

How to double business entry in two years

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At a government press conference in December 2005 Serbian Minister for Economy and Privatization Predrag Bubalo said, “The Law on the Registration of Business Entities has produced fascinating results.” On 18 January 2006 the Serbian Business Registry Agency celebrated its first anniversary. At the ceremony Bubalo proudly announced, “During the first year of operation the registry set up almost 11,000 new companies, an increase of 70% from the previous year.”

For decades, starting a business in Serbia was time consuming and burdened with unnecessary bureaucratic hurdles—the rules inherited from the communist past were not business-friendly. Some of the biggest problems: the \$5,000 minimum capital requirement for starting a limited liability company, the necessary inspections before a company could start operating, and the commercial courts checking every document. Sixteen commercial courts were in charge of registering enterprises, and 131 municipalities dealt with registering entrepreneurs. The practice was so inconsistent that even judges in the same court required different documents. As one lawyer says, “I had to file the same form to the same court in 15 different ways depending on what judge handled my registration.” There were even cases when the courts refused to accept forms filled out electronically and instead insisted on handwritten materials.

Reports from the U.S. Agency for International Development (USAID), Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), the European Union, and the World Bank identified business registration as a serious problem. And in 2001–02 consensus was growing that something had to be done. A report for the Ministry of Economy and Privatization prepared recommendations for reforming Serbia’s enterprise registration system. This report became the basis for reform.

After the decision to reform, the driving force behind the effort was the Inter-ministerial Working Group on Deregulation, which later became the Council for Regulatory Reform. It drafted the primary laws, coordinated their implementation, and established the registry. Appointed in late 2002 by Aleksandar Vlahovic, the then Minister for Economy and Privatization, the group was in charge of drafting the Law on the Business Registration Agency and the Law on the Registration of Business Entities. Not all proceeded smoothly. In March 2003 the Serbian prime minister was assassinated, and after several months of uncertainty early elections were called in December. But thanks to the working group’s enthusiasm and persistence, continuity was maintained, and significant delays were avoided.

Changing the laws—and establishing the registry

The reform had 2 elements. The first was a radical change of the laws, and the second was making the new system work in practice by establishing a new registry. Three laws were enacted—the Law on the Business Registration Agency, the Law on the Registration of Business Entities, and the Company Law. The first 2 established the registry and radically changed the procedure for starting companies. They also moved the process from commercial courts and municipalities to the new admin-

istrative agency, unburdened by old habits and inertia. Using the Irish system as a model, the system was centralized and accessible via the Internet, leading to far greater legal certainty. As one attorney says, “Now I can check in a few minutes if a company exists, what is the address, and who is authorized to represent them. Before, I had to go to the court for each inquiry.”

Another very important change was the deadline of 5 days to register a company. If no decision is made in 5 days, the applicant is free to begin operations (“silence is consent”). This was a big change. Previously under Serbian law, the decision was negative if the relevant administrative body did not respond in the prescribed time.

For the company law, too, rather than amend the old law, a new one more suitable for a market economy was created. The new company law reduced the minimum capital requirement for limited liability companies (90% of all companies in Serbia) from \$5,000 to €500 and eased requirements for establishing companies by making the rules more flexible.

Out-maneuvering opponents

The working group organized workshops with officials from Irish and Italian business registries to produce reform principles for the government. And 3 public discussions were organized with stakeholders after the laws were drafted. The critical moment was when the government adopted “The Principles” in April 2003. Vlahovic and Minister for International Economic Relations Goran Pitic were the main supporters, while the Ministry of Justice was the main opposition. The principles described the main policy objectives of the reforms and concrete steps for implementation. Andreja Marusic, the leader of the working group, pointed out that “by adopting the principles, the government gave political backing to the expert work we did and silenced lots of opposition.”

The original plan was to have the necessary legislation in place by mid-2003, and the registry operating by the beginning of 2004. But the assassination of the prime minister in March 2003 and subsequent elections delayed the registry’s startup until January 2005.

The biggest opponents of the reforms were the commercial courts and the Ministry of Justice, which tried to stall the process and persuade policymakers to keep business registration in the courts. Business registration was a large source of power and influence for commercial courts, and so they opposed removing it from their activities. The Serbian Chamber of Commerce and the National Bank of Serbia also wanted it under their control. Thanks to the persistence of the working group and later the Council for Regulatory Reform, the reform was implemented as envisaged at the beginning. Almost all facets of the law were included in the final language. But the Ministry of Finance and Tax Administration retained control of issuing tax identification numbers.

