



## BUSINESS ENABLING ENVIRONMENT PROGRAM

ANNUAL REPORT #1  
JULY 2010 – JULY 2011



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# CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>PROJECT INTRODUCTION.....</b>	<b>5</b>
<b>WORK PLAN PROGRESS REPORT .....</b>	<b>8</b>
COMPONENT ONE: IMPROVED RULES AND REGULATIONS .....	8
COMPONENT TWO: REDUCED BARRIERS TO TRADE.....	18
COMPONENT THREE: REDUCED RISKS OF LENDING IN THE FINANCIAL SECTOR.	25
<b>BEEP CASE STUDIES (2010-2011) .....</b>	<b>33</b>
KOSOVO CASE STUDY #1 – CHARTER CAPITAL REQUIREMENT.....	33
KOSOVO CASE STUDY #2 – MITROVICA TRANSPARENCY REGULATION .....	35
<b>ANNEX 1: PERFORMANCE VERSUS TARGETS SUMMARY .....</b>	<b>37</b>
PROJECT RESULT #1: WORLD BANK DOING BUSINESS INDICATORS.....	37
DOING BUSINESS RANKINGS 2011 (PR1) .....	39
DB 2011 EUROPEAN UNION COUNTRIES .....	39
BUSINESS ENVIRONMENT IMPACT TABLE (PR2).....	42
PROJECT RESULT #2: ECONOMIC IMPACT OF REFORMS.....	45
PROJECT RESULT #3: PERCENTAGE IMPROVEMENT IN THE MUNICIPAL COMPETITIVENESS INDEX (MCI) .....	45
PROJECT RESULT #4: NUMBER OF TYPES OF USERS OF THE CREDIT INFORMATION SYSTEM.....	47
PROJECT RESULT #5: NUMBER OF REQUESTS BY BUSINESSES AND CITIZENS FOR THEIR OWN CREDIT REPORTS.....	47
<b>ANNEX 2: SUPPLEMENTAL REPORTING.....</b>	<b>48</b>
<b>ANNEX 3: SPECIAL STUDIES AND PROJECTS FUND.....</b>	<b>62</b>
<b>ANNEX 4: FINANCIAL REPORTING.....</b>	<b>63</b>

# ACRONYMS

AI	Administrative Instructions
AmCham	American Chamber of Commerce
BEEP	Business Enabling Environment Program
CBK	Central Bank of Kosovo
DB	Doing Business
DEMI	USAID Decentralized Effective Municipalities Initiative
ECLO	European Commission Liaison Office
EU	European Union
GFSI	USAID Growth and Fiscal Stability Initiative
GoK	Government of Kosovo
KMFAS	USAID Kosovo Ministry of Foreign Affairs Support
IPR	Intellectual Property Rights
IS/IT	Information Technology and Information Systems
ITD	Integrated Tariff Database
ITG	International Trade Guide
MAS-Q	Metrology, Accreditation, Standards, and Quality
MCI	Municipal Competitiveness Index
MOU	Memorandum of Understanding
MTI	Ministry of Trade and Industry
OLSS	Office of Legal Support Services (in the Office of the Prime Minister)
OPM	Office of the Prime Minister
PBMP	Performance-Based Monitoring Plan
PR	Project Results
RFP	Request for Proposals
SEAD	USAID Systems for Enforcing Agreements and Decisions Project
SME	Small and Medium Enterprise
SSPF	Strategic Studies and Projects Fund
STTA	Short-term Technical Assistance
TPWG	Trade Policy Working Group
USAID	United States Agency for International Development
WB	World Bank
WBDB	World Bank Doing Business
WTO	World Trade Organization

## EXECUTIVE SUMMARY

The Business Enabling Environment Program is an innovative three-year initiative by USAID leveraging the successful methodology applied in other countries to use third party measures of performance to drive cross-cutting reforms, while pursuing holistic strategies taking into account all aspects of the legal environment for economic activity and collaboration with other donors and projects. This report is the first Business Enabling Environment Program (BEEP) Annual Report and describes project activity since BEEP's start in July 2010 through July 2011, the end of the first contract year.

As a project with clear targets and an ambitious mandate from USAID, getting buy-in for transformational changes from the highest levels of the Government of Kosovo (GoK) as well as leveraging the resources and activities of other projects is of critical importance. Year I focused largely on World Bank Doing Business (WBDB) indicator validation and achieving GoK commitment to institutional change through business environment improvements. This Doing Business indicator validation resulted in BEEP submitting promising clarifications to the WBDB team that are expected to make positive improvements to Kosovo's ranking in the Doing Business 2012 report.

In Year I, BEEP was successful in obtaining the interest and buy-in of a number of key stakeholders – from the Office of the Prime Minister (OPM), to Deputies in Parliament, to ministers, as well as other donor-funded initiatives. The U.S. Government-supported economic retreat commissioned by the U.S. Ambassador and supported by BEEP in April resulted in the *Economic Vision 2014*, which builds on and commits the GoK to many of the targets that BEEP has pursued since the launch of the project.

At the same time, working closely with other projects and donors wherever possible has been a key to BEEP's strategy to avoid overlap and present a common voice on issues. The relationship that BEEP has with the WBDB team in Washington is built on shared recommendations, facilitating the involvement of World Bank representatives, strengthening communication between the GoK and the World Bank, and has been an important element of project activities.

A number of activities have been conducted in collaboration with the European Union's SME project, including co-funding a working retreat for ministry legal officials, and working together on inspections reform, normative acts, and Doing Business improvements. With USAID projects, especially the Systems for Enforcing Agreements and Decisions (SEAD) and Growth

and Fiscal Stability Initiative (GFSI) projects, BEEP has pursued strong working relationships on common issues.

At the local level, BEEP was successful with forging relationships with municipal officials across the country. BEEP utilizes eight Municipal Coordinators that work with partner municipalities to identify and recommend reforms to further improve the local business environment. Branching out from the core eight municipalities, our project Municipal Coordinators maintain relationships and are forming the base to pursue demand-driven reforms in all municipalities except for three municipalities in the north. BEEP hired international experts and subcontracted a local survey firm to design and carry out the first Municipal Competitiveness Index in Kosovo. Results published in July 2011 rank all municipalities according to their relative business enabling environments. The MCI has already received much positive feedback from ministries, municipal mayors, and business associations, and is expected to incentivize demand-driven reform by the municipalities.

Challenges remain in the reform environment. Although the change of the national government in Fall 2010 was an unexpected political challenge, it provided the project with the opportunity to meet with technical representatives of the government, including representatives from the OPM and legal departments of various Ministries and Departments. During these meetings, BEEP and the technical representatives were able to develop the framework for Doing Business and other reforms such that when the economic retreat was launched, significant groundwork had already been laid to seize the opportunity for the *Economic Vision 2014*. Given the number of donors and projects present in Kosovo, combined with the ambitious directive for BEEP, coordination and collaboration to achieve the robust, but necessary goals of the project will continue to be a challenge the project will strive to meet.

Highlighted below are some of BEEP's accomplishments in its first year of operation, together with a summary of the project's progress towards established indicators.

### **Highlights of Year I include:**

- Securing Government of Kosovo (GoK) commitment to attain a Top-40 position in the World Bank Doing Business rankings by 2014;
- Developing with economic Ministers and the Prime Minister the Economic Vision 2014 plan for Kosovo including goals of eliminating 50 percent of licenses, improved Information Technologies / Information Systems (IT/IS) intra-governmental coordination, and rationalization of the regulatory system to move revenue-focused activities to the tax system;
- Kosovo's adoption of two laws, incorporating BEEP Doing Business recommendations, eliminating charter capital for LLCs, reducing fees, and eliminating the work permit with potential economic impact of over \$8 million;
- Completion of the first-ever Kosovo Municipal Competitiveness Index (MCI), which utilizes detailed indicators to rank all 37 municipalities in Kosovo according to their business enabling environment;
- Increasing municipalities' transparency through improved procedures, placing official documents online to inform citizens, and empowering them to understand and protect their rights;
- Identification of 1,579 Administrative Instructions (AIs) with GoK counterparts, and the earmarking of more than 30 percent of those AIs for repeal that were obsolete, illegal, contradictory, or unnecessary;
- Development of numerous trade-related laws, including the Law on Safeguards, Law on External Trade, Law on Anti-dumping and Countervailing Measures, and Law on Integrated Border Management;
- Assistance in the establishment of the Trade Policy Working Group (TPWG) to modernize the legal and regulatory framework for trade in accordance with international standards and best practice; and
- Assessment of the Kosovo credit registry and development of recommendations of process and system upgrades for the Central Bank.

### **Indicators of Success:**

Success is measured by five Project Results (PRs) covering our activities in doing business improvement, trade facilitation, and access to credit. The table below describes each of the PRs and their end-of-project targets, their status as of the end of Year I, and subsequent percentage of the target achieved.

