ALBANIA

REMOVING ADMINISTRATIVE BARRIERS TO INVESTMENT: A CRITICAL COMPONENT OF THE NATIONAL DEVELOPMENT STRATEGY

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Foreign Investment Advisory Service
a joint service of the
International Finance Corporation
and
The World Bank
At the request of the Government of Albania (GOA), the Foreign Investment Advisory Service (FIAS) of the IFC and World Bank conducted an Administrative Barriers Study aimed at removing bureaucratic bottlenecks and streamlining administrative procedures for investors. The terms of reference for the study was agreed between the GOA and FIAS, and the funding of the project comes jointly from the GOA, FIAS and the Soros Foundation. The Ministry of Economy was the designated official counterpart for the study.

The project started in the summer of 2002 with a 500-company survey of the regulatory costs to businesses and over 30 interviews with government authorities responsible for business regulation, both to be executed by selected local professionals under FIAS guidance. This was followed by more detailed field investigations of the key issues identified by the survey and initial interviews with government agencies, conducted in November 2002, by a FIAS team combining international and local experts. While in field, the team met with private sector groups, relevant ministries and public agencies, as well as representatives of the IMF, World Bank, IFC, EU and other donor agencies to discuss the key issues identified, and consulted them on the possible suggestions.

Based on the field work, the FIAS team prepared an Aide Memoir in December 2002, providing the GOA with a view of its preliminary findings and suggestions. This report further elaborates on the issues highlighted in the Aide Memoir.

FIAS is responsible for any errors and is solely responsible for the analysis and recommendations contained in this report. The views of FIAS are not necessarily shared by the Government counterpart, local consultants, and other donor agencies involved in the project.
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ANNEX 2: “ADMINISTRATIVE BARRIERS TO INVESTMENTS IN ALBANIA,” by Boga & Associates, December 10, 2002
EXECUTIVE SUMMARY

i. Like all other transitional economies in the region, Albania has liberalized its economy and promoted private sector-led growth in recent years. However, despite the achievements in the macroeconomic reforms and relatively high rates of economic growth since its transition, Albania remains one of the poorest countries in Europe. Apart from the fact that Albania had to start from a low base, weak governance and institutions, coupled by tenuous rule of law, are deterring informal enterprises from "graduating" to the formal sector. They discourage entry by long-term and strategic investors and limit the ability of the broader population to share in the benefits of economic growth.

ii. Recognizing the need to accelerate economic growth and reduce poverty, the GOA has adopted the Growth and Poverty Reduction Strategy (GPRS) supported by the World Bank and other donors. It sees the next two to three years presenting a critical opportunity for systematic structural reforms, law enforcement, anti-corruption and governance improvement. The current administrative barriers study contributes a critical element to the national strategy.

iii. Removing administrative barriers to investment is a need that has been increasingly recognized in the country. In a diagnostic study of the investment climate in Albania concluded by FIAS in 2000, bureaucratic bottlenecks, compounded by weak law enforcement and strong corruption, were highlighted as major impediments to the growth of private investment. Domestic and foreign firms interviewed at that time consistently voiced their concerns about the delays, unpredictability, and high costs (associated with formal and informal payments) of acquiring licenses, permits, and other government approvals required to start and operate a business. Companies also pointed out that many of the promulgated laws and regulations have not been effectively implemented or enforced. Many ministries and authorities were regarded by business as not having been responsive in addressing issues that have been repeatedly raised at various conferences, workshops and other policy discussion forums.

iv. To address these concerns, the GOA and FIAS agreed on a project approach that emphasized the involvement and ownership of local parties, from both the private and public sectors. The project started in the summer of 2002 with a 500-company survey of the regulatory costs to businesses and over 30 interviews with government authorities responsible for business regulation, both to be executed by selected local professionals under FIAS guidance. This was followed by more detailed field investigations of the key issues identified by the survey and initial interviews with government agencies, conducted in November 2002, by a FIAS team combining international and local experts.

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1 Two local organizations were contracted to carry out the initial fieldwork – the Human Resource Development Center (HRDC) for the company survey; and Boga & Associates, with support from the Ministry of Economy, for all interviews with government institutions. FIAS provided the survey and interview instruments and overall supervision.
Based on the field work, the FIAS team prepared an Aide Memoir in December 2002, providing the GOA with a view of its preliminary findings and suggestions.

v. This report further elaborates on the issues highlighted in the Aide Memoir. It provides a set of concrete and action-oriented recommendations that can be used as inputs for the further discussion and consultation between the private and public sectors within the country, as well as between the Government and the major donors on developing the implementation plan in the upcoming months.

The Overarching Issues

vi. In all procedural areas examined, the systems in Albania are found seriously flawed and characterized by over-complexity, lack of clarity and transparency, and investor unfriendliness. Bureaucratic delays, discretionary and arbitrary treatment, and high costs, including frequent “un-official payments”, are common across all areas. While these features are not unusual among transition economies in the region, their severity is remarkable when benchmarked against comparable country survey results.

vii. Apart from possible broader social and political factors, which lie beyond the FIAS mandate, the team attributes the observed problems to a combination of the following factors:

- There is a serious systemic lack of implementing regulations and operational guidelines. Newly introduced laws are typically not supported by efforts setting out necessary procedures, criteria and responsibilities. As such, the system permits the exercise of a high degree of administrative discretion by regulatory agencies and their officials, whose interpretations of the laws are frequently inconsistent and lack transparency. It also creates confusion among investors regarding their legitimate rights and obligations, as well as their means of compliance.

- There is a systemic lack of effective institutional structures, with neither clear designation of individual agency responsibility and accountability, nor the required degree of cooperation between them. Investors often do not know exactly where to go for what, and government authorities also seem confused about who is responsible for what. For investors, this means a waste of time and unpredictability. For government authorities, this allows responsibility to be avoided when things need to be done, and “turf battles” to be waged when vested interests are threatened.

- Legal and regulatory enforcement is chronically lacking. Complaints exist in almost all areas about ineffective dispute settlement mechanisms, both within public administration and the court system. Officials with operational power are able to abuse their power without being held accountable. Private parties can move easily from legal to illegal practices (e.g., not using bank accounts,
constructing without permits, smuggling, etc), and, in some cases, seem to be
driven of necessity to the latter since they are in competition with firms who
engage in those practices. This is highly inequitable since those who try to
comply can be penalized the most. It creates a vicious circle, in which fewer
and fewer people, in both public and private sectors, are motivated to comply
with the rule of law.

- **Administration is further weakened by a lack of development of the
appropriate mindset and skills of officials at all levels.** In general, regulatory
officials seem not to trust businesses. Many appear to see themselves as
policemen, not service providers. It is common perception that some abuse
their position by seeking personal gain. Moreover, many authorities do not
keep good records of their own performance; many cannot provide statistics
on applications received, rejected, appealed, etc. Almost all authorities
interviewed complained about resource constraints, and none had effective
staff performance systems to reinforce good performance and dissuade poor
performance.

viii. In the context of this pervasive dysfunction, it is hardly surprising that corruption
stands out as the most serious factor impeding reform efforts. To meet the challenge of
urgently needed economic growth and development, the Government will have to
demonstrate stronger political will and ability to tackle the problem of corruption. The
Government has recently initiated an anti-corruption program under the Prime Minister’s
Office. FIAS suggests that any anti-corruption program incorporate an explicit focus on
the issues and dilemmas faced by the private sector.

ix. Experience in many countries suggests that governments can advance the battle
against corruption by simplifying the investment process and eliminating scope for
discretion. The GOA would benefit from similar initiatives. The GOA should also make
more vigorous efforts to clarify institutional responsibilities and enhance agency
accountability, enforce laws and regulations, and educate the general public and civil
servants at all operational levels on their rights and responsibilities. These initiatives will
require a strong political will and long-term commitment. The GOA should regard the
next three years as an opportunity to implement the necessary far-reaching structural
reforms that are fundamental to encouraging private sector investment. At the same time,
the effectiveness and credibility of laws and regulations designed to safeguard the
legitimate public interest should be increased.

**Specific Areas Requiring Priority Attention**

x. Four specific areas of administrative barriers to investment in Albania stand out as
most problematic, according to the results of the company investor survey. They are:
customs procedures, tax administration, land and construction permits, and sector
licensing. Underlying these issues are pervasive concerns related to the ineffectiveness
of legal enforcement and dispute resolution mechanisms, such as appeals systems.
xi. To assist the GOA in its aim of improving the competitiveness of the investment environment, FIAS has examined these issues in detail. Based on the consultation with the various groups in the country and, where appropriate, international experience and best practice, FIAS developed a set of specific recommendations in each of the areas. Where possible, the recommendations are prioritised according to the urgency of the problems from an investor perspective. They also attempt to take into account the practicability of implementation in the short, medium, and long run, from an administrative perspective.

xii. The table below summarizes the key recommendations contained in the main report. These recommendations are put forward to stimulate discussion among relevant and interested stakeholders, in both the public and private sectors. In the main text, FIAS elaborates on all these issues and, where appropriate, supports the recommendations with examples from relevant international experience and “best practice. Ultimately, it is the prerogative of the Government of Albania, in consultation with the private sector in the country, to decide which are desirable and which are practicable, as well as how to sequence and time the changes, based on its goals and priorities for economic reform.

The Next Steps

xiii. In order to remove administrative barriers to investment successfully, the GOA must engage in a more determined and concerted manner to implement the needed changes, in practical process terms. As in all countries, the critical phase of the current “study of administrative barriers” comes with government taking leadership to ensure that the findings and recommendations are implemented successfully. As mentioned in the preceding chapter, the report recommendations are put forward as a basis for promoting discussion among stakeholders in the country’s economic reform agenda. Ultimately, the Government of Albania, relevant ministries and agencies, and private sector communities must work together to agree on priority goals, develop appropriate strategy, and design specific action plans and mechanisms for implementation.

xiv. Removing administrative barriers is a difficult process in all countries, as it involves and confronts directly the day-to-day work of the institutions and people within the bureaucratic system. Chart IV-1 on next page shows the implementation cycle based on the experience in many countries. As seen in this cycle, the success depends on an ongoing process of engaging all parties involved. It is pre-conditional that the private and public sectors have continuous dialogue and consultation, to increase the mutual understanding and learn to trust and work with each other. It is also critical that different government departments and officials at all operational levels are led by a common vision and cooperate with each other’s efforts to support the changes required. Not surprisingly, all these will happen only when there is a stronger political will and leadership at the highest level of the government.
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<th>Main Concerns of Investors</th>
<th>Suggested Solutions</th>
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| Customs Procedures    | 1. Import clearance and export procedures are time-consuming; documentation requirements overly complicated and redundant.  
2. Customs valuation does not follow clearly established rules and procedures; rejections are not automatically notified to importers in writing.  
4. Appeals system within GDC does not follow WTO rules; courts decisions are ineffective.  
5. Poor dialogue and consultation with the private sector | 1. Review import, export and transit procedures and adopt “risk management” approach, with a view to simplifying documentary requirements, speeding up processing, and reducing costs to the private sector.  
2. Establish clear rules and criteria for invoice valuation by following Article VII of GATT, with a view to minimizing discretion and arbitrariness in decision-making.  
3. Consider carefully the range of options for using international inspection assistance with valuation, and compare the associated costs and benefits.  
4. Improve the customs appeals system.  
5. Improve public relations and strengthen internal operation procedures. | Immediate  
Immediate  
Short to medium  
Short to medium  
Short to medium |
| Taxation Administration | 1. Poor registration (including Small Business Tax) causes narrow tax base and penalizes those who try to comply.  
2. Audits disorganized, heavy-handed, and without necessary “sign-offs” at the end.  
3. Calculation and prepayment of profits tax (in practice) penalize start-up firms.  
4. Enforcement (freezing bank accounts) does not follow clearly established rules and procedures.  
5. Extremely poor and unclear internal appeals process; courts are flooded by tax disputes and their decisions are highly ineffective.  
6. VAT refund system never works.  
7. Taxpayer communication and information extremely weak. | 1. Institute measures to ensure that VAT refunds are funded by the Government and processed in a timely manner by the GDT.  
2. Develop and implement effective audit strategy for all market segments, including small business and individuals.  
3. The method for calculating installments of profits tax should be revised with a view to providing greater flexibility and with the aim of better reflecting the actual taxable profits of the business in the relevant period.  
4. Improve the compliance enforcement so that it is consistent, cannot be routinely and coercively used against taxpayers, and is appropriate in relation to the relative tax outstanding.  
5. Improve the internal appeal system for all first instances.  
6. Simplify and strengthen SBT registration. Administration of the SBT should be retained within the GDT.  
7. Strengthen taxpayer education and multi-party consultation to provide greater understanding, certainty and consistency on interpretations of the law. | Immediate  
Short to medium  
Short to medium  
Short to medium  
Short to medium  
On-going |
| Land and Construction | 1. Pervasive land property conflicts unsettled, largely as the result of the inconsistency of the various land privatization programs and disconnection between land registration and construction approvals; courts are flooded by land disputes and their decisions are based on insufficient information and are highly ineffective.  
2. Pervasive illegal constructions due to the lack of updated urban plans and building codes, and a total lack of cooperation between the municipal and infrastructure/utility authorities | 1. Halt uncontrolled construction Accelerate and complete the land restitution program; complete land registration with more emphasis on urban and commercially attractive areas.  
2. Establish effective cooperation among the Restitution Commission, the National Privatization Agency, courts, land registry offices, and the municipal construction approval authorities  
3. Speed up the strategic territory planning to be followed by more detailed city planning, establish and implement modern building codes.  
4. Establish a “one-stop shop” information center for construction approval process in the municipalities.  
5. Establish a technical advisory committee at the municipality level to incorporate the inputs from the infrastructure/utility authorities and other key agencies when approving construction projects.  
6. Establish an effective appeal system that check and balance the power of site development approving authority.  
7. Explore the option of developing industrial and tourism parks. | Immediate | Short to medium | Short, medium, and long run | Immediate | Immediate | Short to medium | Medium-run |
| Non-Food Industry License | “Non-food License” serves no valid purposes and is largely ignored in reality by companies and the responsible ministry; however it deters potential foreign investors as long as it exists in law. | 1. Abolish “non-food industry” license  
2. Review other sector licenses with a view to limiting licensing to the sectors justified by vital public interest; consider the “negative list” approach. | Immediate | Medium run |
| Administrative Appeals System | 1. General lack of effective administrative appeals processes within individual agencies  
2. General lack of independent and specialized appeals tribunals  
3. Lack of a national administrative appeals tribunal | 1. Conduct a cross-agency review, with a view to improving, on a consistent basis, the internal appeals processes within each agency.  
2. including the option of establishing specialized, independent tribunals in specific procedural areas.  
3. Establish a fully independent national administrative appeals tribunal. | Short run | Medium run | Optional |
The immediate challenge faced by the GOA on receipt of this report, is to find an effective way to move towards implementation. Based on experience in other countries, consideration should be given to the following steps:

- **Step One – Disseminating the Current Study and Building Political Consensus.** Studies of administrative barriers have had a positive impact where governments have ensured the effective dissemination of the study report as the basis for an informed and focused process of political consensus building. For example, the studies have been posted on websites, and workshops and seminars involving all stakeholders, have been conducted. Such government actions are also critical for success in Albania. The current study report should be disseminated to all interested parties for open consultation and discussion at a subsequent workshop.

- **Step Two – Establishing an appropriate institutional set-up for developing the Action Plan for reform.** For the success of the preparation of the Action Plan and the subsequent implementation of the Plan, the Government should put in place an appropriate institutional set-up with the involvement of the key relevant parties.

  A common practice in other countries in the region is the establishment of a special “Task Force” (or a “Steering Committee”) often at the cabinet level and with private sector participation. The “Task Force” will play a vital leadership and co-ordination role in the determination of priorities and sequencing of the necessary reforms. It will lead the development of precise improvement targets, timetables and designated responsibilities among participants. It will also be responsible for the design and development of a performance monitoring system that provides concrete enforcement, and evaluation tools and mechanisms.

  The “Task Force” can be supported by several “working groups” focused on specific procedural issues, such as customs administration, tax administration, land/construction, etc. These groups should be equipped with the right expertise incorporating both public and private sector inputs. Moreover, the “Task Force” will need the support of a Secretariat, i.e., a dedicated unit whose job is the day-to-day handling of the reform agenda, including all aspects of the cycle of reform.

- **Step Three – Establish an agenda for dialog between the public and private sectors on prioritizing administrative reforms.** A public-private sector consultative mechanism needs to be put in place to bring together the two principal sides of a discussion about needed reforms. The discussions should lead to the establishment of an Action Plan for Removal of Administrative Barriers to Investment. This Plan should reflect
which recommended reforms are highest-priority from the private sector’s point of view; which are feasible from the Government’s point of view, and concrete proposals for implementation, including responsibilities, deadlines, and monitorable indicators.

- **Step Four – Putting the Plan into Implementation.** The “Task Force” should continue to play a key role in coordinating and supervising the process of implementation following preparation of the Action Plan. This is essential since effective implementation involves committed efforts by various parties and change at different levels of policy, legal, and institutional responsibility. At the implementation stage, it is also crucial that the Government maintains a close dialogue with the private sector.

- **Step Five – Monitoring, Evaluation, and Adjustment,** Enforcement and evaluation tools must be used concurrently with implementation to monitor and adjust the implementation process periodically. This will require the Government to:

  - Establish and rigorously implement an internal, formal mechanism within the government whereby the responsible institutions regularly report to the Task Force on the status of implementing the reforms that they have undertaken in the Action Plan.

  - Monitor and measure the on-the-ground impact of the implemented actions through regular interaction with the private sector representatives, the templates and the business survey.

  - Prepare regular reports to the highest political level on the status of implementation of the Action Plan, based on both the internal reporting and external monitoring, and other necessary measures to reduce the administrative barriers and improve the business environment.

xvi. *An effective way to do this is to repeat the administrative regulatory cost survey every 12-18 months.* The findings of the current, inaugural survey provide a potentially useful baseline for the findings of future surveys. Positive results from future surveys will demonstrate the progresses made and the beneficial impact of reforms on the private sector. They will enhance political support. Identified weaknesses and lack of progress will assist in the review and necessary progressive adjustment of reform targets and strategies. The repeated surveys serve also to maintain private sector engagement in the reform process and to facilitate policy makers’ continuing access to private sector feedback and inputs. These ongoing, post-implementation steps are essential to the ultimate success of the reform effort.

xvii. *The template interviews with government agencies should also be repeated periodically in future, by the Government itself to update the procedures and agency*
performance. During the first round of such interviews under this study, most agencies did not fully respond to the questions related to their performance, possibly due to the lack of their internal system of keeping the performance data. This should change in future. All agencies must understand that their credibility and accountability depend on their performance, not just on laws and regulations laid in paper. The self-assessment of their performance will be the key to encouraging good performance, increasing the overall operational efficiency, and demonstrate to the public the progresses to be made.
CHAPTER I
INTRODUCTION

A. Investment, Growth and Poverty Reduction

1. Like all other transitional economies in the region, Albania has liberalized its economy and promoted private sector-led growth since 1990. After several ups and downs in the first decade of transition, the economy has managed to achieve macro-economic stability and a relatively high annual growth rate of over 7 percent since 1998. Significant progress has also been made in structural reforms, especially in privatizing the small and medium sized state owned enterprises (SOEs). As a result, the economy today has a private sector that accounts for over 85 percent of GDP and over 80 percent of employment. At the same time, the Government has continued its aggressive effort in legislative reforms. A large number of laws and regulations have been introduced to provide the legislative framework for the financial sector, land market, tax and customs systems, and other important components for a market-oriented economy.

