending the Law on Administrative Procedure in order to introduce the system of online business registration or applying for registration via email. Introduction and implementation of

¹⁴ Law on Entry of Business Subjects in F BiH, Official Gazette, 27/05, Article 48

these laws would also enable exchange of information electronically between different government institutions.

However, some court based business registration systems are reasonably effective. Keeping registration in the judicial system in return for improved efficiency can also be an incentive for the courts to perform better. It may not be the optimal solution, but a compromise. Austria, for example, has an extremely efficient judiciary based business registration system and has taken legislative measures to make the process easier for new business owners.

From the perspective of Doing Business, the paid in minimum capital requirement is one of the most expensive considerations for new businesses, and the better performing countries do not have it at all. Even though these funds can be used as soon as company becomes operational, the capital requirement represents a burden for most entrepreneurs. In the future this requirement should be eliminated since the practice shows that it does not serve its original purpose as the existence of such requirement does not help to ensure compensation for those who might be seeking damages.

In accordance with the Instruction from the Tax Authority, banks are required to ask the entrepreneur to provide them with Proof of having no tax liabilities as a prerequisite for opening a temporary deposit bank account. Also, the Tax Authority will refuse to give tax number (and therefore court will post pone or decline registration) to anyone who has even a small interest in a company that has been delinquent with tax payments. The Tax Authority, institution responsible for enforcing tax obligations, should have its own direct

mechanisms for enforcing the tax obligations. In general, the government should find a better ways how to enforce tax obligations through institutions responsible for this and not by putting an indirect burden on registration process. This as an instrument for enforcing tax does not have any real impact since an entrepreneur can always register a business on somebody else, usually a spouse or sibling who ends up being just official, but not real owners of the company. After all, it should be in the government's interest to give a possibility to an entrepreneur to earn money so that he / she could settle the tax obligations.

Today, many policymakers, government officials and average citizens still do not understand the importance of small private companies for economic development. This misunderstanding undermines efforts to introduce customer oriented government and court services and discourages some from pursuing entrepreneurial activity. There is an ongoing need to ensure a positive image for entrepreneurs, encourage people to take the risk of forming a business and provide access to the information needed for a new venture to be legal, well financed and effective.

Conclusion and Recommendations

- Equip registry courts with necessary technical preconditions (apparently many courts do not have enough telephone line extensions and electric sockets) and approve installation of electronic Registry System as soon as possible. In order for this to happen entity

ministries of justice are required to give their approval and instructions. The system's hardware and software is ready thanks to the funding of DfID and their project that fought the battle to develop it.

- Rule Book on Use of Electronic Main Book of the Registry needs to be developed and approved by entity ministries of justice; Draft Rule Book already exist as it has been developed by DfID project together with responsible civil servants from entity ministries of justice. However, this might need a minor alterations and more importantly the political will for approval.

- Train court officials on use of electronic Registry System;

The above mentioned would be sufficient for implementation of the Framework on Registration of Business Entities and its corresponding entity laws, which would limit the registration procedure to 5 days and simplify number of steps required for registration. However, other problems will still persist. The following needs to be done in the future:

- Pass the Law on Electronic Business, the Law on Certified Body in B&H and amend the Law on Administrative Procedure. These are legislative preconditions for introduction of online business registration or applying for registration via email.

- Eliminate capital requirement, which is currently 2000KM, by amending the entity Law on Business Entities;

- Requirement imposed by the Tax Authority: Proof of having no tax liabilities, should be eliminated. Tax Authority should use its own direct mechanisms to enforce tax obligations;

- Technical requirement for business premises could be resolved in such way the registrant certifies by signature that his premises meet the Technical Requirements. This should be followed by, after a business start, ordinary regulatory inspection to verify compliance.

- Court taxes for registration of business entities that are regulated by cantonal laws on court taxes in the FB&H and RS Law on Court Taxes need to be reduced and charged in the future on cost recovery basis. Once the Single Registry system becomes operational it will be possible to estimate the real cost, which is expected to be negligible, and charge accordingly. It would be advisable to harmonise the court taxes across the country or prescribe a maximum amount that could be charged. Entity and state ministries of justice together with state Ministry of Foreign Trade and Economic Relation, which is responsible for implementation of the Charter, should lead this process.