**PROJECT RESULTS SUMMARY**

	<b>2011</b>	<b>End of Project PR Target</b>	<b>Percent of Target Achieved</b>
<b>Project Result 1: Percentage Improvement in Underlying Variables of Project-Supported Doing Business Indicators</b>	The first WBDB report capturing the regulatory environment during the span of BEEP is expected in Fall 2011†	20% average total improvement in the combined underlying variables of indicators reflecting project activities in the annual WBDB Report	TBD
<b>Project Result 2: The Economic Impact of Reforms</b>	Full quantification and validation pending*	\$170 million	TBD
<b>Project Result 3: Percentage Improvement in Municipal Competitiveness Index scores in at least eight municipalities</b>	Baseline MCI completed in 2011	20% improvement in MCI scores in eight municipalities as reflected in the MCI 2013	TBD
<b>Project Result 4: Number of types of users of the Credit Information System</b>	2	5	**
<b>Project Result 5: Number of requests by businesses and citizens for their own credit reports</b>	398	No Target <sup>◇</sup>	- <sup>◇</sup>

† The MCI 2011 will act as the baseline for future BEEP PR3 progress monitoring

\* Business data is presently unavailable for these estimations. BEEP will continue working to obtain the necessary information to approximate these PR2 values.

\*\* Banks and microfinance institutions are the two users of credit information and were using the credit information system prior to BEEP

◇ The PBMP does not set a target for PR5 and therefore there are no numbers reported for the end of project target or the percentage of target achieved

# PROJECT INTRODUCTION

BEEP aims to improve the environment for business through effective implementation of reformed laws and regulations, and enhanced publication and accessibility of legal, economic, and financial information by national and local governments. Specifically, BEEP has four (4) priorities:

1. *Improved laws and regulations*: to identify, promote, and facilitate implementation of free market reforms.
2. *Lower trade barriers and harmonized trade policy*: to identify, promote, and facilitate adoption of policies, laws, regulations, and procedures that reduce costs, time, and other disincentives to trade; as well as to promote and assist the development and implementation of harmonized trade policy.
3. *Improved financial sector efficiency*: to reduce risks of lending by increasing availability of credit information and effective use of risk management by the financial sector.
4. *Improved government procurement*: to increase transparency of local government tenders.

## Overview of Project Components

*Component One (CI): Improved Rules and Regulations.* CI is the largest component in terms of resource allocation and technical scope, and works at both the national and municipal levels to remove barriers to business by simplifying and streamlining the regulatory framework — statutes, regulations, rules, procedures, and other legal requirements — that is applied to businesses operating in Kosovo. Current practice of regulatory bodies is generally to impose requirements on private economic activity, which constitute a serious, system-wide constraint on business. CI has been working closely with the GOK – primarily with the Office of the Prime Minister (OPM) and the Ministry of Trade and Industry (MTI) – to carry out legal reforms that address impediments to business identified in the World Bank Doing Business reports on Kosovo. Additionally, it supports reforms in complementary areas to DB reform, including in permissive system improvement, consolidation and publication of laws and regulations through a unified database, inspections reform, and other initiatives detailed below.

Municipal Coordinators in BEEP's eight primary municipalities – Ferizaj, Gjakova, Gracnica, Mitrovica, Peja, Pristina, Prizren, and Strpce – have established strong links with local business communities and public administrations to identify the specific legal constraints that impact business activities and to engage them in the reform process. The Municipal Coordinators have

also gathered extensive information on the organization, resources, operations and practices of municipal administrations that are enabling BEEP to develop comprehensive reform strategies that encompass both the national and municipal levels.

*Component Two (C2): Lower Trade Barriers.* C2 focuses on the reduction of barriers to trade to facilitate increased commerce and international cooperation, as well as the implementation of regional and multilateral trade agreements.

On average, long-term growth is enhanced when a more liberal trade regime is implemented. Unambiguous rules and regulations that guarantee the free and fair movement of goods and services are fundamental to increased trade. For Kosovo to realize the benefits of more efficient trade, a combination of strategies is required: implementation of sound, market-based trade policies and modernization of trade-related institutions; institutionalization of a strong, liberalized business regulatory framework; strengthening of basic market institutions; and the implementation of transparent policies that attract foreign direct investment.

For these reasons, C2 is assisting the Ministry of Trade and Industry with institutional reforms and Kosovo Customs on activities involving private sector partners (clearing agents, transporters, and business associations). The aim is to streamline trade-related activities through broad-based consultative mechanisms – involving private and government stakeholders in the formulation, implementation, assessment, and fine-tuning of trade policy and customs procedures. Regarding imports, exports, and transits, the C2 team assisted with an assessment of the efficacy of customs procedures. For purposes of trade facilitation, the team started carefully assessing Customs procedures and practices, and expects to provide technical assistance for the incorporation of suggested measures for easing trade constraints.

*Component Three (C3): A More Efficient Financial Sector.* C3 aims to increase access to finance and enable Kosovo lenders to make more informed decisions based on reliable credit information. C3 personnel work with the Central Bank of Kosovo (CBK) to ensure that more credit data is captured, that it is stored securely, that it is provided in a timely manner to authorized users, and that it is accurate. Furthermore, they have explored ways to expand the scope of the credit information system by working to add new data providers and to incentivize subjects of credit reports to check and update their own credit information. Activities include the identification and elimination of barriers to the development of private credit bureaus. C3 is also using the results of an assessment it completed of the Credit Registry's software to advise the CBK on upgrading its Credit Registry software to ensure more accurate and timely credit information.

*Component Four (C4): More Transparent Tenders.* C4 is tasked with helping to make more transparent the tendering process for goods and services conducted by Kosovo municipalities; more specifically, to assist at least two of its partner municipalities to introduce on a pilot basis the use of electronic tenders for procurement of local goods and/or services consistent with international best practices.

There has been considerable uncertainty and controversy in Kosovo surrounding donors' efforts to reform procurement, with the EU continuing to advocate for a draft procurement law that was passed over by the National Assembly in September of 2010. Meanwhile, procurement is reported to be problematic and susceptible to corruption at both the national and municipal levels, which was confirmed first-hand from focus group participants in our municipal round tables.

For these reasons, BEEP has proceeded deliberately and methodically in the area of e-procurement. In the fall of 2010, BEEP conducted an assessment of the general technical capacity of the eight municipalities, which yielded information relevant for the e-procurement initiative. In April 2011, BEEP began preparations to arrange for STTA to conduct a general assessment of the law and practice of procurement in Kosovo, with the aim of determining the legal, technical, financial and political feasibility of implementing the proposed reforms, and to define the best approaches for going forward. In May, however, the World Bank team announced its intention to launch a procurement reform initiative in Kosovo at the national and municipal levels over the next year. It was subsequently agreed with USAID that BEEP put on hold its own initiative until the scope and direction of the World Bank and EU initiatives become clearer.

*Cross-cutting Strategic Studies and Project Fund.* In order for legal reforms to succeed and “take root” in society, it is important that the public embrace them. This requires that people be informed about the reforms and understand why they are necessary. To involve citizen stakeholders in project reforms and increase the capacity of indigenous organizations to influence the reform process, BEEP initiated in its first year a \$1.5 million Strategic Studies and Project Fund (SSPF). The SSPF will advance reforms across all BEEP components by awarding grants and subcontracts to Kosovo-registered non-governmental entities pursuing reform-minded initiatives. Specific efforts supported by the SSPF are discussed in the following section.

# WORK PLAN PROGRESS REPORT

## COMPONENT ONE: IMPROVED RULES AND REGULATIONS

### CI-1: SUPPORT MUNICIPAL REFORMS THROUGH THE MUNICIPAL COMPETITIVENESS INDEX AND INSTITUTIONALIZE THE MCI

*Municipal Competitiveness Index (MCI)*. The MCI can serve as a useful planning tool to identify business environment constraints and provide direction to reform initiatives at the municipal and national levels, as well as to demonstrate to government officials and the public the utility of such surveys. Ultimately, the project anticipates that the national government will institutionalize



the MCI methodology to inform its own policymaking.

To increase the probability of sustainability, BEEP issued a request for proposals (RFP) to local service providers in October to undertake all survey functions related to the 2011 MCI. UBO Consulting was awarded a subcontract

through the SSPF in November. The first annual MCI Survey was designed in the first quarter of 2011, following which a total of 2,026 business stakeholders across all 37 Kosovo municipalities were interviewed. The results of the 2011 MCI were announced at a national event in July 2011 where each of the three highest scoring municipalities received awards.

In order to raise public awareness of the MCI results, BEEP subcontracted with local company PR Solutions in June to develop a media campaign plan that included the broadcast of public service announcements in Albanian and Serbian on national and local television. The results of the 2011 MCI

**PR 3: Using the MCI methodology to identify business environment constraints, BEEP will improve MCI scores for 8 Kosovo municipalities.**

establish a baseline of data that will serve to measure municipal progress in subsequent MCIs 2012 and 2013. For a full ranking of municipalities, scores, and criteria, please see Annex I.

*Municipal business environment reform activity.* At project start USAID and BEEP selected eight primary municipalities in which to commence its efforts to improve the business environment in

Kosovo at the local level. For each primary municipality, a Municipal Coordinator was selected to lead this work. Each was given the following comprehensive tasks: (1) to get to know the business community and learn from its members their legal and regulatory problems; and (2) to become conversant in all principal aspects of the operations of the municipal administration: the structure, organization and allocation of staff, the scope and tenor of municipal regulations, the level of transparency accompanying municipal processes, the respective roles in practice of the administration and the municipal assemblies, and the composition and volume of municipal own-source revenue.