2. FDI inflows to Albania, albeit small, are increasing. After a major setback caused by the 1997 crisis, foreign investor confidence appears to have returned over the last 2-3 years. According to the UNCTAD statistics, Albania attracted US $143 million of FDI in 2000, a three-fold increase over the levels between 1997-1999. The positive trend continued in 2001, with an inflow of $181 million. By the end of that year, the cumulative FDI stock in the country was approaching $800 million, equivalent to a stock per head of about $220.2

3. Despite the progresses made, Albania still faces an uphill journey to achieve rapid and sustainable growth and improve the economic well-being of the population. The country started from a low GDP base; and thus, even with an impressive growth rate of over 7% per year, its per capita income of around $1,100 remains among the lowest in the region. It is also among the lowest recipients of FDI in Eastern Europe. Moreover, the economic transition is far from complete, with many laws and regulations introduced but not effectively implemented. Particularly, weak governance and institutions, coupled by tenuous rule of law, are preventing informal enterprises from "graduating" to the formal sector. They also discourage entry by long-term and strategic investors and limit the ability of the broader population to share in the benefits of economic growth.

4. To accelerate economic growth and reduce poverty, the Government of Albania (GOA) has recently adopted a new Growth and Poverty Reduction Strategy (GPRS). Supported by the World Bank and other donors, the GPRS envisages the next two to three years presenting a critical opportunity for systematic reforms, law enforcement, anti-corruption and governance improvement. A critical component of the

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comprehensive program under the GPRS is to “create a growth oriented business environment that attracts investment and create employment.”3 In support of this goal, the GOA has called for a special effort to remove administrative barriers to business entry and streamline administrative procedures for investment.

B. The Need for “Second-Tier Reforms”

5. Removing administrative barriers to investment is a need that has been increasingly recognized in the country. Domestic and foreign firms operating in Albania have consistently voiced their concerns about the tardiness, unpredictability, and high costs (associated with formal and informal payments) of acquiring licenses, permits, and other government approvals required to start and operate a business. Companies have also pointed out that many of the promulgated laws and regulations have not been effectively implemented or enforced. Many ministries and authorities are regarded by business as not having been responsive in addressing issues that have been repeatedly raised at various conferences, workshops and other policy discussion forums.

6. The situation faced by Albania is not unique. In almost all transition economies, removing administrative barriers has become necessary once the legal constraints to private investment have been addressed. In particular, countries with a history of government intervention and direction in economic decisions typically have complex, overlapping administrative controls beyond those easily identified as obvious constraints on investment. Such controls mean excessive paperwork and delays, the exercise of significant administrative discretion, a lack of institutional responsibility and accountability, and unproductive ‘turf battles’ between agencies. They often lead to ‘extraordinary’ payments by those who want to start or operate businesses, and become a serious deterrent to potential investors.

7. Similarly, countries which have taken steps to introduce new market based legislative reform often fail to realize its full potential benefits unless complemented by effective reforms of the relevant operational rules and institutional structures. Without these further changes, sometimes referred to as “second-tier reforms,” there would be no transparency, predictability or consistency in the operation of administrative systems. Serious investors often cannot tolerate the lack of transparency and consistency because the latter prevent them from predicting the costs/risks and making business planning. They can also give rise to discrimination between different types of investors (foreign/domestic, large/small) and to corruption.

8. Moreover, the new business environment policy and legislative framework will not work well if government officials at all levels continue to see themselves as ‘policemen’ rather than ‘service providers’ and if they are not equipped with the requisite skills and resources. In a worst case scenario, officials may simply view the new environment as a source of continuing opportunity to generate ‘supplemental’ income.

with no improvement in service quality. These factors can be particularly negative in places where the existing business communities may be politically connected, operate under no strict internal corporate governance guidelines, and/or be driven by short-term, speculative motivations. In such circumstances, countries may lose-out on the “good” investors they all attempt to attract, domestic or foreign. The same obstacles also tend to deter small and medium enterprises from emerging from the “informal” sector.

9. Of course, removing administrative barriers does not, of itself, overcome the many other significant impediments that deter private investment, such as the absence of credible legal commercial dispute resolution mechanisms, the need for financial sector reforms, the lack of efficiently functioning infrastructure and utility services, and the absence of effective investment promotion. Nor does it address fully the complex issues of corruption and civil service reforms. Nevertheless, efforts to simplify and streamline regulatory operational procedures are necessary to complement and effect the implementation of policy and legislative reforms. By reducing business costs of compliance imposed unnecessarily by ‘red-tape’ and by increasing the transparency of regulatory administrative decisions, they deliver tangible benefits to investors. Removing administrative barriers also serves to increase the efficiency and effectiveness of government operation and service delivery. Importantly, such measures are within the power of governments to improve in the short-to-medium term, thus sending a positive signal to investors and making a significant contribution to the overall economic reform process.

C. Study of Administrative Barriers

10. To tackle bureaucratic problems of regulatory reform and to accelerate the implementation of these “second-tier reforms,” a number of reform-minded governments developed a method in the mid-1990s, known as the “study of administrative barriers.” Since then its use has spread rapidly among the countries of Africa, the Middle East, Latin America, and Eastern Europe. Almost all governments in the region of South East Europe had either completed or had underway such a study by 2002.

11. Although the content and level of effort may vary from country to country, a “study of administrative barriers” typically includes a thorough examination of all the steps an investor has to go through in order to start up a new business, plus several of the routine interactions between a business and government agencies required during the course of ongoing business operation. The main business regulatory areas examined usually include:

- **Start-up Procedures**: Registration procedures for businesses (including company registry, tax registry, and other registries for social funds, statistics, etc.); immigration procedures for foreign investors, a sample of sectoral business licenses (e.g., transport, food-processing, etc.).
• **Locating Procedures**: Key aspects of site development including land allocation and registration, site development approvals, building permits, utility connections, etc.;

• **Operating Procedures**: The bulk of these are related to tax administration, import/export procedures, foreign exchange procedures, product certification, labor regulations, and government inspections.

12. The information gathered on these procedures is used to identify their weaknesses and strengths from the point of view of enhancing the investment environment. The information is collected not just through an examination of written laws, regulations, procedures and forms, but also through interviews and surveys involving the business community and executing agencies. In this way, both the normative, ideal features of the regulatory environment are captured for comparison alongside the positive, existing reality of that environment. Compiling information about all investment related regulatory procedures, also enables the various relevant agencies to appreciate – often for the first time – the cumulative impact of their respective functions on a given investor. Finally, the resulting detailed examination and documentation reveals exactly where inconsistency and redundancy exist, which in turn facilitates further necessary policy and administrative reform.

13. In recent years, governments seeking administrative reforms have used the “Administrative and Regulatory Cost Survey (ARCS),” as a supplementary tool to collect substantial, quantitative inputs from the private sector concerning administrative barriers and to assess the impact of their ongoing reform. The ARCS uses a questionnaire administered to a selected sample of firms, concerning time delays experienced, managerial time expended, official fees paid, unofficial payments made, and other sources of increased costs associated with bureaucratic regulatory approvals. Use of a standardized instrument enables the data to be used for cross-country comparison. More importantly, repeated by a country over successive years, it also enables the measurement of reform impacts over time, helping governments strengthen implementation and maintain the momentum of the reform.
CHAPTER II

CHALLENGES IN REMOVING ADMINISTRATIVE BARRIERS IN ALBANIA

14. In a diagnostic study of the investment climate in Albania concluded by FIAS in 2000, weak law enforcement and strong corruption, compounded by bureaucratic bottlenecks, were highlighted as major impediments to the growth of private investment. Many firms interviewed at the time complained that Government officials frequently ignored their own laws and made arbitrary and inconsistent decisions without any apparent accountability. In a more recent Aide Memoir (January 2002), commenting on the country’s foreign investment promotion strategy, FIAS reiterated the need for removal of administrative barriers as the key to encouraging new investment.

15. In 2002, the GOA embarked on a Study of Administrative Barriers, recognizing that improving the business environment is critical to the national strategy of promoting investment, stimulating growth and reducing poverty. In particular, the GOA acknowledged the growing need to overcome problems at the operational level in order to accelerate implementation of reforms and to increase their tangible results. The GOA was also aware that most other reform-minded governments in the region had already taken such steps and was keen to see Albania do the same.

16. At the request of the GOA, FIAS assisted in a three-phase project. It followed the basic approach adopted in other countries and emphasized the involvement and ownership of local interested parties from both the private and public sectors. Phase I, completed in November 2002, focused on basic information collection for the purpose of identifying problems. It included a 500-company survey of the regulatory costs to businesses and a series of interviews with government authorities responsible for business regulation, both carried out by local teams with FIAS guidance. Phase II, started in November and to be concluded in February 2003, required a specialized team of both international and local experts to investigate in more detail the key problems identified with a view to developing specific recommendations for improvements. Phase III, closely following Phase II, will focus on development of a prioritized action plan for implementation of reforms, with the participation of relevant stakeholders in the public and private sectors.

17. The remainder of this chapter provides an overview of the study results to date, that is, the private sector survey findings, the government interview results and the general observations based on the FIAS investigations. Chapter III further elaborates the findings and provides specific recommendations.
A. The Company Survey

18. The Administrative and Regulatory Cost Survey (ARCS), is specially designed to gather data from companies on management time taken and monetary costs incurred in establishing and operating businesses as a direct consequence of complying with bureaucratic regulatory procedures. The core questions used in the Albania survey are the same as those used in other countries, in order to generate data that is comparable across countries. More specific questions reflect Albania’s particular situation.

19. An independent local survey institution, the Human Resource Development Center (HRDC), was responsible for conducting the survey. The sample was 500 currently operating private sector companies. Of the firms interviewed, 94% were of small and medium size (that is, employing less than 50 workers), 86% were domestically owned\(^4\), and 48% were based in Tirana.\(^5\) The size, ownership and geographical distributions of the sample are believed to be representative of the structure of the broader private sector in the country. All sample firms were interviewed ‘face to face’.

20. Firms were asked to evaluate the regulatory environment both at the general level and in specific administrative areas. At the general level, they were asked about their satisfaction regarding both the nature of the regulations themselves and their bureaucratic administration. They were also asked which areas of business regulation constitute the major obstacles to investment.

21. For each specific regulatory procedure firms were asked to provide hard data based on their actual experience, for example, time spent in complying with requirements, amount of official fees paid, and frequency and amount of unofficial payments required. There were also some more subjective questions, such as how the recent situation compared with those pertaining one, two and three years previously.

22. The overall findings of the survey are summarized in the HRDC report, which is included in Annex A of this report. The following are the highlights of the survey findings:

- In general, businesses seem “somewhat dissatisfied” with the regulatory environment, as indicated by the average values placed on both the quality of regulations and the administrative behavior of the regulating agencies. They seem also to be more worried about the behavior than the regulations themselves, as indicated by the mean value 4.1 for the former and the mean value 3.7 for the latter.\(^6\) This average result is based on 34 percent firms responding with “somewhat satisfied,” and 59 percent with “somewhat dissatisfied,” “dissatisfied” and “very dissatisfied.”

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\(^4\) Less than 6% of the sample has foreign ownership and the remainder is involved in foreign/local joint ventures.

\(^5\) For details of the survey methodology and sample designs, see HDPC report.

\(^6\) Both were measured along a 1-6 scale in which 3 means “somewhat satisfied,” 4 means “somewhat dissatisfied,” and 5 means “dissatisfied.”
The dissatisfaction level is especially high in Tirana, where 40% of the firms interviewed characterized themselves as “dissatisfied” or “very dissatisfied” with the regulations; and 58% as “dissatisfied” or “very dissatisfied” with the bureaucratic behavior.

The procedural areas that concern investors most are Customs, Tax Administration, and Land and Construction, as seen in the Chart below.

Figure 1: Level of obstacles faced by businesses in different areas

1= No Obstacle  2= Minor obstacle  3 = Moderate  4 = Major obstacle
*Numbers in (..) are the number of respondents

The most striking finding of the survey is the extent and level of petty corruption, as indicated by the large percentage of firms acknowledging “unofficial payments” and the amounts of such payments reportedly made. (See table II-1) In both regards, Albania fares far worse than most other countries in the region. Moreover, petty corruption appears to be pervasive across all procedural areas, including the courts. The two areas showing the highest percentage for bribery are customs clearance (36%) and construction permits (32%). Both indicators are significantly higher than for most other indicators of bribery known in the region.
TABLE II-1: ALBANIA: REPORTED UNOFFICIAL PAYMENTS BY PROCEDURES

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Number of observations</th>
<th>Percentage of those who reported unofficial payments</th>
<th>Average amount of each payment (in US$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customs: Import Clearance</td>
<td>184</td>
<td>36.0</td>
<td>167.70</td>
</tr>
<tr>
<td>Construction Permit</td>
<td>146</td>
<td>32.0</td>
<td>406.60</td>
</tr>
<tr>
<td>Tax Inspection</td>
<td>482</td>
<td>26.0</td>
<td>265.50</td>
</tr>
<tr>
<td>Business Licenses</td>
<td>263</td>
<td>11.6</td>
<td>108.00</td>
</tr>
<tr>
<td>Business Registration (Court)</td>
<td>137</td>
<td>9.5</td>
<td>173.10</td>
</tr>
<tr>
<td>Land Title Registration</td>
<td>244</td>
<td>5.7</td>
<td>225.10</td>
</tr>
</tbody>
</table>

23. Curiously, the firms surveyed report fewer problems with the number of regulatory requirements and management time spent on each. For instance, the average number of licenses required per business in Albania is 0.9, which is much lower than that in many other countries in the region. The total time spent on start-up registration by an average Albanian business is 18 days, also less than that in many other neighbouring countries. This evidence corroborates FIAS’ earlier findings that while regulatory requirements are ‘on the books’ they are not rigorously enforced, and many are, in practice, probably ignored or circumvented through bribery.

24. Finally, the top three obstacles reported are in the areas of customs operations, tax administration, and land/construction permits. This should be cause for special concern by the GOA. These are the very areas, especially in customs and tax administration, in which substantial reform efforts have been made, with donor support. Whatever the positive outcomes achieved, it seems that thus far only a limited impact has been made from the point of view of private sector businesses dealing with those agencies.

25. The results of the survey should be interpreted with caution. As with all such surveys, not all areas of procedural experience questioned can be readily quantified and firms tend to exaggerate some experiences or under-report others, depending on the questions. The questions concerning bribery are particularly sensitive, and many firms may not be willing to provide accurate information, for understandable reasons. Accordingly, the survey results should be regarded not necessarily as accurate measures of reality, but rather as measures of the opinions of the firms interviewed. Nevertheless, they do provide quantitative indicators of these private sector opinions including, in particular, a reasonably accurate ranking of problems within the country as well as indicating possible emerging trends. They therefore send reasonable signals to policy makers seeking to identify priority areas upon which to focus their further reform efforts. If repeated periodically, the survey will reveal the shifting dynamics of business.

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7 Regarding “unofficial payments,” for instance, some experts believe that the data collected could be under-reporting reality by about two-thirds.
perceptions, and provide an extremely useful measure of progresses with reforms and with their impacts.

B. Template Interviews with Government Agencies

26. In parallel with the company survey, over 30 government agencies responsible for the various regulatory procedures for investment were interviewed based on template questionnaires. These interviews aimed at “mapping out” the investment procedures as they are officially required today. A local legal and accounting firm, Boga & Associates, was responsible for collecting the data from these agencies. The Ministry of Economy (MOE) provided support to the exercise.

27. Each agency was asked to describe in detail the regulatory requirements falling within its competency, including their purpose, their legal basis, the procedures and documentation involved, sanctions available, etc. To the extent possible, operational data was sought, including the number of staff involved, the number of applications received and approved during specified time periods, the average processing time for each case, etc. The opinion of each agency was sought, through its senior officer (the director), in relation to the strengths and weaknesses of its regulatory administrative processes and suggestions for improvements.8

28. In general, the agencies contacted were willing to provide the information sought. However, while the descriptions of the primary laws and regulations were relatively simple and clear, those of the operational rules and procedures were obscure, in most cases. This appears to be due largely to the fact that many laws have not been followed up with more detailed implementation regulations. As such, the system permits the exercise of a high degree of administrative discretion by regulatory agencies and their officials, whose interpretations of the laws are frequently inconsistent and lack transparency.

29. Information provided by agencies concerning their performance was generally poor. Most agencies found it difficult to provide such data as the number of applications received and approved during a set period of time, the average time of processing each application, etc. as they simply do not maintain good statistical records. It is worth mentioning that there were a few agencies that provided some statistics required, and they included the authorities in charge of environment, work permits and visa, land registration, land restitution and the registration for patent/trademarks.

30. Some agencies were reluctant to cooperate for fear, it seemed, of contradicting “official” government statistics.

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8 All agencies interviewed received the templates prior to the interviews and so had time to prepare the information required. Some agencies were interviewed more than once in order to clarify or provide further details of the information. In some procedural areas, multiple agencies had to be interviewed in order to clarify the situation. The provided information was supplemented with material gathered from other independent sources available to Boga & Associates.
31. The data collected from agencies is compiled in the report prepared by Boga & Associates, as included in Annex B. Subject to the data limitations noted above, it provides a useful guide to current business regulatory requirements and procedures in Albania. That report also raises questions about the conduct of regulatory administration – its clarity, consistency, and the attitude and competency of the responsible officials – based on the experience of conducting the interviews with the various agencies.

C. The Overarching Issues

32. To further clarify the issues and concerns arising from the survey and the government interviews, and to collect inputs for recommendations, a FIAS team composed of international expertise paired with local experts conducted additional fieldwork in Albania in late November 2002. The further investigation focused on the four major areas of administrative impediment identified by investors in response to the survey, namely, customs procedures, tax administration, land and construction permits, and sector/activity licensing. In addition, the cross-cutting issues in relation to administrative appeals processes was also examined, as a response to widespread concern about the lack of effective legal enforcement and dispute resolution processes. The visiting team conducted further detailed interviews with the officials of the relevant government agencies, investors, business associations, and independent professional business advisers, including lawyers, accountants, real estate agents, and other consultants familiar with business procedures.

33. These wide exchanges confirmed the concerns identified by the survey and the initial government interviews. While the existing laws and regulations may not appear unreasonable, procedures at the administrative operational level are seriously flawed in the following ways:

- There is a serious lack of implementing regulations and operational guidelines. Newly introduced laws are typically not supported by necessary procedures, criteria, standards and responsibilities for effective implementation. This leads to a total lack of transparency in implementation, and it allows for considerable administrative discretion. It also creates confusion among investors regarding their legitimate rights and obligations, as well as the appropriate means for their compliance.

- There is a systemic lack of effective institutional structures, with neither clear designation of individual agency responsibility and accountability, nor the required degree of cooperation between them. Investors often do not know exactly where to go for what, and government authorities are confused about who is responsible for what. For investors, this means a waste of time and unpredictability. For government authorities, this allows responsibility to be avoided when things need to be done, and “turf battles” to be waged when vested interests are threatened.
• Legal and regulatory enforcement is chronically lacking. There are investor concerns in almost all areas of business regulation, about ineffective dispute settlement mechanisms, both within public administration and the court system. Officials with operational power are able to abuse their power without being held accountable. Private parties can move easily from legal to illegal practices, for example, not using bank accounts, constructing without permits, and smuggling, and, in some cases, seem to be driven of necessity to illegal practices. This is highly inequitable since those who try to comply can be penalized the most. It is also inefficient in that it creates a vicious circle, in which fewer and fewer people, in both public and private sectors, are motivated to comply with the rule of law.

