CORPORATE GOVERNANCE RISK IN THE SLOVAK REPUBLIC

Report on Survey by INEKO

INEKO
Institute for Economic and Social Reforms
Bajkalská 25
827 18 Bratislava 212
Slovak Republic
http://www.ineko.sk

ČSOB, a.s.
Czechoslovak Merchant Bank

Na příkopě 14
115 20 Praha 1
Czech Republic
http://www.csob.cz

This Project was initiated and supported by Czechoslovak Merchant Bank (CSOB) as a contribution to the improvement of the entrepreneurial environment.

The study was prepared by research fellows Lívia Zemanovičová (INEKO - The Institute for Economic and Social Reforms, Bratislava) and Martina Kubánová (SGI – Slovak Governance Institute).

The Slovak Republic faces the task to secure conditions for a long-term economic growth. A crucial precondition for an efficient implementation of economic measures is the knowledge of the status quo and of the impacts on the economy and the society as a whole to be expected from the relevant measures. Foreign experience with economic policies can only be adopted when adjusted to the conditions of Slovakia's economy, and attention has to be paid to both short-term and long-term prospects of the economic and social development. To be implemented, many economic measures require acceptance on the part of the public, and this requires, among other, direct involvement of the citizens into economic processes. The Institute for Economic and Social Reforms (INEKO) shall therefore spend efforts to make the public familiar with the nature of economic and social processes in Slovakia and abroad, and to eliminate, through economic research and educational activities, hindrances to long-term economic growth of Slovakia.

INEKO
Institute for Economic and Social Reforms
Bajkalská 25
827 18 Bratislava 212
Slovak Republic
tel: (+421 2) 534 11 020, fax: 582 33 487
www.ineko.sk

Contacts on authors of this study:
Martina Kubánová: kubanova@governance.sk
Lívia Zemanovičová: zemanovicova@ineko.sk

1 Methodology

In this part, we shall not repeat the statements of the Czech CGR report, as the methodological background is the same. It consists of the OECD Principles of Corporate Governance and the essay by Crichton-Miller and Worman: Seeking a Structured Approach to Assessing Corporate Governance Risk in Emerging Markets.

However, there are several methodological issues we consider worth noting. The following text describes the four main issues, apart from those presented in the Czech CGR Report, that were important in the phase of interpretation of results and answers of respondents in the Slovak part of the research.

- **Timing of the survey**

It is important to note that the Slovak survey has been performed in two time periods. The questionnaires were sent out at the beginning of 2000. On the other hand, the interviews were performed in October 2001-January 2002 period.

- **Perception of time: snapshot view vs. past track inclusion**

When interpreting the answers, we were usually unable to properly distinguish between the "snapshot-view" and the development over past few years. This problem emerged in part II and III of the questionnaire, where changes and also some improvements were observed in recent years/months, but some respondents referred to longer tracks (thus abstracting from the recent positive development). If possible, we try to distinguish it in the comments.

- **Perception of situation: big cases vs. general (average) development, in other words: volume vs. frequency**

Respondents could have approached the questionnaire giving major weight to the scope of the problem (high perception of big cases focused on by media) or to the frequency of a given problem in Slovakia. The latter approach, though less frequently used, may provide a better description of the overall situation in Slovakia. It usually shows that the general view is better than what the results of big cases might suggest (mainly in public procurement, tendering practices, etc.) as we adopt the opinion that in each country the big cases are solved differently from the majority of average cases. When performing and interpreting results from interviews, we try to distinguish between the two approaches.

- **Interviews vs. submitted questionnaire results**

The resulting CGR index for Slovakia is usually lower for the respondents replying only in written form than for the interviewees. This may be due to the fact that an interviewee spends more time reading the questions and formulating the answers, reasons and comments to the answers. Also, an opportunity to explain the question more properly to the interviewee could have had an impact. Time – questionnaires were sent at the beginning of 2000, interviews were performed in October 2001 – January 2002. Furthermore, in anonymous surveys in general, the respondents tend to assign a more negative assessment of surveyed facts.

2 The Present Level of Corporate Governance Risk

This chapter offers in detail the results of the survey. General interpretation and summary of the results is found in the conclusion.

2.1 The Results in Numbers

Respondents and Questionnaires

	SR	% SR	ČR	% ČR	Modification SR	Modification % SR
Total number of respondents	118	100	50	100	142	100
- direct interviews	13	11	13	26	37	26
- written questionnaires	105	89	37	74	105	74

We have received 105 questionnaires and 13 questionnaires were filled in at the direct interviews. We adjusted the calculation of the CGR index, so that the ratio between anonymous respondents and interviewees is the same as in the Czech Republic. To adjust our results we have multiplied each answer from the direct interview by 2.85.

The respondents represented these sectors and industries[1]:

Industrial production	79	69%
Services	12	10%
Retail and wholesale trade	4	4%
Transport	2	2%
Consulting and advisory services	1	1%
Construction	3	3%
Multiple sectors from above mentioned	9	7%
Others	5	4%
Total	115	100%

Majority of respondents represents a limited liability company (51%), the rest joint-stock companies (48%) and others, e.g. NGO's (2%). The structure of respondents by size of the company is as follows: 9% small enterprises, 57% middle enterprises, 34% large enterprises.