The Municipal Coordinators held focus groups, discussions and one-on-one meetings to identify problems confronting business. They have already introduced concrete reforms in several municipalities, such as advocating for the adoption of a regulation to increase transparency (in Mitrovica and Prizren), and supporting the municipalities to increase the volume and accuracy of official information (budgets, decisions, regulations, plans) posted on municipal websites (Gjakova, Ferizaj, Junik, Peja). The coordinators work closely with one another, share experiences, develop initiatives, and “cross-fertilize” each other’s reform work. In addition, using a “hub and spoke” strategy, coordinators forged relationships and have divided responsibilities for all municipalities of Kosovo, except the three northern municipalities, allowing BEEP to respond to interest in MCI improvement from any municipality, gather information from government and business counterparts across the country, and facilitate consistent reform implementation throughout Kosovo.

**PR 2: This project result captures economic impact of reforms at the municipal level not covered by the DB methodology. BEEP does not have annual PR2 targets, but rather has a total PR2 target of ten times USAID’s investment.**

CI has compiled a body of information unprecedented in Kosovo on the composition of and practices surrounding municipal own-source revenue from the perspective of economic actors. Through their multi-pronged efforts, the Municipal Coordinators brought to light, among other things, the municipalities’ widespread practice of raising revenue through the issuance of business “licenses” as a *de facto* pre-operations and reoccurring tax on business activity, rather than as justified restriction on economic activity based on any health, safety or professional requirements. BEEP’s activities in this area contributed to the discussion amongst projects, government counterparts and other donors, including the IMF, on the need for extensive reform in the area of municipal finance; bolstered calls for property tax reform; and are helping shape USAID policymaking.

Moving forward, the Municipal Coordinators will focus on developing diagnostic analyses of their municipalities' results in the MCI and leading the effort to persuade the municipalities to take concrete steps to address needs identified. They will also collectively develop a set of model regulations for all municipalities to consider.

## **CI-2: SUPPORT NATIONAL BUSINESS ENVIRONMENT (DOING BUSINESS)**

*World Bank Team Collaboration.* From the date of contract award, one of the first tasks completed was to secure World Bank Doing Business (WBDB) team agreement on collaboration and establishment of a working relationship. BEEP has since worked closely with the WBDB team leader and technical indicator-specific staff for Kosovo to ensure that BEEP project activities are specifically tailored to improve Kosovo's DB indicators.

Because Kosovo was recently added to the Doing Business Report, a threshold project task was to complete a validation of Doing Business data and provide clarification information to the Ministry of Trade and Industry as well as directly to the Doing Business team. Due to the scope of the Doing Business initiative, the Doing Business team recognizing the value that long-term dedicated USAID projects can provide from their daily experience and expertise with country legal and business environments to contribute to the accuracy of the report. Providing this review and feedback to partners is a beneficial aspect of the partnership for all involved.

In addition, because the WBDB team has an existing Memorandum of Understanding with the GoK to support Doing Business reforms, the Investment Climate Advisory Services of the World Bank Group provided a detailed reform memo to the Government in early 2011. Due to the close collaboration between BEEP, the GoK, and the World Bank, this memo helps to reinforce a common position on reforms and encourage reform.

*GoK Commitment to Improving Kosovo's Business Environment and Economic Action Plan.* From fall 2010 to Spring 2011, BEEP worked closely



with key technical counterparts in the government to create the foundation for transformational Doing Business and related reforms. This work contributed to the subsequent Economic Visioning summit held in April in Bulgaria. Fifty-four participants included ministers, their advisors, the Prime

Minister and the U.S. Ambassador. As a result of the summit, the government committed to attain a Top 40 Doing Business rank by 2014. BEEP played the principal role in developing the recommendations that became the basis for the reforms approved at the working session. Following the summit, the GoK publicly announced its commitment to improving the business environment through the *Economic Vision 2014* plan, and to achieve a Top 40 ranking by 2014.

BEEP also assisted the MTI to detail reform activities to achieve the political commitments announced at the event. These activities are incorporated in the Kosovo Action Plan accepted by the GoK that will guide and be used to monitor implementation of specific reforms.



GoK legislative drafting session targeting WBDB reforms. A five-day legislative drafting session was held in Struga, Macedonia in February 2011 to consider BEEP proposed-amendments to several laws that govern activities within the scope of planned WBDB reforms. A total of 10 laws and amendments were prepared at

the working session, including those on the:

- Law on Business Organizations
- Law on Notary
- Law on Cadastre
- Law on Registering Immovable Property Rights
- Law on Fire Protection
- Law on Construction
- Law on VAT
- Customs Code
- Law on Internal Trade
- Law on Accounting, Financial Reporting and Audit

These draft laws and amendments were approved by the GoK and, with the exception of the Customs Code and the amendments to the Law on Construction, have been submitted to Parliament. (It has been decided that work on the Law on Construction should be developed under the auspices of the Doing Business Task Force, owing to the complexity of issues and the multiplicity of stakeholders.) As reported above, the amendments to the Law on Business Organizations and Law on Internal Trade have been signed into law with the changes advocated by BEEP eliminating the universal work permit for businesses required during start-up, eliminating the charter capital requirement for LLCs, reducing the charter capital requirement for joint-stock companies, and increasing corporate disclosure requirements to protect minority shareholders. It is expected that the other proposed amendments will

**PR 1: In Year 1, BEEP laid the foundation for Doing Business reform. Major successes include amendments to the Law on Internal Trade and the Law on Business Organizations.**

similarly be adopted. The Head of the Office of Legal Support Services (OLSS) to the OPM oversees production of legislation by the various ministries. BEEP reviews this legislation before the ministries submit the legislation to the OLSS. BEEP also monitors the process to ensure that DB-related reforms (as well as non-DB reform) are drafted and brought before Parliament in a timely manner. BEEP has attended several sessions of the Parliamentary committees reviewing the draft legislation in order to answer questions and explain the purpose of the reforms.

*Doing Business Task Force.* BEEP continually stresses the importance of involving key business stakeholders in the reform process, and advocated strongly for the development of a Doing-Business indicator-specific working groups. In June, the order for a Doing Business Task Force was issued by the Prime Minister. In July, the cross-ministerial task force held its first, organizational meeting and authorized the formation of working groups on two indicators: dealing with construction permits, and starting a business. With the authority and direction provided by the Government, the Doing Business Task Force has the potential to serve as the vehicle for effecting sweeping positive change in the business environment in Kosovo and achieve the goals of Kosovo's *Economic Vision 2014*.

BEEP will continue to support the indicator-specific groups to improve Kosovo's overall ranking in the WBDB report. Collaborative activities will aid in accomplishing both Kosovo's *Economic Vision 2014* targets, and BEEP's PR I.



### **CI-3: SUPPORT NATIONAL BUSINESS ENVIRONMENT (NON-DOING BUSINESS)**

*Additional reforms to improve the regulatory environment agreed and crucial working relationships developed.* As part of its efforts to develop working relationships with the business communities of its eight primary municipalities, CI held a total of 23 focus groups with business community members – either directly or indirectly through a grant awarded to the American Chamber of Commerce of Kosovo (AmCham) – to learn firsthand about the legal and regulatory problems most constraining to Kosovo businesses.

Building on the momentum of legislative amendments aimed at the GoK's national DB reform program, based on opportunities to address foundational legal infrastructure issues identified by BEEP, the OPM took a number of crucial steps anticipated to lead to further improve Kosovo's

economic environment. For example, it added the Law on Normative Acts and the Law on Inspections in the Legislative Strategy for 2011 and agreed to support the development of the Law on the Permissive System. The latter two laws will establish the necessary legal framework for governmental regulation of private economic activity. The laws will further provide limits on authorities' powers to impose requirements and restrictions related to private commercial activity by requiring that regulatory action has a demonstrable relation to compelling interests of public health and safety, and that regulatory agencies base their activities on modern risk-management assessments. The Law on Normative Acts is discussed further below.

*AmCham business agenda.* With the aim of increasing the capacity of business associations to work with their constituents to identify relevant policy issues and advocate effectively for reform, BEEP awarded a grant to the American Chamber of Commerce in Kosovo (AmCham) through the project's SSPF. The main deliverable of the grant is the development and presentation to the GoK of a Business Agenda of proposed legal reforms on behalf of the business community.

BEEP conducted jointly with AmCham a total of eight focus groups composed of representatives of the business communities across municipalities with the aim of identifying relevant business environment issues. AmCham used the results of the focus groups to develop problem statements of the issues raised. The problem statements were presented in six roundtables attended by business community stakeholders. This information gathering process has allowed AmCham to identify root causes of the problems identified and to develop recommendations on how to address them. AmCham is now in the final stages of preparing its Business Agenda Report and is expected to present it at a roundtable to be held in the near future. AmCham will monitor and report to BEEP the responses of the GoK to the specific recommendations and progress made in carrying out the recommended reforms.