• Administration is further weakened by a lack of development of the appropriate mindset and skills of officials at all levels. In general, regulatory officials do not trust businesses. Many see themselves as policemen, not service providers. Some abuse their position by seeking personal gain. Moreover, many authorities do not keep good records of their own performance; many cannot provide statistics on applications received, rejected and appealed. Almost all authorities interviewed complained about resource constraints, and none had effective staff performance systems to reinforce good performance and dissuade poor performance.

D. The Combat against Corruption

34. In the context of this pervasive dysfunction, it is hardly surprising that corruption stands out as the most serious factor impeding reform efforts. The evidence of corruption revealed by survey, although striking in many ways, is hardly new in Albania. Many other studies and discussions by domestic and international groups have drawn attention to the problem. The 2002 Corruption Perceptions Index of the Transparency International ranked Albania No. 81 among the 102 countries covered, with a score of 2.5 within the range of 0 (highly corrupt) to 10 (highly clean). A recent study based on surveys conducted in seven countries in the South East European (SEE) region by the Center for the Study of Democracy and the International Legal Development Institute, revealed that Albania was the worst among all countries in the region in terms of perceived corruption, and that its performance is getting worse with time. Table II-2 below highlights the corruption indexes compiled by the study. Table II-3 highlights that Albania is behind its neighboring countries regarding the extent of corruption among customs officers, tax administrators, municipal officials, and judges.

9 <http://www.gwdg.de/~uwvw/2002Data.html>
10 “Regional Corruption Monitoring,” the Center for the Study of Democracy and the International Legal Development Institute, Rome, under its South East European Region Legal Development Initiative (SELDI), 2002.
TABLE II-2: CORRUPTION INDEX OF SEE COUNTRIES

<table>
<thead>
<tr>
<th>Country</th>
<th>Year 2002</th>
<th>Year 2001</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>68.4</td>
<td>60.8</td>
</tr>
<tr>
<td>Romania</td>
<td>59.9</td>
<td>59.9</td>
</tr>
<tr>
<td>Bosnia and Herzegovina</td>
<td>48.3</td>
<td>47.6</td>
</tr>
<tr>
<td>Croatia</td>
<td>41.1</td>
<td>41.7</td>
</tr>
<tr>
<td>Serbia</td>
<td>37.3</td>
<td>37.2</td>
</tr>
<tr>
<td>Montenegro</td>
<td>35.9</td>
<td>30.8</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>35.1</td>
<td>37.5</td>
</tr>
<tr>
<td>Macedonia</td>
<td>31.2</td>
<td>35.1</td>
</tr>
</tbody>
</table>

Source: “Corruption Indexes,” Regional Corruption Monitoring, Center for the Study of Democracy and the International Legal Development Institute, Rome, April 2002

TABLE II-3: CORRUPTION PRESSURE INDICATOR*

(Relative share of those who have had contacts with the respective group and have been asked for cash, gifts or favors.)

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>55.60</td>
<td>54.88</td>
<td>52.50</td>
<td>50.67</td>
<td>53.10</td>
<td>44.31</td>
<td>56.80</td>
<td>50.43</td>
</tr>
<tr>
<td>Bosnia and Herzegovina</td>
<td>15.90</td>
<td>16.20</td>
<td>19.10</td>
<td>22.91</td>
<td>8.30</td>
<td>9.15</td>
<td>8.80</td>
<td>12.19</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>15.80</td>
<td>18.55</td>
<td>10.30</td>
<td>9.96</td>
<td>9.10</td>
<td>7.80</td>
<td>8.30</td>
<td>5.29</td>
</tr>
<tr>
<td>Macedonia</td>
<td>21.80</td>
<td>25.32</td>
<td>11.90</td>
<td>19.67</td>
<td>13.70</td>
<td>15.53</td>
<td>8.90</td>
<td>24.08</td>
</tr>
<tr>
<td>Romania</td>
<td>20.50</td>
<td>29.60</td>
<td>26.90</td>
<td>19.70</td>
<td>16.60</td>
<td>13.70</td>
<td>10.60</td>
<td>7.98</td>
</tr>
<tr>
<td>Croatia</td>
<td>10.50</td>
<td>7.36</td>
<td>11.30</td>
<td>8.27</td>
<td>5.80</td>
<td>5.97</td>
<td>6.60</td>
<td>3.45</td>
</tr>
<tr>
<td>Serbia</td>
<td>42.80</td>
<td>52.60</td>
<td>27.20</td>
<td>25.12</td>
<td>19.30</td>
<td>26.24</td>
<td>22.00</td>
<td>23.49</td>
</tr>
<tr>
<td>Montenegro</td>
<td>21.60</td>
<td>29.67</td>
<td>19.30</td>
<td>20.79</td>
<td>7.00</td>
<td>7.65</td>
<td>13.30</td>
<td>17.24</td>
</tr>
</tbody>
</table>

Source: “Corruption Indexes,” Regional Corruption Monitoring, Center for the Study of Democracy and the International Legal Development Institute, Rome, April 2002

35. Corruption is caused by deep-rooted social and political factors that go beyond the scope of an administrative barriers study. However, flaws in the operation of the administrative regulatory system, such as the exercise of too much discretion and a lack of transparency and accountability, provides fertile opportunities for the practice of corruption. Governments that are serious about combating corruption must endeavor to simplify investment regulatory procedures and eliminate the exercise of unnecessary administrative discretion.

36. The GOA has recently launched an anti-corruption campaign led by a Special Committee based in the Prime Minister’s Office. The campaign would benefit from the addition of a further specific terms of reference addressed at the removal of
administrative barriers to investment in order to remove opportunities for corruption and improve transparency. The task would have two prongs: the elimination of those rules and procedures that no longer serve a good purpose, and the strengthening of those that need to remain for legitimate reasons. This would require establishing clear rules and procedures as well as articulating the rights and obligations of investors and executing and enforcement agencies. A regulatory system that is more simple, transparent, and user-friendly will encourage private sector investment and increase the effectiveness and credibility of laws and regulations designed to safeguard the legitimate public interest.
CHAPTER III
KEY ISSUES AND RECOMMENDATIONS

37. Four specific areas of administrative barriers to investment in Albania stand out as most problematic, according to the results of the Administrative and Regulatory Cost Survey (ARCS). They are, as seen in Chart II-1 customs procedures, tax administration, land and construction permits, and sector licensing. These areas deserve the priority attention from the GOA. In addition, across all these areas, there are pervasive concerns related to the ineffective appeals systems to resolve the disputes between the firms and the executing authorities. Therefore this last issue also deserves a special attention.

38. To assist the GOA in its aim of improving the competitiveness of the investment environment, FIAS has examined these issues in detail. It has held discussions with relevant authorities/officials and the private sector, and has consulted with IMF, World Bank, EU and other donors that are providing the GOA with related assistance. This chapter highlights the FIAS findings and presents the recommendations developed by FIAS for consideration by the GOA.

39. The recommendations are prioritized mostly according to the urgency of the problems from an investor perspective. They also attempt to take into account the practicability of implementation in the short, medium, and long run, from an administrative perspective. Where appropriate, they are based on relevant international experience and “best practice.” The recommendations are put forward to stimulate discussion among relevant and interested stakeholders, in both the public and private sectors. Ultimately, it is the prerogative of the Government of Albania to decide which are desirable and which are practicable, based on its goals and priorities for economic reform.

A Customs Procedures

40. Customs procedures received among the highest levels of complaints in the company survey. Firms are dissatisfied with the time and complexity involved in import clearance, invoice valuation, and dispute settlement. Export procedures were also the subject of serious complaints. Moreover, the survey indicates widespread problems of petty corruption in customs. Of the firms that have dealt with the customs during the last year, 36% reported the practice of “unofficial payments,” with an average of $168 per payment. Both the percentage of those paying and the amount paid are significantly higher than most other countries in the region. Moreover, nearly 50% of the firms felt that the custom regime for imports had become more complicated compared to one year ago.
41. The General Directorate of Customs (GDC) was among the few government agencies that entirely failed to fulfill the questionnaire distributed by the Boga & Associates during the first phase of this study. During the follow-up investigations made by the FIAS team, the GDC was cooperative and provided detailed information. The result revealed several specific concerns of the investors which warrant urgent attention by the Government:

1. Import Clearance and Export Procedures

42. Import clearance procedures are extremely important to firms whose production depends on imported machinery, parts and components and raw materials. Currently, the private sector in Albania is facing the customs procedures that are slow, inefficient and requiring high compliance costs. The average time of 5.3 days for each import clearance is way too long for investors, and it certainly compares unfavorably with many other countries in the region.11 The bribery level in this area is particularly high, which indicates the dysfunction of the system.

43. One reason for this prolonged process is the heavier burden of paperwork required. The mission observed about 20 supporting documents to be required at the goods declaration for a commercial consignment. Many of these documents for customs seem redundant. For example, cargo manifest extract and cargo stowage plan extract should not be required because the consignment can be identified on the ship's manifest that has to be lodged as part of the ship's report procedure. Likewise there is no need for the routine requirement for the packing list as long as sufficient information is provided by the invoice.

44. Other documents required, such as bills of lading or other transport documents, serve no useful purpose to customs. An original bill of lading is a legal document of title to the goods, to be used by the importer (or his agent) to claim the goods from the shipping company (or ship's agent), to ensure that the right person is taking delivery of the goods. However, this is not the responsibility of the customs administration whose concern is to ensure that the correct duty and tax are paid before the goods are released. This is why the UN/ECE Working Party on the Facilitation of International Trade Procedures has recommended that customs should not require a copy of the transport document.

45. There are other requirements that seem to be unnecessary. For instance, firms are required to present all invoices with the original signature; and they are required to translate most documents into Albanian even though those documents are originally in English and Italian which are frequently used in foreign trade of the country. These requirements are obviously out of step with modern commercial practice,12 and have been thus abandoned in most other countries.

11 For instance, it is 1.2 days for Bulgaria, 2 days for Romania, 2.6 days for Ukraine and 4.3 days for Moldova.
12 Signatures on invoices, for instance, have no validity in practice and their authenticity cannot be verified -- a driver may sign on the way to the port if he notices that his boss forgot to do so.
Another factor further slowing down the import clearance process is the VAT calculation. The national VAT law requires that the VAT value be based on the customs value (CIF) plus import duty plus all the post landing expenses. This requires the customs administration to add the post landing expenses before calculating the VAT payable on imports, which complicates the documentation involved in import clearance. Again, this practice is not consistent with the general international rules, under which the post landing expenses may not be added before import duty is calculated.

Only 8% of the surveyed companies reported having export activities. The preliminary survey results suggested serious delay to export goods, but due to the small percentage of responding firms the result can not be considered robust enough for accurate comparisons. A large clearing agent complained of the customs attitude that "exports can wait," whereby export clearance is done only in the afternoons, a practice that can result in ships being missed. Exporters also complained of lack of adequate customs facilities for signature of EU certificates of origin.

2. Transit Procedures

Transit procedures are important in Albania because the country allows imports and exports to be cleared at the customs clearance point nearest to the trader's premises. This practice is found in a number of other countries. It has the advantage to the importer of delaying payment of customs charges, and may have other advantages provided transit procedure requirements are minimal. Some industrialized countries allow the importer the choice of clearing at the point of entry or inland, and allow deferred payment of import charges.

Remote clearance, however, requires some additional customs procedure to cover the risk of improper diversion of imports to the home market between the point at which they enter the customs territory and where they are to be cleared. A similar customs transit procedure is also required to ensure that goods cleared for export are actually exported. Currently, the GDC debits the transit bond with the amount of duty chargeable on imports and credits it back after the transit operations has been completed. This is very labor intensive and a cause of delay. The GDC should adopt a risk management approach, which is used by many countries. Based on this approach, the customs need at the start of a transit operation only the basic information that will enable them to calculate the charges if the goods go missing, and periodically review the level of security in force to ensure that it is adequate to cover the charges likely to arise in practice. This will eliminate the need for several documents currently required to start an inward transit operation. Standard 6 of Specific Annex E of the Kyiv Convention endorses such a practice.

3. Customs Valuation

Another major concern of importers relates to the administration and application of the customs valuation system. It is a frequent cause of dispute between customs and
the private sector, and a source of dissatisfaction with the service provided by the GDC. Companies complained about arbitrary treatment by individual customs officers based on no clear instructions on how to assess the credibility of declared/invoice values. Importers complained that Customs regularly increase declared values which are supported by purchase invoices. The GDC agreed that it increase about 40% of declared values because it believed that many invoices showed less than the full amount paid for the goods that are lodged with goods declarations.

51. Albania adopted the Agreement on Implementation of Article VII of GATT in 1999. This Agreement requires, as a principle, the use of the transaction value as the base for valuation. Where such a value cannot be satisfactorily ascertained, the Customs can use second and third methods of import valuation (e.g., value of identical goods; adjusted value of similar goods). To help the Customs check the credibility of declared import values, and for the operation of other methods when needed, the Agreement allows the compilation of reference values based on past transactions, commodity and other values available on the internet (such as catalogues, etc). Legal provisions for valuation declarations requiring information on the conditions of sale and the relationship between the buyer and seller can also be used, particularly for higher value consignments.

52. Although the Albanian Customs Code includes the main provisions of the Agreement on Implementation of Article VII of GATT, it falls short of strict WTO requirements in some important respects concerning valuation. Article 34 does not cover reasons for rejection of the declared value other than the fact that the price may be influenced by the relationship between the buyer and seller. The GATT Agreement sets out in detail the circumstances in which persons shall be deemed to be related, but this information is not included in the Albanian Customs Code. This omission makes the procedures less transparent and it does not help the Albanian customs officials administer the WTO requirements correctly.

53. Further, the Albanian system does not obligate the customs administration to advise the importer in writing when it has grounds to suspect the truth or accuracy of the declared value -- unless such a written notice is requested by the importer. This reduced the opportunity for the importer to respond timely. According to the WTO rules, if Customs subsequently reject the declared value, the final decision and the grounds therefore must be communicated to the importer in writing. The GDC should comply with this requirement, even though it does not appear in the Customs Code.

54. According to the clearing agents in the country, the reference values adopted by the GDC are currently known and they are practically used by the GDC as minimum values. Accordingly, when the importer's invoice shows a value greater than the reference value, the invoice value must be declared; but when the invoice shows a value less than the reference value, the reference value must be declared. This practice is

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13 Article 15(4) of the Agreement on Implementation of Article VII of GATT.
14 Article 34(2) of Customs Code.
15 See Uruguay Round Ministerial Decision Regarding Cases Where Customs Administrations have Reasons to Doubt the Truth or Accuracy of the Declared Value.
against the WTO valuation rules which explicitly state that no custom value shall be
determined on the basis of minimum custom values.\(^{16}\)

55. Customs valuation is a sensitive issue in Albania where under-invoicing is
rampant. But this problem exists to different degrees in many countries. There is, thus, a
common need for many members of the WTO to seek sound operational rules for guiding
customs valuation. The WTO has developed the various operational requirements, as
mentioned above, precisely for the purpose of assisting countries in controlling the
problem of under-invoicing and, at the same time, to respect the rights of the private
sector.

56. For its own benefit, Albania needs to follow WTO rules and guidelines to
streamline its current valuation system. The currently system allows too much room for
arbitrariness and this fails to serve the original purposes of the valuation system. On the
contrary, it tends to punish law-abiding importers and encourage illicit practices.

4. Appeals

57. One concern expressed by many public and private parties interviewed by FIAS is
the lack of a fair and effective appeals or complaints handling system. Internal appeals
provisions are available under the Customs Code and its associated Law on Customs
Implementation Procedures, but those provisions are inadequately drafted, contain some
important inconsistencies with WTO rules on appeals, and lack clear institutional back up
for effective implementation.

58. For instance, Articles 19 and 20 of the Customs Code provide only for appeals
against customs decisions that are subsequently annulled, revoked or amended. There is
no provision for appeals against other customs actions that adversely affect clients. As a
result, the general rights of appeal of importers are highly restricted in Albania. Article
34 of the Customs Code requires the customs to notify the importer of their rejection of
the transaction value in writing, but only when the importer requests such a notification.
Without an automatic written notification, it is difficult for the importer to know whether
and when an appeal should be made. Article 298 of the Customs Code provides for
appeals against penalties imposed for contraventions of customs law; but only after
payment of 40% of the penalty on deposit.

59. These provisions are not consistent with standard international practice explicitly
required by WTO rules. According to the Kyoto Convention\(^{17}\), national laws should
provide that any person who is directly affected by a decision or omission of the customs
administration shall have a right of appeal, initially to the customs administration. The
Uruguay Round Ministerial Decision further requires explicitly that written notice be
provided by customs to importers whenever the transaction value is rejected, so that the

\(^{16}\) Article 7 of WTO rules.
\(^{17}\) For details of the Kyoto Convention, see Box III-2 of this section.
importer will know whether an appeal should be made.\textsuperscript{18} Moreover, the Kyoto Convention requires that all persons who deal with Customs must be afforded the opportunity to lodge an appeal on any matter.

60. The loopholes in the law are compounded by poor implementation, largely due to a lack of training, accountability and enforcement mechanisms. There is no specialized body within the GDC to handle appeals independently. When disagreements arise, importers have to appeal to the head of the same local customs office which made the disputed decision, and the case can escalate to the Director General of GDC. The process tends to be discretionary and informal. It appears that few importers have had resort to it. According to the GDC, there are only about 15 appeals handled internally a year.

61. Instead, most dissatisfied importers have taken their cases directly to the courts. There are no accurate management statistics on numbers of appeals and court cases, although the Customs estimates that there are about 100 cases in the courts each year. However, the courts lack specialists in customs matters and their credibility is questioned. Industry claims that typically, the courts of first instance, find in favor of the appellants, while the Customs claim they are successful in just over half of the court cases at the lower levels. This then results in lengthy and costly further, higher level appeals by the authorities. The Customs claim 90% success in cases taken to the High Court.

62. The Office of the People’s Advocate (known as the Ombudsman) is another external mechanism available for importers’ complaints. According the Ombudsman, it receives over 100 appeals and complaints a year concerning customs matters, which are often intertwined with about the same number of VAT complaints. The Ombudsman makes a “recommendation” for appropriate corrective action by the concerned government agency, but has no enforcement power.

5. Relations with the Private Sector

63. All these operational problems as highlighted above are made worse by the very poor working relationship with the private sector, especially importers and exporters. In the meantime, the GDC is suffering much adverse comment in the media, related to the ineffective efforts countering widespread smuggling and corruption.

64. Interviews with both the private sector and the customs officials reveal that there are few effective consultative mechanisms in place to improve mutual understanding and increase cooperation. Important information needed to guide both investors and customs employees is often not readily available in published form, causing confusion, misunderstanding, and mistakes made by investors un-intentionally. Moreover, when rejections or delays occur, there is insufficient effort to explain the reasons to the investor, nor the effort to discuss the compliance difficulties and hear suggestions from the private sector. Experience in many other countries suggests that efforts to communicate with the users, by listening to them sympathetically and respecting their

\textsuperscript{18} See the Uruguay Round Ministerial Decision Regarding Cases where Customs have Reason to Doubt the Truth or Accuracy of the Declared Value.
suggestions for improvements, can go a long way to improve compliance – even the most difficult requirements achieve higher compliance when the reasons for them are explained to the companies.