Corporate Governance Risk Index (in the brackets is result for interviews only)

Maximum possible points	28
Average points per questionnaire	10 (12)
Average points in the four sections	
Corporate Law (max. 7 points)	3.3 (3.8)
Legal Processes (max. 7 points)	1.4 (1.6)
Regulatory Regime (max. 7 points)	3.0 (4.0)
Ethical Overlay (max. 7 points)	1.9 (2.5)
Mean	9.5 (11.9)
Minimum result	3 (5)
Maximum result	26 (16)
The most frequent result	6 (11)

The basic result of our survey follows: the present corporate governance risk index in the Slovak Republic is 10 points. According to Crichton-Miller and Worman's scale, it represents the upper-bound value for the "high risk" category. The interpretation of the result and its wider context are

[1] The number of respondents and that of the firms represented by them are not equal since in some cases we obtained two questionnaires from one company and in some cases the respondents did not report their background information.

summarized in the conclusion (see chapter 3). The evaluation of the four dimensions and of the concrete questions is presented in chapters 2.2 through 2.5.

The whole sample of answers is relatively dispersed from 3 (very high risk) to 26 (low risk). The most frequent result is 6, but it does not correspond to the average value or even does not approach it. The sample of interviewees shows lower variance of answers, ranging from 5 (very high risk) to 16 (modest risk). The most frequent result 11 is very close to the average value 12, so this sample has signs of normal distribution of results. It was impossible to create a histogram, because of the multiplication of interviewees' responses by the coefficient 2,85 to equate the relation between questionnaires and interviews to the Czech results.

Comments on the Questions

The following subchapters deal with the questions in detail. Every subchapter follows this structure:

- **Summary of the Results** - a table displays the average number of points assigned to the given aspect and the percentage of positive answers to each question (in the case of ethical overlay, the percentage concerns the negative answers because the questions in this sector are formulated in such a way that a "no" answer evaluates the corporate governance positively). The percentages in brackets correspond to the interviewees' sample, which was realized in a time delay of 8 months. Moreover, people in anonymous questionnaire are more critical than in an interview.
- **Questions in Details** - here, the questions are put more precisely in such a way that was used during the interviews, and the respondents' commentaries are presented. This point is further broken down into three points:
- **Question** – full text of the question as it is stated in the questionnaire.
- **Assessment** - besides the number of positive and negative responses[2], this part also includes our remarks on the formulation of the questions, in particular for methodological reasons, and we recommend considering these remarks when repeating the research or applying it in other countries.
- **Comments** - here we state the questions more precisely, following the commentaries from the source documents (see 2.1 and 2.2) as were stated during the interviews, and present the comments expressed by the respondents. The commentaries do not attempt to define the actual state objectively; they are presented particularly because they highlight specific and often very real issues. And highlighting the issues that "people talk about" is one of the objectives of this research.

[2] The overall number of responses need not always be the same as some respondents did not answer all the questions. The number of all unanswered questions, however, did not exceed 0,1% of all responses and 1% of the responses on the given question.

2.2 Evaluation of Corporate Law

Summary of the Results

1.	Corporate Law	3.3 (3.8)
	Question (percentage means the ratio of positive responses)	**%**
1	Registration of claims upon companies	48% **(70%)**
2	The rights of all the parties	**58% (77%)**
3	Shareholders' voting rights	**83% (92%)**
4	The disclosure of a disproportionate degree of control	39% (38%)
5	The quality of contracts	42% (46%)
6	Bankruptcies	13% (15%)
7	Material interests of the board's members	42% (38%)

The purpose of the first group of questions was to characterize a legal framework necessary for the functioning of corporations. The questions focus on the wording of laws and other legal norms. Their enforcement is as yet not questioned. A foreign investor is, from the practical point of view, interested in whether the norms define sanctions for asset-stripping or whether the norms ensure them the right to participate in the decision-making on the authorization of additional shares, selling the company, and other important activities.

The respondents positively answered two out of seven questions. If only interviews are taken into account, the number of positively answered questions increased up to 3 and the percentages in most questions are higher. Possible reasons might be the time delay of about 8 months between questionnaires and interviews as well as the more negative attitude of respondents in case of anonymous research. In general, interviewees do not consider the legal framework to be the key problem of the Slovak Republic. Even more, in the process of approximation of our legislation to the legislation of the EU (one of the benchmarks of this research) a lot has already been done. Many laws were amended and also the evaluation from the entrepreneurial environment concerning the laws is relatively favorable. In comparison within this research, the Corporate Law is the best section with 3.3 average points. The main problem concerning the corporate law in Slovakia may be the instability of legal system, where laws are frequently amended thus creating uncertainty and additional costs for entrepreneurs.

The strongest agreement was reached for the question 3 about the shareholders' voting rights. There is no doubt that shareholders can exert their rights without restrictions. The definition of the rights of all parties (Question 2) does not cause problems in general even though the rights of different parties are not defined in the same extent. Creditors are example of a group with weak legislative definition.