#### **CI-4: INCREASE PUBLIC ACCESS TO AND KNOWLEDGE OF LAW AND LEGAL REFORMS**

*Law on Normative Legal Acts and Electronic Legal Database.* CI enjoys a cordial and constructive working relationship with head of the OPM's OLSS, who agrees with BEEP's view that there is a need for a Law on Normative Legal Acts and with the project's proposal that the GoK create a comprehensive electronic database of all laws and sub-normative legal acts that is searchable and easily accessible by the public.

The Law on Normative Legal Acts is expected to clarify the necessary rules and procedures that establish the hierarchy of laws and the rules for resolving conflicts between laws. Such a database will create transparency and order in the adoption of AI<sup>1</sup> and other sub-normative legal acts by requiring that all such proposed acts: (1) be supported by a regulatory impact analysis; (2) be subject to public notice and comment; (3) be subject to the approval of the OPM; and (4) be included in the official legal database as a condition to their entering into force.

To date, there is no such legal database in Kosovo, and many AIs have never been published. Thus the public in general and the business community in particular are not aware of existing AIs and have had no opportunity to comment

on the AIs during the drafting state nor even to be able to know all of the legal requirements that are being imposed on them. This situation seriously undermines the rule of law and democratic governance, creates impediments to those who wish to engage in economic activity,



and creates conditions conducive to corruption. As an initial step in creating the database, the GoK held a week-long event with BEEP and EU/SME support in Struga, Macedonia to identify all AIs. This effort brought to light that there were 1,579 AIs in force – to the shock and surprise of the Head of the OLSS of the OPM. During this session the working group identified those AIs that were vague, obsolete, or contradictory and earmarked nearly 30 percent of the total for immediate repeal. Following the Struga workshop, the CI team worked with the OLSS to systematize the remaining AIs and convert them into electronic format.

In addition to a legal database, BEEP urged the GoK to adopt a comprehensive strategy for information technology and information systems (IS/IT) to rectify the current situation where agencies do not share information. Little information is made available to the public in a systematic and comprehensive manner. CI started an assessment of existing GoK IS/IT resources in order to develop an overall strategy for GoK IS/IT reform and to establish the legal and administrative procedures and technical requirements for the legal database. The assessment began in July 2011 and is expected to conclude by the end of August 2011.

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<sup>1</sup> Administrative instructions are also known as regulations; instructions for executing an act or set of acts stipulated in the related law(s).

*Developing Community Relationships.* As concerns other initiatives to increase public awareness and understanding of law, legal reforms and the issues affecting business, BEEP has gathered the necessary background information and established the necessary contacts with municipal business communities and municipal officials to enable the project to work with them closely going forward.

## **NEXT STEPS**

*Law on Inspections.* Many countries use inspections to enforce the public's health and safety. However, the inspections regime in Kosovo goes well beyond the public's health and safety concern. In fact, 110 different laws currently employ inspections as a method of enforcement. The frequency of inspections and discretion of inspectors creates an enforcement environment highly susceptible to corruption and critically damaging to entrepreneurship.

The Law on Inspections will establish general principles governing inspections that will include: (1) procedures to tighten controls on ministries' and agencies' authority to conduct inspections; (2) a requirement that all inspecting bodies adopt policies that emphasize achieving compliance rather than imposing fines and sanctions; and (3) a requirement that all inspecting bodies adopt principles of risk management, in order to reduce the frequency and scope of inspections to the level that is reasonably necessary to ensure public health and safety.

The current concept is to have a centralized agency to coordinate all inspections. BEEP intends to raise awareness about the Inspections Law through media outreach once the law is adopted, and ensure that citizens and businesses understand their rights and obligations under the law, including limits on the powers of inspectors.

*Law on the Permissive System.* Kosovo suffers from excessive government regulation of private economic activity through the use of licenses and permits. Indeed, in practice licenses are used indiscriminately to regulate private economic activity, with no rational relation to considerations of public health and safety. In fact, it appears that government bodies use licenses and permits primarily to raise revenue. Moreover, the procedures for obtaining licenses and permits are unnecessarily complicated and expensive.

The Law on the Permissive System will be a framework law that will provide (1) clear definitions and criteria for each permissible category of permissive act that may be issued by a state body; (2) a complete list of the activities for which a license, permit, or other permissive act is required, and these will be limited to those activities that involve a genuine risk to public health

and safety; (3) clear rules on the conditions to be met for the issuance of a permissive act and the procedures for application; and (4) clear rules that establish the basis for an agency's refusal to issue, or for its revocation of, the permissive act, and the applicant's right to appeal.

The Law will ultimately operate on a risk-based management system that removes much of the built-in discretion of inspectors and instead focuses on legitimate health and safety concerns.

*Law on Normative Legal Acts.* BEEP will work closely with the OLSS of the OPM and the EU/SME project to develop a draft Law on Normative Legal Acts along the lines described above. The Law has been included in the GoK's Legislative Strategy for 2011-2012.

*Municipal Competitiveness Index (MCI).* The MCI will be completed for 2012 building on the experience gained from MCI 2011. Only marginal improvements are expected for MCI 2012, but improvements satisfying Project Result 3 are anticipated for MCI 2013. BEEP intends to use the results of the MCI to help municipalities identify and implement concrete measures to improve their municipal business environments.

*Improving Municipal Regulations.* BEEP, in close collaboration with DEMI, will develop model regulations for all 25 municipal core competences contemplated by national law and will propose them to the municipalities for adoption.

*GoK Doing Business Task Force.* BEEP will support the DB Task Force and the DB indicator-specific working groups to: (1) monitor the implementation of the Doing Business-related legislation adopted in May and June 2011; (2) make recommendations to improve the time and motion components in the processes related to the Doing Business indicators; (3) develop further legislative amendments to advance Doing Business reforms; and (4) maintain a close and constructive working relationship with the World Bank Doing Business Team in Washington.

*Reaching out to the business community.* BEEP will establish a "BEEP Information Network" to be comprised of business persons, citizens and government officials who have participated in project activities. IT and media staff will use the network to distribute information on developments in reforming the business environment. A number of significant developments have occurred recently that will be the subject of the first BEEP electronic newsletter: the passage of laws furthering Doing Business reforms; the results of the MCI Survey; and the formation of the Doing Business Task Force and its working groups on Dealing with Construction Permits and Starting a Business. BEEP expects the first newsletter to be published in September describing these significant developments and explaining how to participate.

It is expected that, by informing business persons participating in the Network of relevant developments, they will be encouraged to engage themselves more actively in the public discussion and advocacy of legal issues affecting their businesses.

BEEP will also determine the level of interest from businesses in learning about the basics of the law and, if there is sufficient interest, assist in training through various indigenous organizations.

We will assist in the development of a media strategy for the Government and key counterparts to make the broader Kosovo public aware of the philosophy and international experience behind the initiatives to improve the business environment; to inform them of the specific recommendations for reform; and to foster debate and discussion of these issues in public forum in the various electronic and printed media. BEEP will commission programs, articles and “spots” through subcontracts, and solicit grant proposals for activities in this area.

## **CHALLENGES AND IMPLEMENTATION ISSUES**

BEEP’s focus is to improve the business environment of Kosovo and, in doing so, we will continue to undertake non-Doing Business reforms. It will be a challenge to implement these reforms, since unwavering government support and action are required for reforms outside of the WBDB-specific indicators. We will work closely with other donor projects and continue to develop counterpart relationships to build the trust and technical capacities necessary to implement these reforms.

As increased own-source revenue collection continues to be a goal for municipalities, we anticipate resistance from municipal governments in implementing business reforms that ostensibly reduce revenue. The challenge here is to demonstrate that reducing tax burdens on businesses, in many cases, increases overall revenue collection because business legalization becomes much more attractive and entrepreneurial activity can be unlocked. BEEP worked closely with GFSI and DEMI to develop a consistent and uniform approach to the issues surrounding municipal own-source revenue so that efforts to increase municipal funding do not create more constraints and regulatory pressure on business. Strategies have been developed to illustrate the correlation between the reduction of economic barriers to business and the increase in tax revenue collection so that reform recommendations are more effectively presented and received.

## **COORDINATION**

BEEP has established and maintained strong working relationships with other projects and will continue to foster these relationships to take advantage of inter-project synergies.

To advance the objectives and activities under CI and to take advantage of additional technical capacities, the project collaborated with a number of USAID projects including: SEAD, DEMI, EROL, KPEP, GFSI, and the KMFAS, to exchange information, build common positions, and leverage resources. Additionally, BEEP worked in close cooperation and contact with other donors including: the International Civilian Office, the Regional Development Agency, the Swiss Development Agency, EU Local Governance Support, DFID, and the EU/SME Project.

## **COMPONENT TWO: REDUCED BARRIERS TO TRADE**

### **C2-1: IDENTIFY AND ELIMINATE BARRIERS TO TRADE AT THE NATIONAL LEVEL INCLUDING IMPROVEMENT IN DOING BUSINESS TRADING ACROSS BORDERS**

*Validation of World Bank Doing Business Trading across Borders sub-indicators.* As part of an effort to improve Kosovo's ranking under the *Trading across Borders* ranking, C2 validated the 2010 and 2011 World Bank Doing Business (WBDB) *Trading across Borders* sub-indicators. Working with the Kosovo Exporter's Association, the Kosovo Chamber of Commerce, and the Kosovo Business Alliance to validate the indicators, the C2 team studied import/export processes to understand trade processes and their relationship to the *Trading across Borders* indicators. They also discussed strategies and proposals to improve the time, cost, and documents necessary for import with Kosovo Customs and the MTI.