65. Of course, the most effective way to gain the public trust and respect is through self-improvements. It is clear that GDC currently suffers from low professional ethics and competence. Many GDC officers see themselves as the controllers rather than the facilitators of international trade, and are rather un-friendly towards businesses. There is also a lack of internal procedures to ensure proper conduct. The 30-page Code of Conduct produced by the authority focuses a lot on some relatively unimportant subjects (such as smoking in the office and borrowing money from colleagues), whereas the control procedures designed to prevent internal malpractices are weak. For instance, one important operation procedure is the necessary manifest control system used everywhere to keep track of all goods that arrive in and leave the customs territories.\textsuperscript{19} This procedure allows local customs management to control possible illicit release of uncleared goods by officials. It also provides an audit trail for subsequent verification that all goods that arrived were properly cleared. It is surprising that this type of control is not applied in Albania, at least not in operation at the port of Durres.

66. The FIAS mission also saw the potential danger of power abuses in the large delegation of the power to grant duty exemptions to local customs offices. Article 199 of the Customs Code lists 23 cases in which relief from import duty may be granted, some open to interpretation. Duty exemption in most other countries requires strict control at higher levels. The mission did not have a chance to further look into the practice of this rule, but it saw a need for the Government to review the situation at an early date.

6. Analysis and Recommendations

67. It must be recognized that the modern customs system in Albania is relatively young and it is still being developed. In this context, the GOA deserves the credit for establishing today’s system starting from virtually nothing and in a relatively short period of time. The substantial assistance from the European Union and the IMF in this area has been extremely helpful and will continue to be crucial to keeping the effort on track.

68. Understandably, the focus of the effort to-date has been primarily on the overall structure rather than on the many operational details as mentioned above. These details, however, are of growing importance as they affect investors’ daily commercial operations. To achieve its goal of encouraging investment and export, the GOA and especially the GDC should recognize the urgent need for their reforms from an investment perspective and speed up their implementation at the operational level. The broadly-based initiatives under the support of the EU and the IMF should be supplemented by the following actions to accelerate reform at the operational level:

\textsuperscript{19} This system requires the manifest to list all consignments carried by the vessel when the goods arrive. When each consignment is cleared, the number of the customs declaration should be shown against that item on the manifest.
• Review import, export and transit procedures with a view to simplifying documentary requirements, speeding up processing, and reducing costs to the private sector.

69. Immediately, the GDC could reduce the number of documents required by carefully adapting the features of the overall EU system it has adopted. The GDC could also simplify many of the document requirements by implementing the relevant, specific recommendations of the UN/ECE Working Party on the Facilitation of International Trade Procedures. Standard 3.16 of the Kyoto Convention, for instance, provides the guidance on the documents necessary for goods declarations in order to permit the legitimate customs control and ensure compliance with the customs laws. Likewise, there are numerous points made in Recommendation No. 18 of the UN/ECE Working Party on the Facilitation of International Trade Procedures. Ideally, the Government could use an advisor with international customs experience working with a counterpart from the GDC for such a review.

70. Regarding export procedures, in addition, the GDC should immediately issue instructions that clearance of goods for export must be given priority and not restricted to particular times of the day. At least one alternate signatory to forms EUR1 should be authorized in the port of Durres.

71. Over the next six months, the GDC should consider developing a risk management approach to customs control, based on international best practice. Box III-1 provides the overview of the principles and features of this approach. Once such a system is in place, the customs could focus its resources more on the “high risk” categories while the “low risk” consignments could be released without physical examination. This would significantly reduce the delays to imports and increase the efficiency of resource allocation in customs. The risk management approach would require more rigorous efforts of post clearance auditing by selected and trained teams. Development of selection parameters for this purpose would also require the implementation of the ASYCUDA (Automated System for Customs Data Management), a computer system developed by UNCTAD. FIAS understands that the GDC plans to computerize import clearance procedures next year. With this plan on the way, it could start the preparatory work for introducing the risk management approach as soon as possible.

72. The introduction of the risk management approach will also benefit the simplification of the transit procedures. Such an approach could help replace the current practice of calculating the charges potentially payable on all goods with periodic checks to ensure that the level of security given is high enough to cover possible risk of revenue loss. The checks include the completion of all transit operations and the volume of transactions in the period, to see if there is danger of a high risk being present at any time. The level of security can be increased if necessary. Standard 6 of Specific Annex E of the Kyoto Convention suggests the ways to implement such a system which is already operated in many countries. Ideally, the Government could use an advisor with
international customs experience working with a counterpart from the GDC to review and design the needed changes.

**BOX III-1: RISK MANAGEMENT APPROACH**

Risk Management consists of assessing the risks attaching to operations that are controlled by Customs by analyzing all factors that contribute to it.

In the Customs context, risk management represents a modern, effective and efficient way of working and importantly assists customs administrations to:

- manage customs operational functions, including the control of cargo and people;
- manage non-operational functions such as IT support services;
- deploy an appropriate level of resources to the greatest areas of risk;
- deliver better results with the same or fewer resources.

Taking the example of import consignments, factors that may affect the probability of a goods declaration not being completely correct include:

- the type of goods
- the type of packing
- the country of origin of the goods
- the country of consignment
- any transhipment countries passed through en route
- the supplier of the goods
- the relationship between the seller and the buyer
- the rate of duty chargeable on the goods
- the declared value compared with the value of identical or similar goods
- the past revenue performance of the importer
- the track record of the clearing agent.
- receipt of intelligence information from sources abroad
- receipt of intelligence information in the import country

Having decided on the factors to be taken into account, weights are then attached to them, and the risk of something being wrong is calculated. By comparing the assessed risk of other consignments, the highest risk consignments receive most attention. Many low risk import consignments may be released without detailed examination. A random factor should be added so that low risk consignments are examined in detail from time to time.

Risk management should also be applied to the security required to cover possible revenue loss, e.g. bond or insurance arrangements to cover goods at risk in a bonded warehouse or under transit control. The level of security should be related to the actual risk of chargeable loss at any one time, not to the total goods in the warehouse or the total goods if many consignments are in transit at any one time.

Risk management allows scarce customs resources to be allocated to control of the greatest risk, and as a result customs work is more cost effective.
• Establish clear rules and criteria for invoice valuation, with a view to minimizing the exercise of discretion and arbitrariness in decision-making.

73. Immediately, the GDC should make available copies of the full text of the valuation rules of the Agreement on Implementation of Article VII of GATT, as the latter has not been included in the current Customs Code, copies of the full text should be made available to the trade by GDC. Clearing agents should be instructed always to submit the commercial invoice supplied to them by the importer even when it shows a price below the reference value. In accordance with WTO rules, Customs should make a practice of determining the acceptability of invoice values before using the value of identical goods or the adjusted value of similar goods. Reference values should not be used as minimum values.

74. It is also essential that the GDC issues, as soon as possible, concise clear instructions to all staff engaged on valuation work, with a view to minimizing discretion and arbitrariness. Reference prices should be updated regularly. Invoice values should always be declared because credibility of declared values is one parameter in the compilation of the intelligence information needed for risk management. Declared values may not always be found acceptable, but customs officers must have precise instructions on assessing their credibility, calling, when necessary, for additional information in accordance with WTO rules, and using alternative methods of valuation under WTO rules. It would be useful if an appropriately experienced international advisor could assist GDC in drafting the instructions.

• Consider carefully the range of options for using international inspection assistance with valuation, and compare the associated costs and benefits.

75. With regard to the widespread dissatisfaction with the current customs valuation, the Government is currently exploring the possibility of using services provided by international inspection companies. A number of developing countries are using the services of such companies for classification, valuation and duty calculation for imports, and there are certain costs and benefits related. The GOA should careful consider the options by consulting with the private sector, GDC, the Ministry of Finance, the Ministry of Trade, the IMF, and other government bodies having an interest in certain imported commodities.

76. The principal benefits of using international inspection services include access to the comprehensive valuation databases that international companies maintain and the relatively impartial treatment that importers should expect to receive. Use of such services does not eliminate disputes, and it imposes a cost on importers and on the governments of the importing countries. Until recently this service has been provided mainly in the form of pre-shipment inspection (PSI) of the goods. PSI is conducted in the export country, at a cost of about 1% of the FOB value of the goods, much of which has to be paid in hard currencies. PSI has never been regarded as a final solution but only as an interim measure pending development of a national customs administration able to work with expertise and integrity. There have been numerous complaints about the
delays to international trade caused by PSI. The World Customs Organization has not favored its use, and the UN/ECE Working Party on Facilitation of International Trade Procedures has made recommendations to reduce the practice.

77. As PSI became more widely practiced in the 1980s, the governments of some industrialized countries concerned about possible breaches of commercial confidentiality, planned legislation to restrict the activities of inspection companies. To ensure that such restrictions were harmonized, GATT took up this subject, and this resulted in the Agreement on Pre-shipment Inspection, one of the Multilateral Agreements on Trade in Goods to be found in the Legal Texts of the Uruguay Round of Multilateral Trade Negotiations. The Code neither encourages nor discourages PSI; it regulates the activities of the inspection companies when PSI is practiced.

78. Recently a number of countries have started to explore the option of using the services of international inspection companies in the import country (destination inspection), which overcomes some of the disadvantages of PSI. This alternative should also lower the hard currency cost to the importing country while facilitating transfer of technology to the customs administration because the company works alongside and trains customs officials in the import country. As the interest in destination inspection increases, inspection companies are willing to form joint ventures with governments and the private sector. FIAS recommends that the Albanian government fully explore the destination inspection option with the inspection companies before making a decision.

- Improve the customs appeals system

79. A good appeal system is important to support the rights and obligations of importers and customs authorities alike. That is why it receives special attention in the WTO agreements. Box III-2 provides an overview of the principles in this respect, established by the Kyoto Convention of WTO. This should be used by all member countries as a useful set of guidelines and benchmarks in improving their customs appeal systems.

80. To improve the customs appeals system in Albania, the Government will need to take several actions:

(a) In the immediate run, it should consider revising the relevant appeals sections of the Customs Code (i.e., Chapter III) to ensure that the general right of appeals are sufficiently provided to importers, and the customs procedures are brought in line with the WTO requirements. This will help increase the fairness of the system and contribute to the customs reform credibility in the eyes of investors.
BOX III-2: CUSTOMS KYOTO APPEALS PROTOCOLS

The right to appeal a customs decision or omission is fundamental. It is part of a good system that safeguard the rights and obligations of the importers and customs authorities alike. This is why the WTO system gave a special attention to this issue at the Kyoto Convention, to set certain principles to guide the member countries in handling customs appeals.

A general principle of the Kyoto Convention is that all Customs matters must be treated in a transparent and fair manner. As a consequence, all person who deal with Customs must be afforded the opportunity to lodge an appeal on any matter. The following standards provide for a transparent and multi-stage appeal process.

Right of appeals

1. National legislation shall provide for a right of appeal in Customs matters.
2. Any person who is directly affected by a decision or omission of the Customs shall have a right of appeal.
3. The person directly affected by a decision or omission of the Customs shall be given, after having made a request to the Customs, the reasons for such decision or omission within a period specified in national legislation. This may or may not result in an appeal.
4. National legislation shall provide for the right of an initial appeal to the Customs.
5. Where an appeal to the Customs is dismissed, the appellant shall have the right of a further appeal to an authority independent of the Customs administration.
6. In the final instance, the appellant shall have the right of appeal to a judicial authority.

Form and grounds of appeal

7. An appeal shall be lodged in writing and shall state the grounds on which it is being made.
8. A time limit shall be fixed for the lodgment of an appeal against a decision of the customs and it shall be such as to allow the appellant sufficient time to study the contested decision and to prepare an appeal.
9. Where an appeal is to the Customs they shall not, as a matter of course, require that any supporting evidence be lodged together with the appeal but shall, in appropriate circumstances, allow a reasonable time for the lodgment of such evidence.

Consideration of appeal

10. The Customs shall give its ruling upon an appeal and written notice thereof to the appellant as soon as possible.
11. Where an appeal to the Customs is dismissed, the Customs shall set out the reasons in writing and shall advise the appellant of his right to lodge any further appeal with an administrative or independent authority and of any time limit for the lodgment of such an appeal.
12. Where an appeal is allowed, the Customs shall put their decision or the ruling of the independent or judicial authority into effect as soon as possible, except in cases where the Customs appeal against the ruling.

Source: World Customs Organization, Kyoto Convention, Appeals in Customs Matters, Chapter 10, General Annex Guidelines
(b) In the medium term, the GDC should focus on improving its internal appeals mechanism in the first instance, by establishing an in-house internal Customs Appeals Committee by following the guidelines provided by the Kyoto Convention. This would be in the interests of all parties. It may incorporate measures to discourage irresponsible trivial appeals by uncooperative traders who are sometimes inclined to dispute everything that customs do, if it costs them nothing. The Committee could include some business representation, which would be useful to reflect client concerns. The Committee could also be mandated to review, recommend on and oversee the implementation of improved appeals processes and customer service arrangements, in the longer term.

(c) In the long run, the Government may consider establish an independent and specialized tribunal, or alternative mechanism for customs dispute resolution. The track record of court findings consistently against GDC and the poor credibility of these findings suggests that there is need for a more professional and specialized tribunal, or alternative mechanism for customs dispute resolution. Ideally, the specialized tribunal should be independent from GDC, so as to provide recourse for appellants if dispute resolution fails within the GDC internal appeal system. It could consist of some respected retired customs people or people who are familiar with technical customs operations but are removed from commercial dealings. It is also possible to train a judge. In addition, given the relatively large numbers of cases going through the courts and the ombudsman in Albania, it may be worthwhile, in due course, considering the case for a Specialist Customs Ombudsman in Albania. Such an option is part of the recommendations by the International Chambers of Commerce for increasing the overall transparency of customs procedures.

- Improve public relations and strengthen internal operation procedures

81. In accordance with international best practice\textsuperscript{20}, the GDC should make a strong effort to institute and maintain formal consultative relationships with the businesses. The GDC should treat the latter as its clients and partners, facilitating its activities and seeking its cooperation in law enforcement. To facilitate the on-going need of dialogue, the GDC should consider establishing a consultative committee responsible for meeting businesses on a regular basis for the inputs required to design effective methods of law enforcement and working commensurate with national provisions and international agreements.

82. On an on-going basis, the GDC should educate its employees that their responsibility is not only to police the ports/borders and collect revenue, but also to facilitate and service legitimate trade activities. Like in other countries, the GDC could also consider issue an Importer's Charter to clarify the duties and obligations of the

customs officials as well as those of the importers. A sample text of the Charter is provided in Box III-3. Management should adopt a text, have it printed, and issue the charter to the private sector. Subsequently, efforts must be made to ensure that all customs employees work in accordance with the provisions of the Charter.

83. The GDC should also take specific actions to strengthen internal operation procedures. It should immediately introduce and enforce a manifest control system at the port of Durres, as well as the whole country, to allow local office management to exercise proper control of the port, and to leave an audit trail for the Internal Audit Unit, the GDC.

<table>
<thead>
<tr>
<th>BOX III-3: A SAMPLE OF THE IMPORTER’S CHARTER</th>
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<tbody>
<tr>
<td>YOU, AS AN IMPORTER, are entitled to expect the Customs Authority:</td>
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<tr>
<td>To be fair:</td>
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<tr>
<td>by settling your customs affairs impartially</td>
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<tr>
<td>by requiring you to pay only what is due under the law</td>
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<tr>
<td>by treating everyone equally</td>
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<tr>
<td>To help you:</td>
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<tr>
<td>to understand your rights and obligations</td>
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<tr>
<td>by making information available on official requirements</td>
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<tr>
<td>by being courteous in the execution of their duties</td>
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<tr>
<td>To provide an efficient service:</td>
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<tr>
<td>by settling your customs affairs promptly and accurately</td>
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<tr>
<td>by keeping your business affairs strictly confidential</td>
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<tr>
<td>by keeping your compliance costs to a minimum</td>
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<tr>
<td>by keeping their own costs down</td>
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<tr>
<td>To be accountable for what they do:</td>
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<tr>
<td>by giving reasons for the actions that they take</td>
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<tr>
<td>by setting performance targets and publishing how well they meet them</td>
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<tr>
<td>If you are not satisfied:</td>
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<tr>
<td>you can ask for the matter to be looked at again</td>
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<tr>
<td>if you are still not satisfied, you can complain to the General Director</td>
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<tr>
<td>you can appeal to the Tariff Tribunal on a rate of duty or valuation</td>
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<tr>
<td>if you have a substantial grievance on another matter, you may be able to complain to the Ombudsman</td>
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<tr>
<td>IN RETURN, CUSTOMS REQUIRE YOU:</td>
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<tr>
<td>to be honest in your dealings with them</td>
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<tr>
<td>to provide complete and accurate information about your importations</td>
</tr>
<tr>
<td>to clear your goods promptly</td>
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</table>
B. Taxation Administration

84. The ARCS survey revealed a high level of dissatisfaction of the private sector with the current tax administration. Investors expressed concerns especially with regard to, as ranked by the severity, “assessing future tax liability,” “delays or non-payments of refunds,” “availability of information,” “excessive paperwork,” and “necessity to pay informally.” Other concerns are related to “unfriendly treatment by tax authorities” and “lack of competence of tax officials.

85. The Ministry of Finance and the GDT provided no statistical data on their performance to the Boga & Associate team during the first phase of this study. The FIAS team conducted further investigation and received cooperation from the GDT.

86. FIAS findings confirmed that many of the concerns of the taxpayer community were valid. The system today does not meet the equity, transparency and predictability criteria of a well functioning tax system. It contains significant opportunities for petty corruption, which further damages the accountability and credibility of the system. FIAS recognizes that these problems are at the attention of the GOA and the current work of the IMF (with extensive assistance from consultants from PWC) in collaboration with the GDT is largely directed to establishing and implementing a better managerial and reporting system within the GDT to tackle many of the administrative defects.

87. To assist the government to accelerate the improvement of the tax administration and the investment environment, this section discusses a number of specific issues that are currently perceived as major operating barriers to businesses. The detailed analysis and recommendations provided in this section are meant to reinforce and/or supplement the discussions already being held in the country, between the Government and the private sector, as well as between the Government and donor agencies including the IMF and World Bank. Their implementation will depend on the broad effort of the GOA to continue to improve the overall tax system and its administrative structure under the IMF program.

1. Narrow Tax Base (and inconsistent treatment between taxpayer groups)

88. Large businesses in general have complained that they bear a disproportionate burden of taxation as compared to small businesses and individuals. This is supported by the revenue figures\(^{21}\) and was verified in discussions with the PWC project team currently working with the GDT and the IMF. Large businesses and their professional advisers report a perception of significant non compliance, under reporting and lack of enforcement in relation to businesses registered under the “small” businesses system. Small businesses can easily ‘close up shop’ in order to avoid their tax debts, and

\(^{21}\) the IMF predicts that in the 2002 year, projected combined revenue from personal and small business tax will be 1.5% of GDP, as against 9% for VAT and profits tax. Total tax collections are anticipated to be 20.4% of GDP. By comparison, in Australia, tax collected from individuals, sole traders and other unincorporated ‘small business’ operators accounted for more than 50% of total tax collected.
recommence business virtually the next day under a new name. It has also been reported that many individual taxpayers are registering as small businesses in order to obtain more favorable taxation rates and to overcome the withholding requirements for salary and wage income. The revenue shortfall caused by lack of enforcement in relation to small businesses and individuals is then met through heavy handed compliance and enforcement activity for large businesses. Therefore the functioning of the system is perceived as arbitrary and inconsistent between different groups of taxpayers.