- Accessibility of information required for registration should be partially solved with functioning of the Single Registry system which will have its website at which registrants will be able to find basic information about registration process. This is going to be a huge improvement in comparison to the current situation. Further work needs to be done in compiling all information about start up process and making it widely accessible in

municipalities and registry courts in hard copy. State and entity governments should finance this.

- Administrative forms and documents required for the process of registration must become user friendly and widely accessible so to eliminate need for solicitor's assistance (and therefore the fees). Ideally, two or three forms should be developed to capture the entire data set needed by every government institution requiring company information. These forms must be accompanied by instructions. This requires a wider action involving not only responsible ministries of justice but also tax authorities, ITA, ministries of finance and MoFTER in order to agree on eliminating unnecessary administrative requirements and simplifying forms (the same group should also develop a national strategic framework of rationalizing costs in relation to business needs)

- A wider educational campaign is needed about benefits that small private companies have for the society. This is needed in order to change a perception of a large number of population and more importantly civil servants.

- In the future, registration process should be taken away from the court system. Ideally agency for registration should be formed on the state level with regional/ entity or cantonal field office that would be accepting and processing applications as the main registrant body. The registration process should be unified and should incorporate also the craft shops and single proprietors that are currently being registered in municipalities.

Bibliography:

1. European Charter for Small Enterprises, from
http://ec.europa.eu/enterprise/enterprise_policy/charter/docs/charter_en.pdf
2. Report on Implementation of European Charter for Small Enterprises in Bosnia and Herzegovina, July 2005, Ministry of Foreign Trade and Economic Relations;
3. Framework Law on Registration of Business Entities, 42/04
4. Law on Entry of Legal Entities into the Court Register, Official Gazette FB&H 04/00, 19/00, 49/00, 32/01, 14/02, 13/03, 50/03;
5. Decree on Entry to the Court Register Legal Subjects Doing Business Activity, Official Gazette FB&H 12/00, 16/00, 38/00, 58/01;
6. Law on Business Associations 23/99, 45/00, 02/02, 06/06, 29/03;
7. Law on Tax Authority of FBiH; Official Gazette FBiH; 33/02;
8. Law on Standard Classification 06/95
9. Rulebook on Obtaining Identification Number and Tax Registration of Business Subjects; Official Gazette FBiH; 39/02
10. Instruction No. FPU-1 issued by FB&H Tax Authority, Official Gazette 04/00;
11. Law on Changes of the Law on Registration of Business Entities in Federation of Bosnia and Herzegovina, 2005
12. Law on Registration of Businesses Entities in Republika Srpska, Official Gazette of Republika Srpska, 42/05
13. Law on Electronic Signature, Official Gazette BiH 91/06

14. Bosnia and Herzegovina: Commercial Legal Framework and Administrative Barriers to Investment, FIAS Report, March 2001;
15. Transition Report 2005: Business in Transition, EBRD, 2005
16. World Bank 2006: Doing Business in 2006 (World Bank and International Finance Corporation).
17. Enterprises Policy Performance Assessment: Bosnia and Herzegovina, March 2005
18. Competitive Analysis of Bosnia and Herzegovina, May 2006 Japan International Cooperation Agency
19. Small and Medium Enterprise Interventions and Gap Analysis, May 2004, USAID
20. Country Assessment – Bosnia and Herzegovina, U.S. Government Assistance to Eastern Europe under the Support for East European Democracy (SEED) Act, Released by the Bureau of European and Eurasian Affairs, January 2006;
21. Benchmarking of Administration of Business Start ups:
http://ec.europa.eu/enterprise/entrepreneurship/support_measures/start-ups/benchm_summary_2002_en.pdf
22. One stop shops and start ups Ukraine, from:
<http://www.europahouse.uz/en/sme/Business%20start%20up.pdf>
23. Electronic Commerce Act, 2000 from:
<http://www.gov.ie/bills28/acts/2000/a2700.pdf>
24. Liliana de Sa: Business Registration Start-Up: A concept note; International Finance Corporation and the World Bank, October 27, 2000