*Review Kosovo's legal framework for external trade.* C2 analyzed the five main laws that are representative of the legal framework for external trade, including the Law on External Trade, the Customs Code, the Law on the Integrated Management and Control of the State Borders, the Law on Economic Zones, and the Law on Anti-dumping and Countervailing Measures. Gaps between international standards and best practices and the laws were identified and recommendations to close those gaps were proposed. Initial work focused on reforming the Customs Code, the Law on External Trade, a Law on Safeguard Measures, and the Law on Integrated Management and Control of State Borders.

It was recommended by the project in early 2011 to draft a new Customs Code in order to bring Kosovo into compliance with international trade practices, particularly the 2008 European Union Customs Code<sup>2</sup>, and World Customs Organizations and WTO recommended practices. In its most recent progress report on Kosovo, the European Commission echoed the need to fully implement customs legislation in line with the EU. C2 staff continue consulting with counterparts in Customs and the Ministry of Finance, and advocating for work on the new Code to begin by the end of September 2011.

In addition to the Customs Code, Year I also saw the beginning of the drafting process for other new and amended laws related to external trade in Kosovo: a new Law on Integrated Management and Control of State Borders, a new law on Safeguard Measures, and a new Law on External Trade. Amendments to the Law on Anti-dumping and Countervailing Measures are planned for the Fall of 2011.

*Provide drafting, consultative, and advocacy support.* In addition to the work on the legal framework for external trade, C2 provided assistance in identifying other possible improvements to Kosovo's *Trading across Borders* topic ranking. For example, recommendations were provided to the Director General of Customs that Customs employ technology to reduce transit and clearance times for imports and exports. Kosovo Customs signed agreements with Albania and Macedonia to obtain automated reports when goods enter the territories of those countries. Using this import data at Kosovo Customs could significantly reduce transit and clearance times and costs. Similarly, C2 identified incorrect valuation of imports as a major reason for delays in import clearances. To remedy the problem, C2 aided provided technical training on the customs valuation methodology for importers, clearing agents, and Customs representatives.

Setting standards and limitations on all forms of licensing will be an important step in creating transparency and integrity in the regulation of the trading sector, further reducing cargo clearance times and costs. The best approach to licensing of clearing agents is still under consideration by BEEP and Customs pending development of a Law on the Permissive System. Similarly, temporary storage costs for cargo clearances are expensive and out of sync with international standards. C2 is supporting development of a new licensing procedure within the Customs Code that will require 4 days of free demurrage pending import and export clearances. As a result of reforms, BEEP expects that most export shipments will no longer be required to

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<sup>2</sup> 2008 Regulation (EC) No. 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernized Customs Code), available at <http://eur-lex.europa.eu/lexuriserv/lexuriserv.do?Uri=OJ:L:2008:145:0001:0064:EN:PDF>

pass through customs terminals. New licensing strategies will follow comprehensive Permissive System reform. Lastly, C2 worked with Ministerial advisors in the MTI and prepared a strategy to improve the capacity of the Department of Metrology, Standardization and Accreditation. In July, a short-term advisor helped foster an understanding on the part of key staff and advisors in the MTI on setting up a Metrology, Accreditation, Standardization, and Quality (MAS-Q) program for trade facilitation.

## **C2-2: SUPPORT DEVELOPMENT OF EXTERNAL TRADE POLICY**

*Assist the GoK in the process of acceding to the World Trade Organization (WTO).* In the project's initial phase, BEEP's short-term international trade expert provided detailed advice on WTO accession and recommended immediate action for Kosovo to become a formal observer. This matter is currently under consideration by the GoK. C2 also provided an outline of Kosovo's Memorandum of Trade Policy Regime to the MTI that describes the level of effort required to support Kosovo's formal WTO application. This work will ultimately be continued by the Trade Policy Working Group under the MTI.

*Multilateral international agreements and conventions.* BEEP prepared a list of all multilateral agreements and conventions that Kosovo may consider joining. A particular focus will be to leverage Kosovo's formal membership in the United Nations Specialized Agencies as the basis for accession to a range of other international treaties, conventions, and agreements and membership in other international organizations.

*BEEP-supported legislative improvements.* Collaboration with donors, government, and private sector partners to develop and/or improve a number of legislative acts not only affects the Trading across Borders topic ranking, but also has a positive impact on the external trade policy of Kosovo by bringing it more in line with international trading practices and reducing barriers to trade. The relevant acts include the Law on Safeguards, Law on External Trade, Law on Anti-dumping and Countervailing Measures, and Law on Integrated Border Management.

*Kosovo's Chair of CEFTA for 2011.* At their request, C2 provided technical assistance to the Trade Division at the MTI in support of Kosovo's Chair of CEFTA for 2011. Technical discussions and analyses were exchanged on a regular basis with the MTI and advice was rendered on subject matter to be addressed at the technical working groups. However, Kosovo is experiencing difficulties in trade relations within CEFTA and it is expected that the MTI will take reciprocal remedial actions in an attempt to overcome these challenges, should negotiations prove

unproductive. It should be mentioned that certain interests in the private sector are pressing the GoK to take such action against imports from Bosnia-Herzegovina and Serbia.

### **C2-3: SUPPORT TRADE CAPACITY BUILDING IN TRADE REGULATING BODIES AND PRIVATE SECTOR ORGANIZATIONS**

*Trade Policy Working Group.* C2 provided technical advice on the composition and structure of the TPWG and the sector sub-groups. The first meeting of the TPWG was held in Pristina with



direct support from BEEP. The original activities planned for the TPWG included modernizing the legal and regulatory framework for trade in accordance with international standards and best practice, export promotion, and market access for Kosovo exports, trade facilitation, the identification of regional transport constraints and solutions,

CEFTA issues, tariff and tax policy on external trade, and steps required for WTO and EU membership. The work of the TPWG was delayed until a formal government was in place, but is again in operation.

*Design and implement the training program for trade regulating bodies.* The BEEP STTA Customs Valuation Specialist conducted a series of three-day training courses on Customs Valuation in Prizren, Peja, Mitrovica, and Pristina at the beginning of 2011. The training was a large success and participants included 170 representatives from Customs, the business community, and media representatives from Prizren, Peja, Mitrovica, and Pristina.



*Conduct operational and human resource needs assessment in private sector representative bodies.* C2 worked closely with private sector entities to develop their capacities within the trading sector by providing technical training to importers and clearing agents on the methodologies involved in determining the customs value of imported goods. C2 worked most notably with the Association of Customs Clearing Agents because of their importance to the facilitation of import and export. Additionally, in response to valuation issues related to trade with Albania presented by businesses supported by USAID KPEP, BEEP provided KPEP with legal analysis as well as recommendations for possible political and diplomatic solutions.

*Kosovo Customs capacity building.* Customs valuation training was conducted in January and February 2011 and helped to build the capacity of more than 300 import and clearing agents. DVDs of the training will serve as a training tool in the Customs Training Department and by business organizations and representatives. C2 also provided technical advice on the deployment of the x-ray cargo scanner that Customs has procured and is using to verify compliance under integrated risk-based controls.

*Intellectual Property Rights (IPR).* BEEP provided technical advice to the Head of the Intellectual Property Department on the administration of requests for IPR protection. Recommendations were also developed for streamlining the process both by accepting patents already registered with the European Patent Office, and by accepting trademarks already registered with the EU.

#### **C2-4: PROMOTE AND SUPPORT DEVELOPMENT OF INTERNATIONAL TRADE GUIDE AND INTEGRATED TARIFF**

Collaborative development of the International Trade Guide (ITG) was agreed to by BEEP, Kosovo Customs, the MTI, and the Legal Department at the Ministry of Finance. This work is expected to begin once the modernized laws relating to external trade have been adopted by Parliament. The ITG will provide comprehensive and readily available information on the benefits of investing in Kosovo and will reflect, among other things, key project trade reform.

#### **NEXT STEPS**

*Scenario Analysis.* In order to determine more clearly the constraints of cargo clearance costs and time, BEEP will conduct analysis to determine the legal base, cost, and time of each process step. Working with project counterparts, BEEP will conduct additional information gathering as necessary and develop recommendations to remove or reduce barriers to trade to improve Kosovo's *Trading across Borders* topic ranking.



*Legislative changes.* A new Customs Code, new Law on External Trade, new Law on Border Management, new Law on Safeguard Measures, and new Law on Anti-dumping and Countervailing Measures will be finalized. C2 will support the Ministry of Finance, the MTI, and Kosovo Customs in organizing roundtables. These key legislative changes will aid in accomplishing Kosovo's Economic Vision goal of attaining a Top 40 position in the Doing

Business rankings. C2 will provide technical support to counterparts to brief legislators on the improvements and to explain how the changes will impact traders. The Component Two team will work with the MTI officials and advisors to develop a strategy for technical training capacity improvement within the MTI. And as the reform process continues to progress, it will be important to provide implementation assistance to relevant public and private entities. Operational and human resource needs assessments will be conducted in this regard.