89. It appears that the method for setting revenue targets for individual GDT employees, and standard targets for audit adjustments by the GDT has contributed to the perception of a disproportionate focus on large business taxpayers. Taxpayers in this group suggest that they are an “easy target” for auditors who are trying to achieve their individual revenue targets through adjustments. Apart from the quality of audit case selection, conduct of audits and audit reporting, which is discussed in greater detail below, the sheer number of audits taking place is also creating a compliance burden for business. Business report on average 4.9 ‘tax inspections’ per year\(^{22}\). There is no official limit on the number of audits or inspections that may be conducted in a given period, and it is not uncommon for auditors to be present on a company’s premises for many months at a time.

90. Foreign businesses with stricter internal reporting requirements by overseas parent companies cannot as easily circumvent the audit process via “unofficial payments”, and therefore perceive themselves to be targeted whenever additional revenue is required to meet targets.

2. Taxpayer Communication and Information

91. Businesses and their advisers reported lack of consistent avenues for communication by the GDT and the Government as being a factor inhibiting transparency in the tax system. This applies in relation to interpretations of the practical or legal effect of the law by the GDT and the responsible Government Minister\(^{23}\), the absence of published decisions by the lower courts and the lack of an effective system for announcing and publishing ministerial and other administrative guidelines. Because there is no consistent and widely understood view on how the law applies in a number of circumstances, there is scope for officials to interpret selectively and arbitrarily. The only recourse of the taxpayer in these circumstances is to appeal the relevant decision (firstly having paid the entire tax in dispute) without any basis for knowing how the relevant law has been applied in the past to taxpayers in the same or similar circumstances.

92. Albania operates under a civil legal system which does not rely on precedent for applying past decisions. In many civil jurisdictions, for the purposes of interpreting statutes, Ministerial directives and similar documents that reveal the intention of the

\(^{22}\) See ARCS, Annex I.

\(^{23}\) Whist Ministerial legal instructions are required to be Gazetted in order to have quasi legislative status, there is no system for publicizing non legal guidelines, including technical instructions to auditors.
legislature and the meaning of specific provisions are often issued and are considered to be more a primary source of law (and therefore more influential than in Common Law jurisdictions).

93. In relation to the work of the GDT generally, changes in policy, and amendments to the law, there is no regular forum for consultation or discussion between the GDT and taxpayers and their representatives. This can lead to frustration for all affected parties, since taxpayers feel they are not properly consulted or considered in the development of new laws that will directly affect them and the drafters may find that their laws become subject to policy review after the drafting process has been completed.

94. Businesses surveyed complained about the lack of information and update on tax requirements as a major problem. The experience of the FIAS mission is that it is difficult to locate all of the necessary legislation, including amendments, dealing with a particular topic. It has also been noted by many in the country that, very often, primary legislative acts are not followed-up with proper implementation and regulatory acts. As a result, although the procedures described by the laws seem simple and understandable, they cannot be easily executed consistently.

95. We understand that there have been recommendations for the tax codes to be comprehensively compiled and re-written. In the future, as the tax system matures and legislation inevitably increases in volume and complexity, it is likely that the need for a comprehensively redrafted code will increase. If this process is to be undertaken it will need to be comprehensive, carefully managed and have the broad support of the business community to avoid the imposition of ad hoc “policy” during the drafting process. In this regard, but also as a general proposition, business and taxpayer consultation needs to be better managed.

96. The mission has been informed that in relation to basic taxpayer enquiries, the GDT is currently preparing a number of “how to” type leaflets dealing with taxation registration, calculating tax payments etc. It is anticipated that these will be supplemented in due course with the publication of pamphlets containing “frequently asked questions”. A hotline is also being established that will enable the provision of telephone advice.

3. Conduct and Administration of Audits

97. Surveyed businesses report an average number of ‘tax inspections’ of 4.9 per year. There is no statutory limitation to the number of audits that can be conducted on a single taxpayer in a given period and businesses report a perception that reviews of a

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24 however, taxpayer representatives do make submissions to the Parliament, for example the Italian Business Association provided copies of a comprehensive submission on a number of tax issues.
25 Anecdotally this has occurred with the recently redrafted excise law, resulting in wide and inappropriate departures from the original policy concept.
26 The IMF have recommended that other than in exceptional circumstances, audit action per taxpayer should be limited to once per year.
companies accounts are simply for the purposes of making adjustments to as to meet individual revenue targets. The level of discretion applying at the local level to impose penalties, the high level of penalties and the discretion to freeze bank accounts, provides leverage for auditors to extract additional tax from already compliant taxpayers or to pressure taxpayers into making “unofficial payments.” Of the firms surveyed, 25% acknowledged payments of “gifts and bribes” with an average payment of 265.5 USD each time (as seen in Table II-1 earlier in this report).

98. Professional advisers suggest that GDT auditors lack basic tax and accounting skills, and will therefore focus on compliance or process type reviews with a view to making selective adjustments, rather than recognizing and considering all the legal and accounting implications of transactions.\(^{27}\) Repeat visits from audit teams will consider and reconsider the same issues over and over again for the entire allowable audit period (generally up to 5 years) and there is never any closure of an issue other than the expiry of the statutory review period. It has been claimed that audit reports, to the extent that they are produced, do not deal with all of the issues considered such as would support a settlement or signoff. Rather the audit report will typically focus only on the issue giving rise to the audit adjustment, and will provide little or no analysis of the legal or factual basis for adjustment.

99. Within the GDT there is currently no system of audit case selection, strategic or limited audits or use of other widely accepted strategic methodology for the management of the audit function.

100. We understand that, along with a general functional reorganization within the GDT, some specific improvements are also to be made to the audit function. Tax audit activities will be directed by the new Audit Directorate in the GDT which will embrace the functions of audit control, intelligence and taxpayer investigation. In addition to the new organizational structure, the PWC project team is in the process of:

- developing a risk based audit selection process for VAT;
- conducting basic audit skills training in the GDT; and
- development of audit technique manuals.

101. We also understand that recommendations have been made in the past to increase the basic salaries of GDT staff from their current low level to amounts that better reflect industry standards and, in conjunction with this, to cease the practice of linking bonuses to revenue targets. Some business representatives also noted the comparatively low salary levels of GDT staff (in the context of complaining about their technical skills and preparedness to solicit bribes). We also understand that this proposal is meeting some resistance from the Ministry of Finance due to budgetary constraints.

\(^{27}\) Some professional advisers interviewed suggested that this approach can often result in audits overlooking significant tax related issues.
4. Calculation and Prepayment of Profit Tax

102. The profits tax (applicable to businesses with a turnover of over 8 million lek) is levied prospectively on a monthly basis. For this purpose, a new business will be required to estimate its profit for the following 12 months. Businesses have complained that it has not been acceptable in practice to quote ‘nil’ for the first year profit, even though it is not unusual for a business to make a loss in its first year of trading. According to the GDT, a nil profits estimate should be acceptable if it is supportable by the taxpayer. This suggests another example of inconsistency between the law and the implementation.

103. Established businesses further complain about the basis for profits tax, which is usually calculated by reference to the profits of a business in the income year before the last (for the initial 4 monthly payments). Businesses point out that this method of calculation does not provide scope to factor in economic changes and other changes to the business cycle.

104. Businesses also report difficulty in having their estimated profits varied on the basis of their un-audited accounts. If it is the case that profits are to differ from the estimated profits for the current year, it is necessary to go through the formal, costly and time consuming appeals process in order to have the estimated profits varied for the purpose of determining the amount of installments payable each month.

105. The law has recently been amended to allow a manufacturer commencing a new business to delay commencing to pay profits tax for the first 6 months after the commencement of the business. Whilst this concession goes some way to relieving the pre-payment issue for some start-ups, it does not sufficiently address the overall problem, since not all businesses entering the market will be manufacturers.

5. Enforcement

106. The law provides that a taxpayers bank account can be frozen 30 days after it fails to meet an installment of profits tax. The head of the local revenue office has the authority to take this action without the need of a court order. Whilst according to the GDT it is only the amount in dispute that can be ‘frozen’, investors interviewed reported that in practice all accounts of a taxpayer can be totally frozen, sometimes rendering them unable to pay the tax in dispute. The GDT has suggested that if a taxpayer can show hardship within the 30 day period, their account may be spared from freezing. This concession does not appear to be widely known to taxpayers either.

107. Generally speaking, it appears that a high degree of authority in relation to the level of punishment is delegated to local offices and that this can lead to abuse. FIAS understands that the issue is at the attention of the GDT and is to be address through the establishment of debt collection units incorporating an enforcement manual and internal review mechanisms.
6. Access to the Appeals Process

108. In relation to tax appeals, the law requires that within the court system, an appeal be heard by the Tax Appeals Tribunal at first instance. The decision of the Tribunal may then be reviewed by the Appeals Court. The main complaint from the business community in relation to the appeals process is the current requirement that 100% of the disputed tax must be paid before the appeal will be heard. The Constitutional Court has ruled that this requirement is unconstitutional and we understand that this is giving rise to the willingness of the lower courts to hear tax appeals without requiring adherence to the statutory escalation process described above.

109. Business surveys suggest that most business taxpayers utilize the services of professional advisers, and that many tax disputes are settled outside the formal appeals process. The costs for taxpayers utilizing professional representatives as a matter of course in all dealings with the tax and court authorities are relatively high compared to other countries in the region.

110. In line with the general functional reorganization of the GDT, there will be a separate appeals function in the tax policy and legal section in the GDT that will have responsibility for the conduct of all tax appeals cases, representing the GDT in appeal cases. In addition, appeals units will be established in the district tax offices separate from the areas responsible for raising assessments and conducting audits.

7. VAT Refunds

111. The administration of VAT refunds (which is principally an issue for exporters) is universally acknowledged to be a problem. Of the companies surveyed for this report, 89% of exporters believe that they are eligible for a VAT refund, 88% declared a delay in payment of 67.3 days on average and 76% declared underpayment of the refund. Examples were given by taxpayers and advisers of an entitlement to a VAT refunds serving as triggers for a profits tax audit. Although the law provides for a 30 day statutory limit on the provision of VAT refunds, with the payment of interest for delays over that time, the consensus amongst both taxpayers and the GDT officials that we spoke to was that the refunds are simply not being processed at all.

112. The problem is fully acknowledged by the GDT. According to the GDT, the problem arises mainly because there is no allocation from the budget for the purpose of VAT refunds, whereas the VAT withheld is paid immediately into consolidated revenue. It was also reported by business representatives that Government businesses do not themselves pay VAT (i.e. are non compliant).

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28 In the example given, it was alleged that the profits tax adjustment (via a one off variation in plant depreciation rates) was sufficient to offset the VAT credit.
8. Registration for Small Business Tax (SBT)

113. The registration and re-registration process for small business in particular is extremely complex, and whilst the annual re-registration for SBT incorporates a basic audit function, much of the information required to be provided to the GDT for re-registration may be unnecessary.

114. The relatively low level of registrations in the small business sector (currently approximately 50,700) is of concern in the context of the relatively narrow tax base and the disproportionate burden that this places on ‘legitimate’ business, as discussed earlier.

9. Analysis and Recommendations

115. Anywhere in the world, a well-functioning tax system is judged by its:

- efficiency (in revenue collection);
- equity (both in the burden of taxation amongst the taxpayer base and in the fair administration of the taxation system);
- transparency (taxpayers are entitled to know what the burden of tax will be for a period); and
- predictability

116. The present tax system in Albania fails to meet some or all of the criteria. As it currently operates, the system relies on a very narrow revenue base, primarily drawn from VAT taxpayers. The system is geared more to meeting short-term revenue targets than to supporting the broadening of the tax base by encouraging business activities. The rates and methods of tax collections -- particularly the pre-payment of profits tax imposed on the start-ups -- do not encourage new business entries and may, in reality, encourage the expansion of “informal” businesses. The current system also seriously lacks transparency and predictability. Large discretion and arbitration allowed at the operational levels further invite abuse and corruption.

117. FIAS understands that the Government is currently working with IMF, World Bank and other donors on the necessary improvements of tax administration, with a view to both encouraging businesses and improving the effectiveness of tax collection. With the donors’ support, the GDT is working with consultants from the accounting firm PriceWaterhouseCoopers, on a number of initiatives, including:

- the reorganization of the GDT along functional lines;
- the production of management manuals dealing *inter alia* with audit case selection, internal review and authorizations and delegations;
- the establishment of an internal investigation and anti-corruption unit;

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29 For the purpose of this study, FIAS did not examine efficiency of revenue collection.
30 See IMF Report, Table 15.
31 Many of these were outlined in a speech by the General Tax Director to the American Chamber of Commerce on 19 November 2002.
- internal training programs for GDT staff;
- a registration drive for small business taxpayers;
- the integration of social security and individual withholding tax collections;
- efforts to launch a taxpayer education campaign for individuals and small business taxpayers;
- the establishment of a GDT hotline for taxpayers;
- the upgrading and enhancement of computerization of the GDT;
- streamlining taxpayer registration and numbering, and
- recommendations to the Ministry or Finance regarding the setting of budgets for the following year and how these are translated to instructions regarding targets to audit teams.

118. FIAS fully supports these projects and urges their accelerated implementation for the benefits of investors. In addition, FIAS provides the following recommendations, prioritized according to investors’ concerns, to supplement the need to address the specific concerns of investors as mentioned earlier.

- **Institute measures to ensure that VAT refunds are funded by the Government and processed in a timely manner by the GDT.**

119. The issue of VAT refunds should be reviewed as a matter of urgency, in view of the necessity of encouraging exporting activities, a goal that Albania gives priority in the upcoming decade. The MOF should take immediate measures to ensure the availability of the funds to facilitate the VAT refunds. The GDT, in the meantime, should establish an effective system for examining the refund claims and having them processed in a timely manner for all VAT taxpayers.

- **The method for calculating installments of profits tax should be reviewed with a view to providing greater flexibility and with the aim of better reflecting the actual taxable profits of the business in the relevant period.**

120. Countries designed their tax collection systems according to their specific needs and traditions, including prepayment or withholding of income and other taxes prior to lodgment of the income tax return and reconciliation of the actual tax payable. Table III-1 provides an illustration of business tax withholding arrangements in three advanced countries. In Albania, the rate of prepayment is more frequent and the method for variation of installments of profits tax is also very cumbersome. In particular, as a general approach, it should not be necessary to go through an appeals process in order to vary the amount of tax installments. An acceptable basis for varying installments should be agreed in consultation between business and professional representatives and the GDT (for example, it is not clear why accounts prepared by suitably qualified persons should not be acceptable to the GDT at first instance, given the existing penalties for the provision of misleading information). The agreed basis for variation of installments of profits tax should be publicized to the taxpayer community, along with the penalties for misleading information and the interest rate that will be levied on tax outstanding at the end of the period. The variation of installments of profits tax should be a more
streamlined administrative function within the GDT, rather than a matter requiring a formal “appeal”. Taxpayer appeal from the administrative decision should then be available through the appeal process.
### TABLE III-1: COMPARATIVE TAX COLLECTION SYSTEMS IN 2001

<table>
<thead>
<tr>
<th></th>
<th>Australia</th>
<th>Canada</th>
<th>US</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligibility for payment of installments</td>
<td>Any entity with business or investment income</td>
<td>Where taxable income is greater than $10,000, corporations pay by installment. If taxable income is less than $10,000 payment is made by way of lump sum.</td>
<td>Any corporations that anticipate a tax liability of $500 or more.</td>
</tr>
<tr>
<td>Installment periods</td>
<td>Quarterly or Annually</td>
<td>Monthly</td>
<td>Quarterly</td>
</tr>
<tr>
<td>Variation of Installments</td>
<td>Taxpayers may vary their effective tax payable when calculating their installment amounts. The taxpayer may be liable for a penalty if they choose a calculation method that results in payment of too little tax.</td>
<td>Tax installments are calculated based on an estimate of the previous income years tax liability and may be varied at the taxpayer’s election.</td>
<td>A lower installment amount may be paid if the company shows that an annualized or seasonal income method would result in a lower installment.</td>
</tr>
<tr>
<td>Calculation of tax payable</td>
<td>Tax is calculated on a quarterly or annual basis. The amount to be paid in the current year is an estimate based on the tax liability for the previous income year. This is based on an installment rate that is issued by the tax authority.</td>
<td>The monthly payments can be estimated in three different ways, depending on the choice of the corporation. The formulas use the tax payable in preceding years to determine the installment amount.</td>
<td>The installment is based on the previous income year’s tax liability.</td>
</tr>
<tr>
<td>Businesses Just Commenced</td>
<td>A business is only liable to pay installments once the Commissioner has notified it of an installment rate. The first installment is payable for the quarter in which the business is given an installment rate.</td>
<td>No installment payments are due until the first fiscal year of the corporation has been completed.</td>
<td>Once the business anticipates a tax liability of $500 or more it must begin paying tax via the quarterly installment method.</td>
</tr>
<tr>
<td>Refunds</td>
<td>Taxpayers are entitled to refunds of tax (where appropriate) where the tax authority make an assessment and the actual liability for tax is different to that calculated under the initial system.</td>
<td>If an assessment shows overpayment of tax, a refund will automatically be made. If the refund is not made at the time of notice of assessment, the taxpayer may apply in writing for the refund.</td>
<td>If a corporation has overpaid tax by at least 10% of its estimated tax liability it may apply for a refund immediately after the close of the tax year. Overpayment is the excess of tax paid over what the corporation expects its final income tax liability to be.</td>
</tr>
<tr>
<td>Penalties</td>
<td>Taxpayers are liable for a penalty based on a general interest charge if they vary a tax installment that results in an understatement of their actual tax liability (by a factor greater than 15%).</td>
<td>Deficiencies in tax payment are subject to a quarterly interest rate, calculated with reference to the average interest rate on 90-day treasury bills during the first month of the preceding quarter.</td>
<td>An addition to tax payable is made on the amount of underpayment for that period, based on current interest rates.</td>
</tr>
</tbody>
</table>
• Develop and implement a ‘best practice’ audit strategy for all market segments, including small business and individuals.

121. The GDT should stop the setting of revenue targets for individual auditors. FIAS strongly urges the GDT to speed up the implementation of the recommendations by the IMF to establish and enforce new audit processes. Box III-4 shows what a “strategic audit” approach for large and small businesses may look like, based on common international practice. Such an approach will lead to overall reduction in the number of visits to firms and help tax authorities focus more on the problematic ones.

122. The GDT should further strengthen the internal systems by introducing management reporting at the individual (auditor) level to enable analysis of individual performance and set a basis for comparison of individual performance. Finally, the internal codes of conduct outlined in the new management manuals should be strictly enforced and regularly reviewed by the internal audit group.

• Improve the tax appeal system

123. FIAS supports the IMF recommendations of the 2002 mission emphasizing the following for the improvement of the appeal system:

a) Reduction of the payment of the outstanding tax in dispute (less interest and penalties) to 50% of the amount in dispute;³²;

b) Replacement of the Tax Appeals Commission with an independent specialized statutory body;

c) Enhancement of management reporting from the GDT and the Tax Appeals Tribunal on the number, nature and outcome of appeals before them; and

d) Alignment of the appeals structure and system for VAT and profits tax.