The new company law faced much less opposition. From the beginning there was a consensus among policymakers, the business community, and academics on the need for change. Foreign experts, mostly funded by USAID, helped early in the process and at some crucial moments, but local experts did most of the work. Even though adopting the new company law was much smoother than establishing the registry, limited public debate left some deficiencies. One is that the minimal capital requirement for a limited liability company was not reduced enough.

Costs of reform—about €2 million

While the company law was mostly prepared by local experts, international donors were important sources of financing. In April 2003 the Serbian government adopted the principles of reform in the Jacobs Report to meet conditions for a World Bank loan. In 2004 donors included reform of business registration in the list of 10 priorities for the new Serbian government. The biggest contributions were €1.4 million from the Swedish International Development Agency and \$150,000 from USAID for computers. The World Bank funded a great deal of consultancy work, and Microsoft Corporation donated provisional software for the registry and other essential and timely support. The total cost of reform was about €2 million (\$2.3 million). The registry is now fully self-financing.

Implementing this reform was not easy. A new institution had to be established and a new system implemented. Having a core group of professionals in the working group and the Council for Regulatory Reform enabled continuity during 2 different governments and freed the reform from political influence. But this political neutrality was sometimes damaging because politicians were not fully committed.

After the laws were adopted, it was realized in the second part of 2004 that software and hardware purchases would not be made in time. As Andreja Marusic from the Council for Regulatory Reform describes, “It was clear that we were running out of time. We had 2 options—to postpone the start of the registry for a year and risk further delays, compromising the reform, or to start as planned and try to fix the problems as they came.” The decision was to continue with starting up. The registry began operations at the beginning of January 2005 and a year later became the country’s only address for business registration.

After the registry started the biggest challenge was re-registering existing companies, almost 70,000 of them. It was a big workload, and the commercial courts obstructed the process. In addition, the facilities were too small, but this will be fixed in 2007 when the registry moves to new facilities.

Immediate effects—from 51 days to 18

The effects of the reform were felt almost immediately. The time necessary for starting a business was reduced from 51 days in 2004 to 18 in 2005. The new system was a radical change, with a focus on customer service and user friendliness. And the forms for registration are being continually improved to reduce the time to complete them. After the very decentralized and inconsistent practices of the commercial courts, the new system is centralized, with internet access to all registration data. To unify practices only 1 person—the registrar—has final authority and the power to interpret the relevant laws. This increases legal certainty and uniformity across the board.

During its first year, the Serbian Business Registry Agency registered almost 11,000 new companies, 70% more than in 2004, shrinking the informal sector. In 2 years, the number of registered businesses more than doubled. Praise has been high. One attorney says, “Since the registry started operating I did not have to appeal at all against their decisions, while before I had to do it very often.”

If it had to be done again

If Serbia had to do it again, it would adopt the principles of reform earlier to prevent delays and limit opposition, especially from the courts and the Justice Ministry. If reform implementation is assigned to a professional nonpolitical body, chances increase significantly that the reform will survive governmental or other political changes. Assigning reform coordination to an inter-ministerial working group, such as the Council for Regulatory Reform, accommodated various ministries that might otherwise have been in conflict.

Reforms should not be delayed because not everything is completely determined ahead of time. If the reform process takes too long, the risk is to lose momentum. Many issues are better addressed during the process.

Creating an entirely new institution with new specially-trained, more capable, and well paid staff, while somewhat extreme, helped avoid the legacy of prior institutions. Other options for a new Serbian business registration system were based on modifying existing institutions and procedures, but it is doubtful that they would have brought about the needed change.

Coordination with other reforms and legislative changes could have been better. For example, it is not possible to file registration documents electronically because the Law on Electronic Signatures is not in place. And other laws adopted were incompatible with the rules for registering a business.

Once the system is working, process improvements should continue to eliminate delays. And even though it was originally planned to have tax identification numbers at the registry, this still is not possible. The Tax Administration, more sophisticated and sensitive to various forms of tax fraud, is now scrutinizing tax identification

number applications more closely. But its legitimate concerns for tax fraud should not delay business registration, so continuing efforts are necessary to improve cooperation between the company registry and other relevant agencies.

The business registration system in Serbia could be implemented in other countries. The Serbian system is not unique and was designed with European best practices in mind, the Irish model in particular. The Serbian example could be especially valuable for neighboring countries, which share similar problems and challenges. For example, in January 2007 the Serbian Business Registry Agency organized a workshop for Bulgarian counterparts who are working on their new registration system.