*Analyze MAS-Q legal framework.* The MTI is addressing issues related to technical barriers to trade arising from product requirements and conformity assessment practices in anticipation of a new EU project. A short-term advisor will examine the legal framework and current practices and procedures for MAS-Q capacity in Kosovo. Recommendations will be prepared and delivered to the MTI and the EU.

*Administrative Instruction for the licensing of Customs Clearing Agents.* Training will be arranged in cooperation with the Kosovo Customs Training Department for candidates for Clearing Agents licenses.

*Development of Kosovo trade policy.* BEEP will assist in the review of Kosovo's trade policy and continue providing WTO accession recommendations. Recommendations will focus on removing barriers to trade and bringing trade practices within international standards. C2 will continue to work closely with the MTI and provide regular briefings and technical information as the review of trade policy continues. This work will aid in the GoK's successful realizations of its Economic Vision 2014 plan by facilitating the development of its trading policies and bringing them within international standards.

A working group, sponsored by the MTI and the Office for Regulation and Monitoring of the Marketing for Petroleum Products, was developed and produced a draft administrative instruction for the licensing of customs clearing agents. The C2 team also prepared a legal memo addressing the proposed AI and provided specific recommendations.

*Support internship program and curricula development.* BEEP will provide technical advice to the MTI advisors and senior managers on the placement of recent graduates in key tasks within the ministry. Existing university trade-related courses will be identified and those courses will be updated with instructions from implementing partners to fill the gaps of the current curriculum. BEEP will also assist the development of an International Trade, Customs, and Transport lexicon.

*Development of the International Trade Guide (ITG).* The C2 will begin development of the ITG in the spring of 2012 following the modernization of the legal and regulatory framework for external trade. An RFP will be published to secure a local partner to aid in the development, maintenance, and management of the ITG website. BEEP will also provide assistance in compiling and reviewing information needed for the ITG and Integrated Tariff Database (ITD).

## **CHALLENGES AND IMPLEMENTATION ISSUES**

Development of the Transport Sector continues to be a challenge, as constraints on territorial access are still in place. This is a political issue and, until remedied, BEEP cannot move forward on development work in this sector.

Another continuing challenge is the lack of capacity within the MTI. This affects many C2 activities, including the development of training programs and new laws and amendments. In October 2010, BEEP established an understanding for collaboration with the then-Minister of the MTI on all C2 Work Plan activities, which included a review of the GoK's trade policy, ways to improve private-public dialogue, an analysis of the legal framework for external trade, and measures to facilitate external trade and capacity building. In the last couple of months, collaboration and technical support to the MTI from C2 has been strengthened for greater effectiveness due to the recruitment of more proficient Ministerial advisors in the MTI, and better managerial direction of technical staff at the Ministry. The Ministry continues its attempt to address its capacity issues by recruiting new directors and returning students from international scholarship programs.

## **COORDINATION**

Part of the C2 strategy is to engage and collaborate with EU and other donor activities in the areas of trade and customs. Collaboration in Year 1 took place in a number of policy development activities and on work related to support in establishment of the Trade Policy Working Group (TPWG). Year 2 will see the continuation of this cooperation. In its effort to develop a new Border Management Law, BEEP will continue the excellent collaboration with the EU Customs Modernization Project, EULEX, Kosovo Customs, the MTI, and the Legal Department of the Ministry of Interior. BEEP will continue to communicate and to meet with officials within the European Commission Liaison Office (ECLO) to discuss progress of Kosovo's efforts to improve trade, customs, and tax administration. Collaborative partnerships are merged wherever possible to leverage partner access to information and comparative advantages, sharing resources to meet common goals.

## **COMPONENT THREE: REDUCED RISKS OF LENDING IN THE FINANCIAL SECTOR**

### **C3-1: SUPPORT DOING BUSINESS REFORM AND MONITOR PERFORMANCE IN GETTING CREDIT INDICATOR**

The WBDB Getting Credit indicator is composed of the Depth of Credit Information and Strength of Legal Rights index:

*Depth of Credit Information Index validated.* C3 worked closely with the Credit Registry department to assist in responding to World Bank questionnaires. In particular, BEEP helped to validate and confirm to the World Bank that the credit registry collects and distributes both positive and negative information<sup>3</sup>. Through its research, BEEP found that the credit registry has distributed more than two years of historical credit information. The project then sent all corresponding clarifications to the World Bank and expects them to have a positive impact on Kosovo's DB Getting Credit ranking in the DB 2012 report.

*Strength of Legal Rights Index validated.* C3 provided a clarifying opinion to the World Bank that law and practice in Kosovo allow for general and specific descriptions of collateral. The C3 staff presented this opinion after completing an extensive legal review of the pledge regulations and administrative instructions, an analysis of actual records in the registry and information gathered on banking practices in pledging assets, and on the regulations and practices in the EU.

Based on analysis of the Getting Credit indicator, C3 developed and presented a scenario analysis to the GoK to illustrate the expected impact of the BEEP reform strategy, and successfully obtained government buy-in BEEP will continue to monitor future DB reports to confirm the improvements on the underlying variables for the Getting Credit indicator.

### **C3-2: SUPPORT CBK TO UPGRADE THE PUBLIC CREDIT REGISTRY**

*Software upgrade.* C3 STTA Jim Aziz completed an assessment of the credit registry system and worked closely with Credit Registry staff to identify and prioritize needs. Mr. Aziz then recommended a software upgrade to ensure the addition of extra data fields, the use of new parameters to improve searches for borrowers, and to improve the logic of the search engine so that files match the names of borrowers. The project also identified a need for new validation and control measures, a redesign of the credit report to make it more user friendly, and to

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<sup>3</sup> See Banking Rule XXVIII on Credit Reporting, Art. 4(1) (2004).

enable the generation all types of reports, including those that ensure accuracy of incoming data and the supervision of the department. C3 is also developing a new module for borrowers' rights. This will enable the CBK to make changes to data at the request of financial institutions rather than by accessing raw databases, as is current practice.

The CBK has agreed to request a technical offer and a price quotation from the current software vendor. After signing an agreement with a vendor, implementation of the upgrade will take several months. C3 will work with the CBK and data providers to ensure they are ready to receive and monitor the accuracy of new data.

*Strengthening Central Bank supervisory capacity.* To strengthen the capacity of the CBK as a regulator and supervisor of financial institutions, C3 recognized the importance of leveraging the credit registry upgrade so that better information and management reports could be generated. These reports, in turn, support and facilitate the CBK's supervisory function, and help ensure stability of the financial system. Examples of such reports would be those that monitor lending and concentration risks, trends in loans, and classifications. An early review of the CBK's supervisory department and research and statistics department needs enabled C3 to identify additional data requirements for inclusion in the credit registry system.

### **C3-3: IDENTIFY AND SUPPORT LEGAL, REGULATORY AND INFORMATIONAL REFORM TO INCREASE THE USE OF THE CREDIT INFORMATION SYSTEM**

*CBK & USAID BEEP joint working group formed.* After USAID formally introduced BEEP in September 2010, the then-acting Governor of the CBK appointed the CBK Chief Operating Officer as project coordinator to work with Component Three. The Chief Operating Officer continues to oversee five departments, including the Credit Registry. The CBK made permanent offices available to C3 personnel and consultants in October 2010 and later formally introduced BEEP to banks, microfinance institutions, and three financial associations (banking, microfinance and insurance). In turn, financial institutions and associations appointed project coordinators to work with C3.

Further, the C3 team had access to and collaboration with all departments within the CBK. Following the appointment of the new Governor, the CBK formally approved a working group in April 2011. The working group is co-chaired by the Chief Operating Officer and the C3 Lead, and includes the C3 Credit Coordinator and CBK staff from various departments. The working

group formation memorandum highlighted the mandate of the group, its purpose, responsibilities, members' names, roles, and meeting dates. After several discussions between C3 and the head of the working group, the working group's calendar was refined, members were assigned to various tasks, and, in July 2011, the working group held its first meeting. The working group includes three officials from the credit registry, the Senior Legal Adviser, the IT head, four officers from the Supervision Department, and an officer from Public Relations. In order to successfully implement BEEP objectives, C3 will also need to work with the head of the Procurement Department, the Director of Licensing and Methodology, the Governor, and the Deputy Governor.

*Working relations with financial sector stakeholders developed.* C3 built relationships with and visited all eight commercial banks, several microfinance institutions, and three financial associations. This proved instrumental in ensuring that their perspectives as users of the credit registry were taken into account, and aided in the assessment of the Credit Registry. C3 completed a survey of a microfinance association's members on credit registry use, and delivered a formal presentation to the association's board to ensure key executives bought into and understood BEEP's recommendations.

*Borrowers' rights as one methodology to increase the number of requests for citizens and businesses for their own credit reports.* The number of requests by businesses and citizens for their own credit reports reveals the extent to which people understand the role of the credit registry and their rights associated with it. Even though laws in Kosovo enable data subjects to access their credit reports, the number of requests is extremely low. C3 has identified a number of activities to increase requests for credit reports. An initial step is to identify a pool of borrowers willing to voluntarily request credit reports so BEEP can then track CBK response times, the percentage of participants indicating their reports containing errors, and the time and success of the error correction process. C3 staff, in coordination with STTA, have provided recommendations to the CBK in this regard. Ongoing work includes development of a new rule for borrower's rights, the inclusion of a new complaints system, ensuring compliance with the data protection law in Kosovo, development of materials and forms for borrowers, and the creation of a tracking system to follow up on corrected credit data. In addition, a borrower's module will be included in the technical upgrade.