124. In addition, FIAS recommends that the Minister of Finance, the Minister of Justice and appropriate members of the judiciary should form a settled view on adherence to the formal appeals escalation process, as the current situation is bringing the appeals process into disrepute and causing taxpayers to conclude that the formal system is not supported at judicial and Government level.

³² this is consistent with administrative arrangements in some other jurisdictions
BOX III-4: COMMON APPROACH FOR “STRATEGIC AUDITS”

Audit strategies for small businesses, many of who deal in cash and keep minimal records.

A record keeping or registration audit, primarily for new businesses. Visits will be unannounced at the taxpayer’s premises, and will focus on:

- Whether the taxpayer understands record keeping requirements.
- Whether appropriate records are being kept.
- Whether proper invoices are being prepared and issued.

An such as this should take no more than a half day

A quick audit focusing on one or two aspects of the taxpayer’s business, that should take 1 to 3 days. A high volume activity, that also creates a high administrative profile within the community. For example, checking the sales shown in a return, to those shown in the sales records.

A comprehensive audit of the taxpayer’s affairs covering a number of years. Generally conducted over a number of weeks or months, involving inquiries at the taxpayer’s premises and checking with third parties.

A project based audit, aimed at a group or category of taxpayers, that have been assessed as high risk, for example, street vendors. A number of taxpayers in the group will be audited and based on those results, the activity extended or otherwise varied.

Audit strategies for large business

- a strategic audit of a short term duration of around 3 months to review the tax strategies of a company or corporate group, to determine whether or not a more comprehensive audit should be conducted.

- a comprehensive audit of a company or a corporate group generally covering a number of years and/or issues. The audit will require an extensive presence at the taxpayer’s premises, and may extend for a year or more. Issues here are generally complex with significant revenue implications.

These audits can form the basis of a strategically planned program to systematically audit a range of large corporate considered of high risk to the revenue.

- Industry or subject based audits. As mentioned earlier, some countries have formed industry (banking) and subject based (international transactions) teams to specialize in areas that involve particular law and/or commercial practices.

• Improve compliance enforcement so that it is consistent, cannot be routinely and coercively used against taxpayers (including in order to extract unofficial payments), and is appropriate in relation to the relative tax outstanding.

125. In general, bank accounts should only be frozen after initial collection procedures (letter and formal demand) have been exhausted and the debt has been overdue for more than 30 days. The current system of enforcement, particularly the application of the power to freeze bank accounts, is not working towards its goals. The use of such a power

33 this recommendation is consistent with recommendations of the November 2002 mission of the IMF
by a Government authority to enforce compliance by business must be carefully regulated by the authority. The inconsistent and heavy handed application of enforcement powers, compounded by the delegation of the power to local directors can discourage companies from using the banking system, while providing an opportunity for abuse of power and corruption. At a minimum, the increased focus on taxpayer education by the GDT should include publicizing the circumstances in which enforcement powers will be exercised according to the law and the form that this will take. In this context, the appeal and review provisions should also be publicized so that taxpayers are aware of their rights and to encourage officers of the GDT to exercise their powers appropriately. There should be a streamlined administrative process for the review of enforcement proceedings since the usual 30 day period under the current appeals process is not appropriate for a taxpayer who may not be able to trade during the period (due to frozen accounts or seizure of goods). Pending the outcome of any appeal is proceeding, the relevant funds should be held in an escrow account.

- **Simplify and strengthen SBT registration. Administration of the SBT should be retained within the GDT.**

126. FIAS believes that the current work of the IMF and the PWC project team in simplifying and enhancing SBT registration critical to the long-term objective of broadening the tax base and enhancing the equity of the system.

127. FIAS supports the view to keep the SBT administration by the GDT, considering the limited resources and expertise of local government to enforce compliance (beyond the registration function). The option would also enable the GDT to retain all information of the taxpayer segments and co-ordinate the tax administrative needs, thus reducing the risk of fragmenting the implementation a broad systemic approach.

128. Simplification of procedures for registration and particularly re-registration would ease the compliance burden on small business, thus encouraging registration. For the initial registration, the GDT may consider a “one stop shop” facility to reduced the complexity. For re-registration, the paper work required could be reduce to that required for the basic ‘tax return’ function (i.e., checking annual turnover for the prior year and anticipated turnover for the following).

- **Strengthen taxpayer education and multi-party consultation to provide greater understanding, certainty and consistency on interpretations of the law.**

129. FIAS supports the preparation of the Government to launch a taxpayer education campaign which is fundamental to achieving the long-term objective of enhancing compliance. The GDT should pursue the proposal to issue documents outlining ‘frequently asked questions’. To the extent that a taxpayer’s circumstances are the same or largely similar to those outlined in an “FAQ” the taxpayer should be entitled to rely on the views of the GDT set out in the document.
130. The process for announcing, publishing and distributing ministerial guidelines and instructions should be enhanced, for example through a well publicized system of publication and a comprehensive topic based index and numbering system. This system should include, where appropriate, instructions to GDT staff on the how the law is to be applied in particular factual scenarios.

131. The GDT, together with the tax appeals commission, should consider publishing significant decisions (see discussion of appeals below in relation to the appeals commission generally).

132. Finally, the Government should speed up the establishment of regular consultative forums between GDT, the MOF and business groups. Such forums will play an important role in collecting inputs from all parties and building consensus for reforms. In the longer term, a comprehensive redraft of the tax codes by specialist legislative drafters in the Ministry of Finance and the GDT may be warranted. But, the Government must ensure that sufficient policy consultation takes place before the drafting of legislation starts. With the understanding and support of all parties affected, the passage of the legislation will become more certain, and its implementation will be more likely.

C. Land and Construction

133. Investment procedures related to land and construction are another major area of concern expressed by businesses in the company survey. Generally, the complaints are about delays, unpredictability, and high cost related to the process of obtaining business premises. In particular, the high cost is associated with “unofficial payments.” For instance, 87% of the average cost for registering titles in the land office/cadastre is attributable to “gifts, bribes and unofficial payments.” Likewise, almost one third (32%) of those whose investments required construction acknowledged “unofficial payments” for construction permits, averaging $406 (Table II-1 earlier in this report). These figures are among the highest known in the region as shown in the table below.

<table>
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<tbody>
<tr>
<td>Receiving construction permits (days)</td>
<td>35.6 days</td>
<td>20 days</td>
<td>93.8 days</td>
<td>88.8 days</td>
<td>105 days</td>
</tr>
<tr>
<td>Cost of construction permits ($)</td>
<td>$472.5</td>
<td>$1,000</td>
<td>$583</td>
<td>$563</td>
<td>$560.9</td>
</tr>
<tr>
<td>% made unofficial payments</td>
<td>11.4 %</td>
<td>20 %</td>
<td>10 %</td>
<td>50.4 %</td>
<td>32 %</td>
</tr>
<tr>
<td>$ paid unofficially</td>
<td>$79</td>
<td>$155</td>
<td>$1,083</td>
<td>$178.4</td>
<td>$406.6</td>
</tr>
<tr>
<td>Receiving exploitation permits (days)</td>
<td>26.9 days</td>
<td>5 days</td>
<td>48.3 days</td>
<td>57.9 days</td>
<td>24.3 days</td>
</tr>
<tr>
<td>Cost of exploitation permits ($)</td>
<td>$229.3</td>
<td>$285</td>
<td>$265</td>
<td>$220.8</td>
<td>$271</td>
</tr>
</tbody>
</table>
The problem, however, goes beyond the time and money investors have to spend in registering land titles and obtaining construction permits. Further discussions with groups of investors, real estate agencies and relevant government authorities revealed a shared concern with broader issues of land property and construction rights, characterized by numerous land tenure disputes, illegal occupancy and chaotic construction activity. Many pointed out that the weak legal and regulatory framework, further weakened by corruption, has encouraged rampant development based on short-term and speculative motivations at the cost of long-term and strategic investments. If allowed to continue, such developments will undermine the government’s effort to develop a sound and viable land market based on private ownership, consistent with the public interest, and supporting future development.

1. Land Property Rights

Both urban and rural land have been largely privatized in Albania since 1990. Today land transactions take place predominantly in the market place, with little government intervention. However, weak, and often conflicting, property rights, have seriously hampered these private transactions. They are the result of errors and inconsistencies arising from the multiple privatization and restitution programs, as well as from chaotic construction activity. While a problem across the country, it has been particularly acutely felt in the urban areas where the commercial demand for land is high.

Land privatization, restitution, and registration have been essential to the Government’s efforts to create a market economy since 1990. Many laws and programs have been put in place, the most important of which include:

- Law 7501 (1991), which privatized most agricultural land into the hands of farming households;
- Law 7652 (1992), which privatized most urban housing in favor of individual occupants;
- Decision of the Council of Ministers No. 248 (1993), which accelerated the privatization of small and medium enterprises (including immovable properties);
- Law 7698 (1993), which calls for restitution or compensation to ex-owners;
- Law 7843 (1993), which established a modern land registration system integrating mapping and tenure registration.

While these laws and programs served the immediate and particular needs of economic transition, their design and implementation were not sufficiently carefully crafted to maintain consistency and clarity. For instance, land parcels privatized under Law 7501 were not always clearly divided and documented; and the land rights...
associated with a large number of urban housing and SME properties sold hastily by state and municipal authorities, under various privatization programs, were not clarified at the time. Most problematically, the restitution and compensation programs implemented since 1994 have been ambiguous and, at times, in conflict with earlier privatization programs. Consequently, many decisions made by the Restitution Commission created overlapping claims over the same land and housing properties, and forced current and historical owners to enter into difficult processes in pursuit of sale, lease or co-ownership agreements.

138. Land property conflicts have also arisen from the urban development boom and the associated inadequate regulation of construction activities since 1990. For a prolonged period, municipal authorities granted construction permits haphazardly without always following title search requirements. Frequently, at the time of construction, the investor was not fully aware of any tenure controversy concerning the development site. Subsequent restitution of the site, following completion of construction, legally required the investor to enter negotiation with the ex-owner(s) of the site for a lease or sale deal, something he had not had reason to expect. On the other hand, there were also speculators who took advantage of the weak system and deliberately obtained construction rights without tenure-rights, knowing that, once the development was completed, eviction was going to be difficult. Finally, some property disputes were caused by illegal construction, that is, construction undertaken with neither property nor construction rights. Illegal construction became rampant largely because the national and local governments ignored the issue over many years. Although the law does not accord illegal developers the same status as those who build with construction permits, eviction is practically difficult and costly. In some cases, it becomes impossible as the developer has already sold the development to a third party and disappeared with the large profits from the transaction.

139. As the result, the courts are over-flowing with land ownership disputes. The situation is exacerbated by an ineffective court system, wherein cases are often determined in the absence of evidence and expertise. Moreover, court decisions are often not effected due to the lack of an effective enforcement or compliance capability. Cash compensations, for instance, have been awarded by the courts but largely ignored by the local governments responsible for their payment since there are no available funds.

140. The large number of tenure conflict hinders the progress of urban land registration. The Immovable Property Registration System (IPRS) established in 1994 aimed to complete First Registration of approximately 1.8 million parcels of rural land and 1.2 million urban properties that have been privatized. With technical assistance and funding from USAID, the World Bank and the European Union, First Registration has been achieved in most rural areas. In urban areas, however, the process has stagnated due to the complexity of tenure controversies, noted above. It is also hindered by the lack of information about land and properties that remain in state-ownership and are believed to be significant in urban areas.  

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34 State-owned land and properties can be in the hands of the national and municipal governments, as well as state owned enterprises. Although statistics of state owned land and properties are extremely deficient,
141. These many problems are interrelated. Inconsistent privatizations and restitutions have created overlapping claims among disputed owners. Arbitrary construction approvals have compounded the difficulties. Court decisions have, in the meantime, contradicted decisions made by the privatization and restitution authorities and been frequently ignored by local governments. With the large volume of disputes pending, it is difficult to proceed with urban land registration. With registration incomplete, information needed by the Restitution commission, the courts and the construction approval authorities is not available. Ultimately, all are caught up in and suffer the negative consequences of this vicious circle, which impedes strategic investors whose need for land with secured property rights is essential.

142. The Government is aware of the situation and requiring many of the key agencies involved to initiate further efforts to improve their operations. The Restitution Commission, for instance, is accelerating its handling of outstanding requests (about 12,000 of them) with a view to completing the program by 2005. The land registry authority is considering giving the next priority to urban registrations and is initiating an inventory of all state-owned land and properties. The urban planning authorities at municipality level are also exploring ways to rationalize land use through more effective controls over construction.

143. These various efforts will succeed only if effectively integrated. Learning from past mistakes, the Government should avoid concentrating on short-term problems in an ad hoc way. What is needed is the development of a long-term vision and strategy for planning and development. Key institutions such as the National Privatization Agency, the Restitution Commission, courts, land registry offices, and the municipal construction permitting authorities, must establish strong communication and cooperation among themselves. This is the only way to ensure that their individual decisions are mutually supporting and reinforce each other, rather than creating further inconsistency and promoting further conflict.

2. Construction Permits

144. Investors are increasingly concerned about rampant and effectively uncontrolled construction activity. It leads not only to vexatious and costly property right disputes, but also creates physical disorder in the built environment. In many cities, including Tirana, it has resulted in undesirable changes in the pattern of land use that taking no account of the necessity for appropriate infrastructure provision and environment safeguards. On many occasions damage is caused to power, water, sewage and other utility connections, delaying adjacent private and public construction activity. Many new buildings have not been built in accordance with any building and environmental standards, leaving occupants and neighbours in apprehension of their future safety and health.

some study estimated that they made up about 50% of the total urban land and close to 40% of urban commercial land by the end of 1998. See “City Made By People,” p. 53, Vol. 2, 2000, Centre for Habitat Development, Tirana.
Many with whom we spoke consider the situation is the result of poor urban governance and management capacity, and a lack of communication and cooperation between the national and local authorities responsible for infrastructure provision and urban planning. Since the collapse of communist control in 1990, there has been no concerted effort to develop new policy and strategy to guide and manage urban development. The last Zoning Plans were approved in 1990 and have not been updated since. There is a new Environment Law but it has not been accompanied by promulgation of detailed regulations and procedures for implementation. There are currently no technical building codes to determine quality and safety standards for construction.

Moreover, there is a total lack of cooperation between the key agencies responsible for the various aspects of the built environment. The public utilities, including electricity, telephone (fixed lines), water and sewage, remain state owned monopolies at the national level. They have little communication with municipal level urban planning departments. Decisions made by the various parties often ignore each other’s needs and requirements, and lead to conflicts on the construction site.

In the meantime, the pace of urban development has been unprecedented in Albania over the past ten years. Many new owners of privatized land wrongly believed that they could do whatever they wanted with their land in a free, market economy. Compounded by the absence of the necessary regulatory and institutional framework, this led to short-sighted development taking no account of any consistent rules and standards. The lack of law enforcement and proliferation of corruption enabled speculative developers to build and sell properties opportunistically and very profitably, leaving innocent buyers and the general public to cope with the adverse consequences.

More recently, legitimate investors, professionals and the general public have become dissatisfied with the situation. In response to this growing discontent Tirana Municipality set about demolishing a whole strip of illegal buildings in the central city area, most of which were commercial and residential structures erected on publicly owned green space without construction approval. This action, painful and costly as it was, appears to have the support of the general public as being in the ‘public interest’.

The biggest challenge remains the proper management of future construction rather than the cleaning up of past illegal construction. Unfortunately, the Government response to date falls far short of what is required. It has chosen to focus on tightening compliance in accordance with existing plans and regulations based on outdated information and requirements. It needs to focus on improving infrastructure provision and urban planning based on the new requirements of economic development. For example, the new construction permit system establishes a two-step approval process: Site Approval to assure appropriateness of location and exterior standards, followed by Building Permit to assure the quality and safety standards of building design and construction. The main steps are described in the following flow-chart.
(1-2) The investor submits the application to the municipal urban planning unit (MUP) for a survey that determines the urbanist features of the site identified for his project. After the survey is conducted, the investor is notified by MUP of the survey results; 
(3-4) The investor then proceeds with his applications to all other authorities responsible for infrastructure/utility, environment protection, etc. for their consent with the site; he should also negotiate with the neighborhood communities for agreements on border lines of the site; the investor should receive the consents/agreements form all authorities and neighborhood communities; 
(5) The investor then submits to MUP his application for Site Approval; at this point, the investor must also present the evidence of his ownership (or lease right) of the land, as well as a preliminary drawing of the project; 
(6-7) MUP forwards the application to its sub-committee equipped with technical expertise to examine the proposal; the Sub-committee suggests changes and give MUP its opinions (recommendations) of approval or rejection; 
(8-9) MUP submit its opinions to the district Territorial Regulatory Council (TRC) for final decision making. TRC makes the Site Approval decision and passes it down to MUP. 
(10) MUP notifies the investor of the TRC decision. Negative decisions initially made by the TRC may be re-examined at the request of the District or Municipal Councils, which may require the TRC to reconsider. Decisions by the TRC based on re-examination are final and cannot be appealed with the administrative chamber of the district court. 
(11-12) If positive, the investor must start dealing with all infrastructure/utility authorities for their agreements on the use and payments of their services. 
(13) The investor then submits to the MUP the application for the building permit. He must do so within 3-6 months (3 months for sites up to 0.1 ha., and 6 months for sites above 0.1 ha.), lest he will lose the Site Approval obtained. At this point, the investor must submit the detailed project design for approval. 
(14-15) The application is to be examined by the same technical sub-committee which provides the opinions; 
(16-17) The MUP submits the project with the opinion reached by the subcommittee to the TRC for the final decision. The TRC will need the evidence that all the payments are made before it issues the Build Permit. 
(18) The investor finally receives from MUP the Build Permit based on TRC approval.

150. While most people we spoke with support the intention to formalize the regulatory control of construction activities, many doubt that the new approval process can actually improve the situation. First, it emphasizes project approval in the absence of updated zoning plans and building codes. In their absence decisions are likely to continue to suffer from inconsistency, exercise of discretion and the resulting appearance of arbitrariness. Second, it does not provide for direct links between the utilities, other
relevant agencies and the municipalities. Instead, it lays the entire burden on the individual investor to navigate the complex maze of all the other authorities whose approvals are required. This is bound to be time-consuming and confusing for the investor. It will also continue to frustrate the individual authorities and prevent effective cooperation among them.

151. The role of the Territory Regulatory Council (TRC) is also questioned by those with whom FIAS spoke. TRC has been created in each municipality to be responsible for the ultimate approval of both site and building permits. It is a representative body, chaired by the mayors and supported by members from the various relevant municipal and national authorities and, in Tirana at least, one representative from the builders’ association. The TRC meets once a month to discuss and approve projects. In Tirana, where construction demand is very high, 60-70 projects are considered each month. These projects are first reviewed by a technical team of the municipal urban planning department, and then forwarded to the TRC with the opinions reached by the municipal technical team, for final consideration. According to the urban planning department, TRC members usually receive project briefs 5-7 days prior to the monthly meeting. The large number of projects and the short time available for their consideration, imply a cursory approval process, with perhaps a bias towards political rather than technical criteria.

152. TRC has 2 months to decide on a request for site approval or construction permit, starting from the request is submitted by the firm. In case of negative decision, of the TRC, the firm can make a complaint to the district and/or municipal council, requesting the re-examination of the case by the TRC. The re-examination of the case by TRC is final. The inadequacy of the internal appeal process led many complainants to bring the cases to the courts. However, the TRC as a council is not considered an administrative unit according to the Albanian Code of Administrative Procedures and the Albanian Law on Local Governance. Therefore, decisions of TRC cannot be appealed with the administrative chamber of the district court. This often leaves complainants without a juridical recourse to address arbitrariness in the decision making of the TRC.