**PR 5: When citizens and businesses access their own credit reports, credit information is more accurate and lending risks are reduced.**

*Ensuring more end users access the Credit Registry.* With BEEP technical assistance, necessary software updates were identified and applied, now allowing access to the system by a much large pool of users with current technology, especially systems produced in the last three years.

BEEP recommended the increase of this number to the CBK by allowing access for insurance companies for non-obligatory products (letters of credit, guarantees). C3 developed its recommendation to permit insurance companies access to the credit registry system by, among other things, assessing the Law on the Central Bank. The recommendation, submitted to CBK senior management, explained the rationale for enabling access, including the legal basis for it. Through a series of in-person visits with insurance companies, the C3 team confirmed the needs of companies, set the conditions for enabling access, and provided advice on implementation.

Two Kosovo utility companies (PTK and KEK) have agreed to share their databases with financial institutions through the CBK (this was included, at the project's suggestion, in an MOU signed between the USAID SEAD project and the two utility companies). However, the CRK currently does not have the legal authority or the technological capacity to collect credit information from the utility companies. C3 will give priority in the coming months to an upgrade of the current system and will continue to explore the possibility of including utility company credit information in the Credit Registry database.

*Need to consolidate Credit Registry Rules and Operating Instructions.* C3 recommended that the CBK: make searching the credit registry mandatory under certain circumstances; ensure that financial institutions abide by privacy laws by obtaining consent in advance of the credit applications; and review loan classifications as specified in the Operating Instructions of the credit registry in connection with the classifications stated in Rule IX<sup>4</sup>. The project's recommendations, including the idea that insurance companies should have access to the credit registry and borrowers' right provisions, gives rise to the need for a unified Banking Rule and Operating Instruction. These are currently under development with BEEP's assistance.

*Ongoing technical assistance.* C3 has assisted the credit registry staff in extracting a number of informational reports to identify errors in historical classifications of loans and highlight weaknesses in the operations of the system. These weaknesses include issues in areas such as old records, borrower personal data, identifiers, guarantors, number of searches, rejected records, records sent after due dates, etc. C3 staff also participated in a number of meetings

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<sup>4</sup> See Banking Rule IX on Asset Classifications, Provisioning for Loan Losses, Treatment of Accrued Interest and Treatment of Rescheduled Credit Exposures (2007).

with financial institutions to discuss problems related to compliance with the credit registry requirements. Other support included assistance with a cost-benefit analysis for a new database management system; namely an upgrade to the SQL 2008 system or a change to Oracle. The ongoing and operational support that BEEP provides is anticipated to result in additional detailed recommendations.



*Two workshops jointly delivered by BEEP and the CBK. The C3 team delivered two workshops on “Enhancing Credit Information and Credit Registry” to 110 participants, including senior executives from credit risk, data quality, legal, and IT departments from 26 financial institutions. The objectives of the workshop were to start discussions with data providers, introduce new providers to the*

*credit registry’s requirements, and incorporate their needs into the technical specifications.*

A number of speakers from BEEP, the CBK, the Bank of Albania, and other donor projects facilitated the workshops. Presentations covered a variety of topics including privacy, borrowers’ rights, data quality issues, credit report form, personal data, and others. Participants worked in groups and discussed future plans and suggestions to capture new data and improve the current reporting of data.

The Governor and the Chief Operating Officer delivered the opening speeches in the first and second workshops respectively. A number of other officials from the CBK both presented and participated. The two workshops were covered by a local TV channel and posted to the CBK website.

*Potential future data matching/data cleansing program.* Recognizing the importance of addressing the issue of accuracy of personal data in Kosovo, C3 took initiative to ensure that the CBK and financial institutions understand current developments in Kosovo that have an impact on their information systems and data formats. An EU project is currently providing the Cadastral Agency with a unified system for addresses in Kosovo and working to link data on addresses with personal data in the Civil Registration Agency. Should such positive developments continue, they will have implications for financial institution and CBK systems and will open the door for

future access to a central government database to ensure accuracy of personal data and matching of data. If this happens, it will likely occur beyond the life of BEEP.

*Exploring ways to capture new data.* C3 has reviewed options to incorporate additional data in the Credit Registry, especially those which can be accessed through public records, including those from the courts, vehicle departments, and others. In general, data on bankruptcy, civil and criminal judgments, tax liens, and foreclosures should be accessible as long as they exist in searchable public records. One of the options currently under review is to request that financial institutions and tax administration agencies in Kosovo report new data to the Credit Registry directly, making them responsible for their own data. For example, the tax department can report unpaid taxes as long as a lien is registered in a public record. Similarly, banks can report legal actions to the Credit Registry. Legal actions should include not only judgments but cases filed against borrowers. Workshop participants explored these issues and some banks indicated that they need time to develop new programs.

BEEP STTA completed a legal analysis of privacy rights under EU directives, the Kosovo constitution, and Kosovo laws concerning the exchange of information with utilities companies, the tax administration, and insurance companies. The legal analysis concluded that information from these sources can legally be included in the Credit Registry's database.

*Expansion of the credit registry.* The abovementioned report also provided some legal options on how to expand the current credit information system in Kosovo. Options included: (1) retaining the Credit Registry in the Central Bank and expanding the scope of information collected from other entities and public authorities, (2) allowing a private credit bureau operator to manage the Credit Registry under a private-public partnership, (3) establishing a private credit bureau as a limited liability company licensed and regulated by the CBK, and (4) assisting in the drafting of a Credit Reporting Act with the aim of protecting and promoting the accuracy, fairness, and privacy of information in the files of consumer reporting agencies, including the Credit Registry or private credit bureaus.

In addition, the project will also provide technical assistance to help identify and remove barriers to the formation of a private credit bureau so that, if the market finds sufficient value in it, private entrepreneurs may develop their own credit bureau.

## **NEXT STEPS**

*CBK working group.* Close collaboration will continue with the CBK working group to implement its recommendations. C3 will continue drafting the Rule for Borrowers' Rights and implementing the Operational Instruction (mentioned below in more detail). The C3 team will also continue developing a Borrowers' Module which focuses on expanding the data fields of the Credit Registry's database to facilitate borrowers' rights, including complete data fields to track requests for credit reports and disputes of incorrect credit information.

*Credit Registry upgrade.* Work will continue with the CBK to ensure proper implementation of the Credit Registry upgrade. The Borrowers' Module is being developed to ensure the upgrade will include the expansion of data fields concerning borrowers' rights and requests for credit reports.

*MOU to be proposed to Central Bank.* The MOU will reflect an understanding between USAID and

**PR 4: The new Banking Rule XXVIII is expected to impact the number of types of users by permitting insurance companies to access the Credit Registry System.**

the CBK and formalize the mutual agreement of both parties to move forward with implementation of all BEEP recommendations, including the software upgrade by setting objectives, and detailing who will do what and when. We expect the CBK to make a decision on the solution provider of the software upgrade soon.

*Banking Rule XXVIII and Operational Instruction.* C3 continues to assist the development of the new Banking Rule XXVIII on Credit Reporting and implementing the Operational Instruction. We expect that insurance companies will have access the Credit Registry database to assess the risks associated with insurance applicants (and within the Law on the Protection of Personal Data<sup>5</sup>). C3 team members will continue to work with the CBK legal department and operations team to ensure proper implementation.

*Media outreach.* As new developments pertaining to data subjects are implemented (e.g., the Rule on Borrowers' Rights), C3 will work with the CBK to develop media campaigns to ensure credit report data subjects are aware of the developments. For example, if the CBK develops and implements a streamlined complaints process so that data subjects may challenge incorrect credit report information, we will employ a media outreach campaign (possibly through a subcontract) to inform the public of the complaints process.

## **CHALLENGES AND IMPLEMENTATION ISSUES**

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<sup>5</sup> See Law No. 03/L-172 on Protection of Personal Data (2010).

Despite the CBK's general acceptance of BEEP's recommendations and reports, it will need to take additional concrete actions, and do so at a much faster pace, in the coming months. A full time CBK project manager has not been installed. The CBK has not yet made a formal decision to procure the software upgrade and, consequently, we cannot predict the implementation timeline. C3's technical assistance is maximized when the beneficiary takes the lead, so BEEP will continue to encourage the CBK to take greater ownership of the implementation of recommendations.

Implementation of a completely new system for borrowers' rights will also prove challenging, both internally and externally. Not only will it require the approval of a new Rule by the CBK, but also new internal processes at the CBK and on the part of the data providers/financial institutions and the linking of each.

Despite the approval of the CBK Governor to allow insurance companies access to the credit registry, there are still objections from some senior officers. This hesitancy seems to stem from the knowledge of unacceptable practices by insurance companies. BEEP's challenge will be to address these concerns and get final approval.