153. There is also a national TRC, which can act as a higher level of appeal against decisions of municipal level TRCs. According to Urban Planning Law (revised in 1998), Article 10, the national TRC can overturn municipal TRC decisions or return them for reconsideration. However, private individuals cannot approach the national council directly but must have their appeal referred to it through the local municipal council, the local prefect or the courts. Nevertheless, the national TRC was immediately flooded with complaints and appeals. As a result, a Ministerial Decision in 2000 suspended consideration of all such complaints, on the ground that most of them were too small and inconsequential to warrant the time and resource of the national TRC. Complaints were re-directed to the courts under Civil Code provisions. More recently that suspension has been revoked. Whether at the courts or at the national TRC, however, there is ultimately

35 The National TRC is chaired by the Prime Minister and represented by key departments of the Ministry of Territory, relevant ministries and national authorities. It has the power to approve major construction projects of national interest as well as the power to determine zoning plans.
no effective sanction available against the TRC decisions, since the decisions are made by the representative group as a whole.

154. Complaints are also increasingly being taken to the People’s Advocate (Ombudsman) who examines technical issues and criteria used in taking the original decision and makes un-enforced recommendations for change or reversal. In some cases, the Ombudsman may pursue a matter through the courts.

3. Analysis and Recommendations

155. In all countries, land issues are socially complex and environmentally sensitive, and warrant treatment accordingly. However, as in all countries, Albania must make land available if it is to succeed in attracting significant new investment and economic activity. Albania needs to encourage investment of strategic benefits to its long-term national economic development. Such investments require an adequate legal and institutional framework providing strong protection for property rights, clear guidance for land use and construction requirements, and equal and predictable treatment when dealing with regulatory agencies at the national and local levels.

156. The existing system fails to meet these fundamental needs of strategic investors. On the contrary, it encourages speculators and rent-seekers. Improving the situation requires the GOA to develop a strategic vision which will guide a range of efforts, both in the long run and short-to-medium runs. Especially, the following actions require priority attention:

- Accelerate and complete the land restitution program; complete land registration with more emphasis on urban and commercially attractive areas; improve the effectiveness of resolving land disputes.

157. Albania has come a long way with the privatization of land. The re-allocation of rural land and urban housing is almost complete and the restitution program, despite its many errors and imprecise decisions, is nearing completion. A market for land has been created. However, it will not be complete and will not function efficiently in meeting investors’ needs, unless land property rights are ensured. This requires further progress with restitution, title registration and dispute resolution programs.

158. The Government recognizes these needs. It is working with the support of the World Bank, European Union and other donors to complete the nationwide restitution program and to speed-up land registration with emphasis on the urban and other commercially attractive areas (such as the coastal areas designated as tourism zones). Ways and means to resolve the numerous land disputes are also being examined. A recent World Bank sponsored study focusing on land property restitution recommends specific policy, legal and institutional options to resolve disputes that have arisen in the course of the past privatization and restitution programs. Those include, above all, the

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36 Albania: Resolving the Question of Land and Property Restitution and Compensation, by Centre on Housing Rights and Evictions (COHRE) on behalf of the World Bank, June 24, 2002.
need to complete an inventory of the significant holdings of urban land and tourism zones in the hands of the state. Potentially, these could be used for compensating those whose justified land rights have been granted but so far not fulfilled. FIAS suggests that the Government act quickly to review and implement the World Bank recommendations, based on national socio-economic priorities. Further delay can only exacerbate the problems and deter strategic investors.

159. Most importantly, the Government must demonstrate a high-level political commitment to these reforms and develop a coherent strategy to accelerate their implementation. Many past efforts failed due to a fragmented approach with non existent or weak linkages between the various programs and responsible institutions. To date, there is little communication and cooperation between the Restitution Commission, the courts, the land registry offices, the municipal urban planning departments, and others. Unless this is rectified, the ultimate success of each program and the overall objective of providing for secure land property rights will not be achieved.

- **Halt uncontrolled construction, and provide an effective regulatory environment that both encourages private investment and protects the ‘public interest’**.

160. Current rampant, uncontrolled construction presents a serious threat to the legitimate interests of both strategic investors and the general public. It benefits speculative developers and rent-seekers. It should not be tolerated further.

161. The country faces an urgent need to develop a new vision and strategy to encourage modern and orderly urban development based on satisfying both private and public interests. This requires political consensus on the need to update zoning plans, building codes, and other necessary construction and environment and safety related regulations. In Albania, there is a general lack of understanding of the legitimate regulatory role of government necessary for the efficient functioning of a market economy, and of the rights and obligations to be observed by all individuals in order to protect the common interest. All countries need a long-term strategy for the management of their valuable land resources and to ensure their fast yet orderly modern development. Box III-5 illustrates the importance of such land-use planning with examples from industrialized countries.

162. Contrary to some perceptions in Albania, strategic investors find it in their long-term, commercial interest to comply with the basic ‘public interest’ as reflected in zoning regulations, environment laws and building codes. They seek the clear guidance of laws and regulations, professionally designed and administered, so that they will know where, what and how they can build. It is also essential that they are able to access necessary land and infrastructure services in a timely and non-discriminatory fashion.

163. The Government is not totally unaware of these needs on the part of the investor. It is developing a regional strategic plan for the greater Tirana area, with donor assistance. Completion of the plan will provide Tirana and other cities in the region a
new perimeter within which more specific zoning plans can be developed and updated. To accelerate and complete this plan the Government will need to strengthen the processes of consultation and engagement with all stakeholders, particularly local communities.

**BOX III-5: LAND USE PLANNING SYSTEM IN UK, GERMANY**

**The British Land System**

Few countries have achieved Britain’s success in protecting the rural landscape despite high population densities. The nation’s land planning system deserves credit for this accomplishment. It provides a relatively stable arena for investment and development, while allowing for public debate in the planning process. The British have given the world many of the tools used in land management today, concepts such as green belts, development plans, and betterment levies (taxes on development gains).

British society has supported the private ownership of land and property for generations. At the same time, it accepts the need to limit private property rights in line with the public interest. The government’s primary role has been to regulate private sector development of land, in a market that is tailored to investors as much as those using the land. The Town and Country Planning System nationalizes the right to use and develop land, and requires owners to obtain permits from local planning authorities before developing property.

Although local governments are the chief agents in land use regulation, the British central government retains strong powers. For example, it constrains the municipal governments’ ability to tax land values. The state has also played a major role in new town building and urban renewal projects after World War II.

**The German Land System**

In Germany, the central government enacts laws setting the framework for land and urban development, but land use planning is delegated to the regional and municipality authorities. The regional authority prepares a spatial plan (flaechennutzungsplan) which determines the general use of land (e.g., forests, agricultural land, lakes and rivers, roads, public buildings, residential areas, etc.) Based on the regional plan, the municipality develops a more detailed zoning plan which further specifies the use of land (e.g., areas for pure residential purpose, areas that are residential with small shops, the number of apartments and stories of houses, etc) Municipalities must seek participation from the general public in preparing urban land use plans, and present those plans, once adopted, to higher administrative authorities. The formal procedure to adopt these plans is written in the laws. An investor cannot initiate or modify construction without first complying with these plans.

Neighbouring municipalities are obliged to agree on the use of borderline land. In case no agreement can be reached, it is the regional authority which makes decisions. Municipalities can go to court if they do not agree with the decision of the regional authority.

164. The Government will also need to introduce, as soon as possible, a set of modern building codes. At the present, with technical building codes missing, the time and costs involved in obtaining construction permits are irregular and unpredictable. This makes it difficult for serious investors to plan properly and it often involves the need to make expensive ‘unofficial payments’. Moreover, building codes are essential for the protection of the health and safety of the general public. Examples are many in
developing countries where poor quality control of construction causes public disasters, as seen in the aftermath of recent earthquakes in Turkey, Mexico and Thailand

- *Streamline construction permit procedures by enhancing institutional cooperation and good governance.*

165. The current construction permit process, as described in the flowchart III-1, segregates the roles of the key institutional players, such as the municipal urban planning departments, the major infrastructure/utility authorities, the environment agency, and local communities. Ultimate approval power is given to a political body, the TRC, which serves to dilute the responsibility and accountability of the municipal urban planning departments, rather than to incorporate substantive technical inputs from all agencies into the approval process. Taken together with the absence of zoning plans and building codes, this makes TRC approvals highly arbitrary and lacking in transparent, and creates opportunities for rent-seeking behavior.

166. By way of contrast, in most European countries the power of granting construction permits is delegated to municipal authorities which coordinate inputs from all other relevant institutions, including transportation, utilities, environment, neighborhood and local communities. Investors can obtain most of the information needed from the municipal authority and usually need to submit their application to only one local authority, which employs professional engineers and planners in the assessment process. If necessary, this authority is responsible to obtain the consent and technical inputs from other parties. Building permits are generally required to be issued within two or three months. Box III-6 provides a brief summary of construction approval procedures in Germany and Ireland, as two examples.

167. Albania will benefit by following the examples. The GOA should make all efforts to get the key authorities to work together for the common interest. This might involve replacing the TRC with a an information “one stop shop” and a technical advisory committee at the district and municipal levels. This facility should enable investors to obtain required information from all relevant authorities at the one place. It should also facilitate the need to have the technical inputs from all involved authorities at the project review stage, thus saving the investor the hassle of obtaining multiple consents and approvals required from each agency. The “one-stop shop” and the technical advisory committee should be coordinated by the municipal urban planning authority which should be responsible for receiving the construction applications, technically reviewing the projects, and granting the permits.
In Germany, a location permit is not required. However, if an investor feels uncertain about some construction issues that are critical to his project, he can ask the authority (Vorbescheid) for opinions on such issues before starting the project planning. This is optional and is up to the investor. The time it takes to receive the opinions from the authority depends on the questions asked. Opinions obtained are not binding to the authority, but the investor usually can rely on them, and they give a high degree of planning certainty.

An investor needs a building permit before starting construction. It takes about 3 months to receive the building permit. The building permit will be issued by the regional building authority with participation of the municipality.

After completion of the construction, a civil servant from the building authority will come to the site to verify that the construction is in compliance with the building permit (Gebrauchsabnahme).

In Ireland, local authorities such as county councils, county boroughs, and borough corporations are responsible for approving building permits. Local authorities have reserved and executive functions. Reserved functions are performed directly by elected members of a local authority, all other functions are performed by the manager and the manager’s executive staff. The manager is bound by the decisions that were made by the elected members, and has the right to attend meetings and take part in discussions, but is not entitled to vote.

Local authorities must grant permission for any projected development that includes building or similar construction work. Permission must be granted or denied within two months after a local authority receives a construction application. Any person may appeal a local authority’s decision within a month after the decision has been made. Appeal boards must make their decisions within a four-month period, and their decisions are final.

EIAs are required for large or complex developments in accordance with the EU’s “schedule of developments.” Integrated Pollution Control (IPC) Licenses are required for a project that may have a significant environmental impact. An IPC license application is submitted to the National Environmental Protection Agency, but it is not part of the building permit process. An IPC license is required in order for a plant to begin operation. Obtaining an IPC license generally takes three months but can take up to seven months if there is a third-party appeal.

- Establish an effective appeal system that check and balance the site development approving power of the approving authority

168. Once the site development approving power is delegated to local government (e.g., municipality) authorities, there is a further need establish an effective system to check and balance that power and prevent arbitrariness and abuses. Some countries have established local councils and special local courts for that purpose. Box III-7 provides a brief view of the New South Wales Land and Environment Court, as one example.
BOX III-7: LAND AND ENVIRONMENT COURT OF THE NEW SOUTH WALES (NSW), AUSTRALIA

The Land and Environment Court Act 1979 (the Court Act) gives the NSW Land and Environment Court the power to determine environmental, development, building and planning disputes. It has the same status as the NSW Supreme Court. There are six Judges and nine Commissioners who have relevant expertise and/or qualifications in planning and development (such as engineering, architecture, town planning and valuation) as set out in the Act.

In disputes about the merits of a decision - usually a decision made originally by local council - the Court hears the dispute afresh and reconsiders the merits of the original decision. Parties may give new evidence if they wish. The Court has all the powers, functions, and discretions of the original decision maker, and its decision replaces the original decision. Parties generally pay their own cost of the proceedings.

The Court also conducts judicial review of decisions. It examine whether the correct legal process was followed in making the decision, or whether the decision maker had the legal power to make the decision in the first place. Where the Court decides that the original decision maker had no power to make the decision, the original decision will be declared invalid. If the Court concludes that the decision maker had the power but did not follow the correct procedures, there is the opportunity for the original decision maker to decide the matter again - this time following the right procedures.

The Court has power to hear disputes about environmental crimes. Civil enforcement of these crimes can be sought by individuals, and can be obtained where the Court decides to issue an order to prevent or stop a breach of legislation. However criminal enforcement of environmental crimes is usually sought by the Environment Protection Authority, the prosecutor of environmental offences. Criminal enforcement may result in a penalty being imposed, such as a fine or imprisonment.

For all disputes, parties may use expert or other witnesses when presenting their case. The Court may order remedies to correct an environmental wrong. These include: an injunction: a Court order to restrain or stop someone from doing something, or a declaration: a statement by the Court setting out what the law is, or whether the law has been broken in a particular case.

For non-criminal disputes a range of alternative resolution processes may be available. These include private negotiation, mediation or early neutral evaluation.


- Explore short to medium term options, including the development of industrial and tourism parks.

169. Implementation of the recommendations above for fundamental reform, will require considerable time and resources. In the meantime, investors will not wait and the economy cannot sustain a moratorium on approvals pending their implementation.
Foreign investors in particular, may choose to locate elsewhere than in Albania, with all its administrative impediments.

170. A possible interim solution, adopted successfully by other countries, might involve the establishment of industrial and tourism development parks. Such industrial parks have become popular because they satisfy several objectives. First, they provide investors with land that has secured ownership titles or lease contracts. Second, they enable concentrated industrial infrastructure development, and provide investors with ready-to-use, serviced land. Third, they relieve investors of the bureaucratic burden of seeking site development approvals, since they usually provide ‘blanket’ construction permits. Individual investors can simply move in, get ‘hooked up’, and start operations.

171. Box III-8 illustrates the important role played by industrial parks in Ireland and around the world. Albania has not aggressively explored this approach. The GOA might consider investigating the zoned industrial lands between Tirana and Durres, and zoned tourism land along the coast, with a view to their designation for development as industrial or tourism parks. Once a few successful examples are demonstrated, the approach could be duplicated in other regions of the country.

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**BOX III-8: THE ROLE OF INDUSTRIAL PARKS IN DEVELOPMENT**

Industrial parks have made significant contributions to development in Ireland. Indeed, for decades, industrial parks were the main strategy pursued by the Ireland Development Agency (IDA) to promote investment. Today, IDA owns approximately 150 industrial estates and business parks of various sizes, located throughout the country. IDA has an ongoing policy of developing flagship business/technology parks to the highest international standards. It also forms joint ventures with municipalities and private investors to develop new parks. Today, sixty-five percent of FDI activities and 50% of manufacturing industries are located in IDA-owned parks. Nearly 125,000 people are directly employed by foreign-owned industries and 200,000 are employed in domestic manufacturing industries.

Many other countries in Europe and around the world have also actively developed industrial parks as a way to address the land and infrastructural constraints in the transitional periods. In the Far East (in Korea, Taiwan, and Singapore), industrial estates or zones helped initiate the orderly growth of manufacturing industries and have prevented the concentration of industrial activities in urban areas. Industrial zones have encouraged industrial clustering in those countries, which has enabled similar industries to be situated near each other and has fostered backward and forward linkages.

Developing an industrial zone requires significant investment and expertise. Most developing countries face serious financial and human resource constraints. To overcome this constraint, many countries have taken the approach to phase in such development zones by starting with one or a few pilot projects. More industrial zones can be established and developed once these pilot projects demonstrate success.

Some governments have encouraged private sector participation in developing industrial zones. This has eased the financial constraints faced by governments and, in most cases, has resulted in higher quality, market-driven configurations and services. In Thailand, for example, the development of industrial estates was initially the exclusive domain of the government but the private sector has been invited to develop its own estates, as long as they comply with public standards for facilities and utilities. The governments of China, Philippines, and Vietnam are actively promoting foreign investment participation through special industrial zones, the result of which is that investors have more choices and better services.
D. “Non-Food Industry” License

172. Ten years after the initial transition to a market economy, the present administrative system in Albania is still burdened with many outdated regulatory requirements. These are rooted in a mentality of state planning and control and micro-management of the economy by the Government. The “non-food industry” license is one example.

173. The “non-food industry” license is issued by the General Directorate of Industry (GDI), Ministry of Industry and Energy, for the purpose of regulating entry and operation in light manufacturing industries such as shoes, clothing, leather, wood furniture, rubber and scrap metal. According to DCM No. 154 (2000) and Instruction No. 2 of the Ministry of Industry and Energy (2000), all wishing to establish and operate a business in these manufacturing areas are required to apply for this license. The application is made in accordance with a prescribed form requiring information concerning the exact nature of the activity, its location, and the offered product(s). In addition, the applicant is required to submit supporting documents, a detailed business plan, description of technology to be used, staff qualifications, and financing arrangements. The license is initially granted for five years and is subject to renewal. Businesses granted the license are required to provide the Ministry with a performance report every three months. To change the activities specified in the license, the businesses must apply to the Ministry for approval.

174. The license, however, appears to exist on the books only. In practice, it is largely ignored by businesses. According to GDI, there have been on average 2-3 applications a month in recent years for this particular license. There are currently only 3 staff in the unit responsible for screening the applications and quarterly performance reports, and almost all applications are approved. The company survey seems to confirm the ineffectiveness of this license, as evidenced by its very low rate of compliance. Enforcement does not seem to exist either -- as far as GDI is aware there has been no case in the past three years where any action has been taken against an unlicensed manufacturing activity.

175. Notwithstanding the ineffective implementation of this license, its continued existence in law warrants questioning. While it may be currently observed in the breach, the potential exists for an official, at some point, to harass companies, on an ad hoc and highly discretionary basis. More importantly, potential foreign investors considering Albania as a location start by reviewing the country’s laws and regulations and are likely to be deterred by the very existence of such an outdated legal regulatory requirement.

176. Experience shows that as governments move towards the market economy, the very concept of industrial licensing becomes obsolete. Industrial licensing is abandoned in favor of reliance on vigorous enforcement of laws safeguarding public interest. Special licensing may continue to be required in specific limited areas involving the “public interest,” for example: granting public monopoly rights (such as public utilities):
accessing non-renewable public resource (such as forests and mineral deposits); involving public trust issues (such as banking); selling public property (such as privatization); and activities that require specialized expertise of concern to public welfare (such as the pharmaceutical sector and construction companies). Justifiable political grounds for screening may include concerns associated with national security or sovereignty, such as in defense-related industries and mass communications.

177. In order to limit licensing to the minimum extent possible and to make the need for licenses clear to the public, many governments have adopted a so-called “negative list” approach. With this approach, governments announce the list that specifies activities that remain subject to government approval and licensing, and open all other activities that are not on the list freely to private investors (i.e., without licensing requirement).

178. Sector licensing has in the past been seen by some governments as a mechanism to ensure tax payments, safeguard the environment, maintain public health and protect building/labor safety. While these are legitimate goals of government, sector licenses are usually not an appropriate instrument with which to pursue them. They are only effectively achieved through the establishment of goal-specific laws and regulations, backed up by monitoring and enforcement regimes that ensure compliance. Implementation requires professional agencies and institutions with relevant specialized knowledge and skills. It also requires a shift from ex ante, pre-operational, substantive review of investments based on their promises to strengthened ex post, operational monitoring and enforcement.

179. **FIAS therefore recommends that the Government of Albania consider the elimination of the “non-food industry” license.** The government needs to re-evaluate the basic rationale underlying this license, and indeed other similar licenses in other sectors. A decision needs to be taken on how to limit licensing to areas of vital ‘public interest’ and how to ensure compliance. Consideration might be given to adopting the “negative list” concept.

E. Administrative Appeals System

180. In looking closely at a number of key areas of administrative barriers to investment, FIAS has been struck by the similarity of problems experienced in the appeals systems operating across the different agency-specific regulatory systems. In essence, they do not operate effectively. This is often notwithstanding agency-specific existing laws, regulations and procedures, as well as the public sector wide Code of Administrative procedures. They lack credibility in the eyes of many both in government and in the private sector. We address these issues on a ‘whole of government’ basis as well as on an agency-specific basis. Their effective reform requires action at both levels.

181. Effective administrative appeals processes and alternative dispute resolution mechanisms to the courts are vital to maintain bureaucratic regulatory transparency and accountability. In the absence of credible appeals systems there is likely to be further
derogation from regulatory compliance. Citizens will feel that they have no alternative but to “do deals” with individual regulators exercising their discretionary powers. There will be no confidence that the ‘rule of law’ will be made to apply through appeals decisions. An effective administrative appeals system is a necessary complement to regulatory reform. Its role is to ensure that ‘due process’ is complied with in regulatory decision making and to provide an effective channel of complaint and timely redress in cases where it is not.

182. Somewhat paradoxically, the widespread corruption reported in the company surveys is perceived by some in the country as acting *de facto* to subvert by its informal processes, the very basis for effective appeals and enforcement. In other words, those currently involved know how the system can be made to work in their favor (i.e., resorting to cronyism or corruption), often over and above the formal legal and regulatory requirements. Formally challenging current, informally negotiated regulatory outcomes could in fact be counter productive for many existing businesses, even if applied in strict accordance with the law. In these circumstances, the effective constituency required for change and reform is all the more difficult to readily mobilize. It is necessary, however, to level the playing field and encourage investment of those who are unwilling or unable to indulge in cronyism or corruption.

183. Therefore, there is an urgent need to improve the overall administrative appeals systems in Albania. One approach that has proved useful in other countries where the system works well is the so-called “whole of government” approach. This approach guides governments in their efforts to improve individual agency internal processes and, in the long-run, to move towards national administrative appeals legislation with a national independent tribunal. Both efforts and especially the latter are challenging, requiring substantial institutional capacity building over time to effect reforms. They require co-ordination and integration with broader public sector reforms and economic development programs to ensure their effective implementation.

1. Administrative Appeals Processes within Individual Agencies

184. The various business regulatory agencies in Albania have their own internal regulatory appeals processes as discussed in the previous procedure-specific chapters. These processes do not operate effectively, as also previously discussed. Moreover, most agencies do not seem to be able to provide hard performance data, nor can they provide clear description of the processes and procedures related to appeals. Some agencies quote low appeals numbers which they say were generally resolved in favor of appellants. There appears to be substantial resort by businesses to the court system and the ombudsman’s office, often in technical breach of legally stipulated appeals hierarchy requirements. There appears to be inconsistency between individual sector legislation relating to appeals and broader constitutional provisions for appeals against administrative actions. When decisions are handed down in favor of appellants, either internally or externally, there is lack of enforcement and timely restitution.
185. The priority areas for agency-specific appeal reforms examined by FIAS earlier in this report are customs and taxation, as well as land and building approvals. The proposed improvements involve the establishment of effective customer service education, information, arrangements and guarantees, and the creation of more independent, specialized regulatory appeals tribunals within or outside of individual line agencies, operating under their own legislation. Many examples of international good practice are available as a guide, as well as international standards and protocols in some areas. For example, a specialized Planning and Environment Court operates effectively to hear appeals in New South Wales, the largest state in Australia. In the customs area, the Kyoto Convention of the World Customs Organization provides general guidelines for appeals arrangements.

2. Statutory Independent Appeals Tribunals

186. As discussed in more detail in the agency-specific sections, it is necessary in the medium term to move towards the establishment of more independent appeals tribunals. Specific technical skills are required in key areas of dispute resolution such as taxation, customs and land and building approvals. Currently, as discussed below, the district courts hear many more appeals than the existing internal agency appeals processes but clearly lack the necessary specialized, technical skills for informed findings. The credibility and objectivity of both the district courts and agency internal appeals are also widely questioned. Any new agency-specific body should be accorded a high degree of independence from its respective agency, preferably on a statutory basis with its own legislation. Each agency should be asked to develop such a proposal. These should be, coordinated for consistency of approach across agencies, in regard to the legislative framework involved covering issues such as mandates, appointments, resources and budgets, management support, staff issues, access conditions, management information, public reporting and accountability.

3. A National Administrative Appeals Tribunal

187. In the longer term, there would be value in considering the establishment of a national administrative appeals tribunal, backed by its own legislation. This would build on the other recommendations made by FIAS in this report, for the shorter and medium terms, involving improved agency appeals processes and specialist independent tribunals. It offers a practical, staged approach to improving the administrative appeals system in Albania; decisions can be taken progressively by government in the light of emerging experience and needs. It avoids the risks of attempting to move too ambitiously, in one step, towards world’s best practice systems, arguably beyond current institutional capacities and capabilities.

4. Integration with Broader Public Sector Reform

188. Improving the business regulatory environment requires a shift in the culture and mentality of the bureaucracy towards a customer service mentality. This can ultimately only be effective and sustainable as part of a broader commitment to public sector wide
reform, that addresses issues such as wage and career structures. A key example of the broader shift required within the public sector, is in the area of anti-corruption initiatives. Another example, are various ‘whole of government’ deregulation initiatives undertaken in other countries. These can include more pro active establishment of regulatory impact assessment procedures which enable governments to screen the benefits and costs of proposed regulations, prior to their approval and implementation.

189. Implementation of agency appeals reforms should as far as possible, be integrated with ongoing agency structural reform programs, covering issues such as staff pay, staff training and development, agency IT programs, etc. They should also be integrated with agency-specific programs funded by donor agencies, such as the EU and IMF Customs and Tax Projects, and with resources provided within the government’s annual budget cycle. This ensures that potential synergies are maximized, in respect of both access to funding and to leveraging political commitment to reform, while potential duplications and inconsistencies are minimized.

190. Finally, there is also a need to promote wider understanding of the importance of a transparent and non-discretionary business regulatory environment to the functioning of a private sector driven, market economy. Understandably, in a transition economy such as Albania, a steep learning curve is faced by everyone in coming to a mature appreciation of the complex interaction between the private sector and government. An appropriate balance has to be struck between too much regulation and too little. On the one hand, any vestiges of the widespread bureaucratic controls of a centrally planned economy have to be removed. On the other hand, they have to be replaced with a legal and regulatory framework that recognizes the important role of government in creating an attractive enabling environment for the private sector, while safeguarding broader public interest.

5. Recommendations

191. Based on the observations above, FIAS recommends that the GOA consider the following options for reform of the administrative appeals processes across government:

- **Conduct a cross-agency review, with a view to improving, on a consistent basis, the internal appeals processes within each agency, including the option of establishing specialized, independent tribunals in specific procedural areas.**

192. This should be treated as an urgent matter. The government should initiate immediately a cross-agency review of internal appeals processes. The objective should be to make them more accessible and to make their activities more transparent. A schedule of priorities by agency should be established, with highest priority given to tax and customs. These initial review reports should be prepared with recommendations for consideration by government as soon as possible. They should be prepared to set of consistent guidelines and specifications provided by the central agency responsible for
public sector wide structural reform programs, in conjunction as necessary, with the justice ministry, and coordinated by that agency.

- *Establish a fully independent national administrative appeals tribunal*

193. In the medium term to long term, the GOA should explore the option of establishing a fully independent statutory appeals tribunal. This option would be based on the “whole of government” approach mentioned earlier, with a view to providing a consistent way to deal with appeals against the administrative decisions taken by any of the government agencies. It would establish transparent standards and guidelines for the operation of appeals processes and mechanisms within individual agencies. Box III-9 provides a summary of the roles, functions and institutional set up of the Australian Administrative Appeals Tribunal, which is one example of the type. In considering this option, the GOA may benefit from the use of high level international staff on the secondment basis in the initial years of establishment and operation. This could help speed up the learning and training process based on relevant experience in other countries.

- *Strengthen public-private sector consultation and general public education*

194. The reforms proposed above will not truly succeed unless they are fully understood and supported by the general public. The current lack of general understanding of the functioning of a market economy (including the rights and obligations of individual citizens and government officials) can only be overcome through effective education and dialogue between government and businesses. The GOA recently established a Business Advisory Council serviced by the Prime Minister's Office, which is a positive step in that direction. The role, activity and credibility of such a body has to be nurtured and developed over time, through its value added contribution on key issues of importance to the development of the private sector. Potentially, that Advisory Council could play a useful role in regard to reform of administrative appeals processes, as an important part of creating a competitive investment environment for private sector development.

195. In the next chapter on the next steps, we will further highlight the importance of public-private sector dialogue and consultation, and discuss the various mechanisms that could help maintain the public-private sector cooperation in the on-going reform process.
BOX III 9: ADMINISTRATIVE APPEALS TRIBUNAL (AAT), AUSTRALIA

The Tribunal was established by the Administrative Appeals Tribunal Act 1975 (AAT Act), which together with the Administrative Appeals Tribunal Regulations 1976 (AAT Regulations) set out its powers, functions and procedures. It falls within the portfolio of the Attorney-General.

The Tribunal is an independent body that reviews, on the merits, a broad range of administrative decisions made by Australian Government ministers and officials, authorities and other tribunals. Merits review of an administrative decision involves its reconsideration. The Tribunal decides whether, on the facts before it, the correct or, in a discretionary area, the preferable decision has been made in accordance with the applicable law. It will affirm, vary or set aside the original decision.

The Tribunal is not always the first avenue of redress for review of an administrative decision. In some cases, it may not review decisions until after an internal review by the department or agency that made the primary decision. In other cases, review by the Tribunal is only available after intermediate review by a specialist tribunal. The Tribunal reviews only decisions over which it has been given specific jurisdiction, generally conferred by the legislation under which the original decision was made. The Tribunal’s jurisdiction is contained in 395 separate enactments, covering areas such as taxation, customs, and social security.

The Tribunal’s membership consists of a President, Presidential Members (including Judges and Deputy Presidents), Senior Members and Members. The President is a Judge of the Federal Court of Australia. Some Presidential Members are also Judges. All Deputy Presidents are lawyers. Senior Members may be lawyers or have special expertise in other areas, such as accountancy, actuarial skills, administration, taxation, and valuation. The position of Registrar a statutory office appointed by the Governor-General, responsible for employment of the Tribunal’s staff, who are employed under the Public Service Act 1999, and for financial management of the Tribunal.

The Tribunal has an outreach Program through which it provides unrepresented applicants with information about the Tribunal’s processes, and answers questions they may have about procedural issues. Comprehensive information is available on its web site. It is also available in pamphlets in a range of languages and in large print, and in a video titled “getting Decisions Right”. The Tribunal has a case management system that provides suitable and flexible procedures for dealing with its applications. It monitors cases actively to ensure that: cases have an orderly and controlled passage from lodgment to resolution; case management targets are met; all parties are afforded equitable treatment; the case load does not become unmanageable; and public confidence in the Tribunal is maintained and enhanced.

Source: http://www.aat.gov.au
CHAPTER IV
THE NEXT STEPS

196. Albania is “on the right track,” but the journey towards sustainable economic development and poverty alleviation remains challenging. For much-needed potential private sector investment to materialize, Albania must continue to develop a considerably more ‘investor-friendly’ enabling business environment. Administrative barriers remain a substantial impediment to investors and can only be removed by more aggressive Government reform measures. Success in this respect will not only substantially ease the practical obstacles confronting private enterprise but will also enhance the efficiency and effectiveness of government operations. It will also increase Albania’s competitiveness in regional and world markets, which is essential for long-term economic development and poverty alleviation.

197. As mentioned at the beginning of the report, the purpose of the administrative barriers study is not for the study itself, but for implementation. In order to remove administrative barriers to investment successfully, the GOA must engage in a more determined and concerted manner with how it will be achieved, in practical process terms. As in all countries, the critical phase of the current “study of administrative barriers” comes with government taking leadership to ensure that the findings and recommendations are implemented successfully. As mentioned in the preceding chapter, the report recommendations are put forward as a basis for promoting discussion among stakeholders in the country’s economic reform agenda. Ultimately, the Government of Albania, relevant ministries and agencies, and private sector communities must work together to agree on priority goals, develop appropriate strategy, and design specific action plans and mechanisms for implementation.

198. Removing administrative barriers is a difficult process in all countries, as it involves and confronts directly the day-to-day work and well-being of the institutions and people within the bureaucratic system. Chart IV-1 on next page shows the implementation cycle based on the experience in many countries. As seen in this cycle, the success depends on an ongoing process of engaging all parties involved. It is preconditioned that the private and public sectors have continuous dialogue and consultation, to increase the mutual understanding and learn to trust and work with each other. It is also critical that different government departments and officials at all operational levels are led by a common vision and concert their efforts to support the changes required. Not surprisingly, all these will happen only when there is a stronger political will and leadership at the highest level of the government.

199. The immediate challenge faced by the GOA on receipt of this report, is to find an effective way to move towards implementation. Based on experience in other countries, consideration should be given to the following steps:
Step One – Disseminating the Current Study and Building Political Consensus.

200. Studies of administrative barriers have had a positive impact where governments have ensured the effective dissemination of the study report as the basis for an informed and focused process of political consensus building. For example, the studies have been posted on websites, and workshops and seminars involving all stakeholders, have been conducted. Such government actions are also critical for success in Albania. The current study report should be disseminated to all interested parties for open consultation and discussion at a subsequent workshop.

Step Two – Establishing an appropriate institutional set-up for developing the Action Plan for reform.

201. For the success of the preparation of the Action Plan and the subsequent implementation of the Plan, the Government should put in place an appropriate institutional set-up with the involvement of the key relevant parties. A common practice in other countries in the region is the establishment of a special “Task Force,” or a “Steering Committee,” often at the cabinet level and with private sector participation. The “Task Force” will play a vital leadership and co-ordination role in the discussion and determination of priorities and sequencing of the necessary reforms. It will lead the development of precise improvement targets, timetables and designated responsibilities among participants. It will also be responsible for the design and development of a performance monitoring system that provides concrete enforcement, and evaluation tools and mechanisms.

202. The “Task Force” can be supported by several “working groups” focused on specific procedural issues, such as customs administration, tax administration, land/construction, etc. These groups should be equipped with the right expertise incorporating both public and private sector inputs. Moreover, the “Task Force” will need the support of a Secretariat, i.e., a dedicated unit whose job is the day-to-day handling of the reform agenda, including all aspects of the cycle of reform. The Secretariat acts as an intermediary or facilitator of the structured dialogue between the two principal stakeholders – the public and the private sector representatives. The Secretariat should report to the head of the Steering Committee. To carry out its responsibility, the Secretariat will need to have an institutional/structural home that will employ the right staff, supply financing and help it liaise with other government institutions and donors.

Step Three – Establish an agenda for dialog between the public and private sectors on prioritizing administrative reforms.

A public-private sector consultative mechanism needs to be put in place to bring together the two principal sides of a discussion about needed reforms. The discussions should lead to the establishment of an Action Plan for Removal of Administrative Barriers to Investment. This Plan should reflect which recommended reforms are highest-priority from the private sector’s point of view; which are feasible from the Government’s point
of view, and concrete proposals for implementation, including responsibilities, deadlines, and monitorable indicators.

*Step Four – Putting the Plan into Implementation.* The Task Force with the support of the Secretariat should continue to play a key role in coordinating and supervising the process of implementation following preparation of the Action Plan. This is essential since effective implementation involves committed efforts by various parties and change at different levels of policy, legal, and institutional responsibility. The Secretariat should be active in organizing, leading and following up the meetings between the private sector representatives and relevant government institutions on various issues of concern to the business community. It should establish good working relations and network with partners in the private sector in order to be able to gather their informal opinions and ideas.

*Step Five – Monitoring, Evaluation, and Adjustment.* The Task Force with the support of the Secretariat must use the enforcement and evaluation tools concurrently with implementation to monitor and adjust the implementation process periodically. This will require the Government to:

- Establish and rigorously implement an internal, formal mechanism within the government whereby the responsible institutions regularly report to the Task Force on the status of implementing the reforms that they have undertaken in the Action Plan.

- Monitor and measure the on-the-ground impact of the implemented actions through regular interaction with the private sector representatives, the templates and the business survey.

- Prepare regular reports to the highest political level on the status of implementation of the Action Plan, based on both the internal reporting and external monitoring, and other necessary measures to reduce the administrative barriers and improve the business environment.

203. *An effective way to do this is to repeat the administrative regulatory cost survey every 12-18 months.* The findings of the current, inaugural survey provide a potentially useful baseline for the findings of future surveys. Positive results from future surveys will demonstrate the beneficial impact of reforms and enhance political support. Identified weaknesses and lack of progress will assist in the review and necessary progressive adjustment of reform targets and strategies. The repeated surveys serve also to maintain private sector engagement in the reform process and to facilitate policymakers’ continuing access to private sector feedback and inputs. These last ongoing, post-implementation steps are equally essential to the ultimate success of the reform effort as the initial steps.

204. The template interviews with government agencies should also be repeated periodically in future, by the Government itself as a tool to update the procedures and
agency performance. During the first round of such interviews under this study, most agencies did not fully respond to the questions related to their performance, possibly due to the lack of their internal system of keeping the performance data. This should change in future. All agencies must understand that their credibility and accountability depend on their performance, not just on laws and regulations laid in paper; and that self-assessment of their performance will be the key to encouraging good performance and increasing the overall operational efficiency.
CHART IV-1: THE ADMINISTRATIVE REFORM PROCESS CYCLE

**Awareness**
- Create political will and build consensus
  - e.g.: Studies, diagnosis of the problems.
  - Dissemination of findings & recommendations of various studies
  - Workshops and seminars
  - Seminars and workshops

**Action Planning**
- Set the goals and targets
  - e.g.: Prioritize areas, set targets, set time-table, designate key players
- Design Approaches
  - e.g.: Policy, legal, regulatory, procedural, institutional

**Implementation**
- Implement Programs
  - e.g.: Policy adjustment, legal / regulatory changes, institutional adjustment, capacity building
- Create Enforcement Tools
  - e.g.: Set monitoring mechanism (e.g. the RACS), establish the base lines for future evaluation, accountability system

**Evaluation**
- Follow-ups
  - e.g.: Repeat the RACS (in 12-18 months)
  - Evaluate results
  - Adjust targets
  - Introduce new mechanisms
ANNEX B

ADMINISTRATIVE BARRIERS TO INVESTMENTS IN ALBANIA

By
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December 10, 2002