A new banking law was recently drafted and approval is expected soon. The CBK will change its rules in the future as they relate to the new banking law. One of them is the Rule on Asset Classifications, which has been used for reporting to the Credit Registry as per the current operating instructions. BEEP understands this challenge and will take steps to address it.

## **COORDINATION**

C3 coordinates with USAID's SEAD project, as SEAD is involved in a number of activities important to the financial sector, including enforcement actions. In addition, SEAD has expertise in areas of law that relate to C3 work, including the Law on Obligations. C3 expects will continue coordination with SEAD, especially when a new agreement will be required for the solution provider of the system upgrade.

The financial sector institutions and the CBK are important partners in C3 work activities, and continued support to foster relations with these and other government agencies will be a central feature in implementation in project years two and three.

# BEEP CASE STUDIES (2010-2011)

## KOSOVO CASE STUDY #1 – CHARTER CAPITAL REQUIREMENT

### Background and Case History

The World Bank Doing Business 2011 report for Kosovo illustrates some of the many business environment issues facing the country's entrepreneurs. Among these is the number of procedures, amount of time (days), and costs (% of income per capita) for starting a business captured in the report's *Starting a Business* topic ranking. According to the Doing Business 2011 report, Kosovo ranks 163 out of 183 countries studied in *Starting a Business*. This topic ranking reports that there are 10 procedures, it takes 58 days, and costs 28.7 percent of income per capita to start a business in Kosovo. Early in the project, BEEP realized that eliminating one of the procedures required to start a business should be both relatively simple and effective: the minimum charter capital requirement for Limited Liability Companies (LLCs)<sup>6</sup>. The Law on Business Organizations stated in Article 33 that:

“To register and establish a limited liability company, a founder shall sign and submit to the Registry the charter of the limited liability company, which must contain the following information:

... (h) the amount of the company's charter capital, which must be at least 1,000 Euros”<sup>7</sup>

But for small business entrepreneurs, the €1,000 minimum charter requirement tied up crucial working capital, causing small businesses to be unnecessarily under-capitalized, deterring small business owners from legalizing the business, or deterring entrepreneurs from starting the business altogether.

Because the minimum charter capital requirement was a limitation on free economic activity that was not objectively justified by a compelling public interest, BEEP recommended that it be removed. With this, and other BEEP recommendations, the Kosovo Assembly passed an Amendment to the Law on

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<sup>6</sup> The *Starting a Business* topic ranking assumes, as part of its methodology, that the processes measured refer to those for starting a Limited Liability Company (LLC); See *World Bank Doing Business 2011* at <http://www.doingbusiness.org/methodology/starting-a-business> for *Starting a Business* methodology

<sup>7</sup> Law No. 02/L-123 on Business Organizations, Art. 33.1(h) (2008), *cited portion deleted under* Law No. 04/L-006 on Amending and Supplementing of the Law No. 02/L-123 on Business Organizations (2011).

Business Organizations that removed the minimum charter capital requirement<sup>8</sup>.

## Reform Results

Although the Doing Business 2012 report is not yet published, BEEP anticipates that this change will remove one step from the *Starting a Business* topic ranking for Kosovo. Procedure I of *Starting a Business* in the Doing Business 2011 report for Kosovo is “Open a bank account and deposit the minimum chartered capital.”<sup>9</sup> This change is also expected to eliminate one day from the “Time” measure of *Starting a Business*.

## Estimated Impact

While the removal of the minimum charter capital requirement is expected to have an impact in the Doing Business 2012 report (to be captured in BEEP 2 Two reporting), it currently affects Kosovo businesses and its effects can be captured as a Project Result 2 (PR2) impact. PR2 measures the economic impact of reforms across all constraint changes *other than national-level reforms relating directly to the World Bank Doing Business Process*. The Doing Business methodology for the *Starting a Business* topic ranking analyzes only the country’s largest city; in Kosovo’s case, Pristina. Therefore, any effects that the elimination of the minimum charter capital requirement has on municipalities outside of Pristina are capable of being captured within PR2.

The direct cost savings component of this PR2 is made up of €1,000 freed up for use by new LLCs outside of Pristina and the elimination of the need for new LLCs to pay €5 to open a bank account and deposit the minimum charter capital. The estimated number of new LLCs outside of Pristina is 618. Therefore, the cost savings for freeing the €1,000 is €618,000 (\$893,937). Similarly, the estimated number of new LLCs per year is 618. Therefore, the cost savings attributed to opening a bank account and paying the charter capital is €3,090 (\$4,469). The combination of the two direct cost savings for this PR2 is \$898,406.

According to the World Bank Doing Business Report 2011, opening a bank account and depositing the charter capital added one day to starting a business. Pursuant to the conservative method of estimation required by the PBMP, we estimate that this will save one day of business operations. With 618 estimated new LLCs per year and average daily business revenue of €55<sup>10</sup>, the estimated time savings

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<sup>8</sup> See Law No. 04/L-006 on Amending and Supplementing of the Law No. 02/L-123 on Business Organizations, Art. 13.2 (2011).

<sup>9</sup> *Doing Business 2011, Starting a Business, Kosovo*

<sup>10</sup> The daily business revenue figure is estimated as follows: Total number of business registered is 42,309. Total revenue collected by the Tax Administration of Kosovo (TAK) is €62,176,609. The business tax rate is 10% according to Article 6, paragraph 1 of Law No. 03/L-162 on Corporate Income Tax (Abolishing Law No. 03/L-113

amounts to \$49,166. Therefore, the total estimated savings for the elimination of the minimum charter capital requirement is \$947,572.

## **KOSOVO CASE STUDY #2 – MITROVICA TRANSPARENCY REGULATION**

### **Background and Case History**

In the Mitrovica municipality, as with most other municipalities, obtaining all municipal regulatory information pertaining to the local business environment was a crucial impediment to operating a legal business and making informed business decisions. Similarly, citizens were uninformed as to the issues relevant to proper municipal administration; budgets were not made public and were unavailable on the municipal website, information on the use of municipality-owned land was unavailable, sources and amount of municipal own-source revenue were not made public, and urban planning information was scarce.

Under the Law on Access to Public Documents<sup>11</sup>, municipalities are required to make certain documents public. However, Mitrovica had not yet adopted a municipal regulation implementing this law. As a result, BEEP made recommendations for the municipality's adoption of a transparency regulation. These recommendations were reviewed and utilized by the Mitrovica Assembly and the members of the Statutory Commission. On March 31, 2011, the Municipal Regulation on the Transparency of the Municipality of Mitrovica<sup>12</sup> was passed with 39 of 41 members of the Assembly voting for its adoption.

### **Reform Results**

With this regulation, the municipal government made several institutional changes that increase transparency. First, this regulation was posted to the website which made it clear what the municipality's duties are as they pertain to making certain documents and processes public. This helps to inform the public on what they can expect from the municipal government, keeping constant pressure on the municipality to observe the transparency requirements. Secondly, Mitrovica has implemented the regulation by posting various public documents on their website. One of the most important business

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on Corporate Income Tax. Therefore, total business revenue is €21,766,090 (€2,176,609 tax revenue / 10% corporate tax rate). Finally, €21,766,090 business revenue / 42,309 registered businesses / 260 working days per year = ~€55 per business per working day.

<sup>11</sup> See Law No. 03/L-215 on Access to Public Documents (2010).

<sup>12</sup> See Regulation No. 01/2011 on the Municipal Regulation on the Transparency of the Municipality of Mitrovica (2011).

environment improvements in this regard is the posting of the municipal regulations. This allows business to make more informed business decisions based on more complete information. The budget is now also available on the Mitrovica website, which includes municipal own-source revenue collection and anticipated investment programs.

BEEP has recommended that a person within the municipal government take the responsibility for making sure that the required information gets posted to the website and that contact information for this person is made publicly available.

### **Estimated Impact**

The benefit to the business in this case is primarily the time savings associated with having readily available municipal regulatory information. Businesses are able to design and execute business activities taking into consideration the local legal requirements. Similarly, businesses in Mitrovica are aware of new regulations as they are being introduced into the Assembly, allowing them to adjust their business plans, prices, employees, and anything else that may be affected by municipal legal acts.

The estimated economic impact in this case utilizes the conservative approach required by the PBMP under PR2. This assumes that all businesses have knowledge of both the fact that this information is available on the Mitrovica municipal website and that they know how to quickly and efficiently acquire the information from the website. Therefore, businesses, according to the assumptions, are able to check all municipal-level legal requirements and become familiar with them in one business day.

The estimated average value of business operations per day is €55. In Mitrovica, there are approximately 2,000 active registered businesses. The annualized savings is €110,000 calculated as the estimated average value of business operations per day multiplied by the estimated number of active registered businesses in Mitrovica ( $€55 \times 2,000$ ). Therefore, the estimated economic impact for the Mitrovica Transparency Regulation in USD is \$159,115<sup>13</sup>.

It should also be noted that the transparency of the Mitrovica municipality may easily have other economic impacts including, among other things, more efficient pricing of products and services, less business risk through a more predictable regulatory framework, and higher levels of government accountability, requiring more efficient use of government resources (reducing pass-through costs to businesses).

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<sup>13</sup> \$1.4465/€ exchange rate at July 27, 2011