On the other hand, 85 percent of the respondents agreed that the procedures of bankruptcy and insolvency are not defined clearly enough to ensure the orderly settlement of liabilities and independent (of managers) distribution of assets. Bankruptcies have been considered as one of the weakest element of the Slovak economy for years. Even the recent amendment to the Bankruptcy Act has not changed expectations toward an improvement of the present situation.

The evaluation of this section is accompanied by a short summary of selected Commercial Code and other legislative enactment.

2.2.1 Registration of Claims upon Companies

Question 1. Is the registration of stock and other claims upon companies transparent and secure?

Assessment Positive responses: 68
Negative responses: 72
Positive responses ratio: 48% **(70%)**

The respondents usually take into account not only the first part of the question which deals with stock, but consider also the other claims linked mostly with creditor- debtor relations.

Laws According to §28 of the Commercial Code (approved in November 5, 1991, No. 513/1991 Coll., with its changes and amendments – 600/1992, 264/1992, 278/1993, 249/1994, 106/1995,171/1995, 58/1996, 317/1996, 11/1998, 127/1999, 263/1999, 238/2000 and 147/2001), it is obligatory to write into the Companies Register (supervised by a register-court) the name and the seat of the company, the identification number, the field of activity, the legal form, the statutory bodies with the names and addresses of their members, the basic capital, the extent of its repayment, number, type, and nominal value of one stock, while it is only optional to include the limitation of the stocks' transferability. Where there is only one shareholder, his or her name and place of abode must be written there, too. Furthermore, according to the §28a and §27 the collection of deeds should be enclosed to the Companies Register. It must include the foundation contract with changes, final accounts, declaration of liquidation, the name of the trustee in bankruptcy, declaration of bankruptcy and entrance to bankruptcy proceedings. Sanctions for not announcing changes in form of amend are defined in §28b.

Everyone has a right to look into the Companies Register and make copies and excerpts. Everyone can also receive confirmation that a fact asked is not in the Register (e.g. founding documents, final accounts, auditor's statements, and decisions on Statutes, cancellation of a legal entity or mergers). The Commercial Register is published on the internet since January 1, 2001.

According to §156, inscribed shares are listed in a list of shareholders and any shareholder can ask for a printout of a part of the list that concerns him or her.

According to the §79a of the Securities and Investment Services Act 483/2001 which replaced the Securities Act 600/1992, 88/1994, 246/1994, 249/1994, 171/1995, 304/1995, 58/1996, 373/1996, 204/1997, 144/1998, 128/1999, 247/2000 and 331/2000 the transparency should be increased by several limits (5,10,20,30,50 and 65%) that make obligatory the disclosure of the names of publicly traded companies' shareholders and reporting of their exceeding. The acquirement of more than 30% of shares is possible only through the public offering to buy the remaining shares from minority shareholders. The registration of shares is now in the competence of the Securities Center, a state-owned joint stock company that will be replaced by a central depository. This licensed subject would be entitled to create a clearing center.

Comments According to the OECD Principles, the secure registration of stock is one of the basic rights of a shareholder. Furthermore, all investors' rights to information about voting rights connected with the shares and their possible changes concerns this question as well.

The registration of shares is now in competence of the Securities Center, a state-owned joint stock company that will be replaced by a central depository. This licensed subject would be entitled to create a clearing center. More problematic are the rights of minority shareholders and non-transparent transfers performed by the state. The situation will hopefully improve with the amendment of the Securities and Investment Services Act 483/2001. It is shall make institutional operation of the capital market more efficient, in particular concerning the securities records, clearing and settlement systems of securities transactions. It enacts the establishment of a cumulative account at the central depository.

The main problem in this question was seen in the registration of other claims resulting mostly from creditor-debtor relations. The majority of our respondents do not consider them to be transparently registered. Although the register of collateral is being prepared by the Ministry of Justice in the collaboration with the Chamber of Notaries.

As we can see on the result from the interviews' sample the situation has steadily improve during recent months, mainly by the amendment of the Commercial Code and the new Securities and Investment Services Act.

2.2.2 Rights of the Parties

Question 2. Does the system of corporate law provide a clear definition of the rights of shareholders, trade creditors, employees, management, and different classes of

lender?

Assessment Positive responses: 83
Negative responses: 60
Positive responses ratio: **58% (77%)**

There is no doubt that the rights and duties are defined, but for some groups like creditors, minority shareholders and management these definitions are not as precise as for the other parties.

Laws The rights of shareholders are defined in the Commercial Code (§178-190). The legal norm includes the right to a share in the profits, but with certain limits concerning the creation of reserve funds and net asset value. A shareholder has a right to a share in the liquidation proceedings, a right to participate in general meetings, to vote, to raise and counter proposals, and to demand an explanation. The General Assembly (so implicitly also the shareholders according to their capital participation) has a right to change Status, to elect and remove the members of the Supervisory Board and the Board of Directors, to approve final accounts and to approve the decision of cancellation of the company.
The voting right is linked to shares. If a shareholder possesses a minimum 5% of the basic capital, or even less, if it is enacted so in the Status, he can ask to call an extra general meeting. The rights of minority shareholders are treated in §176b: "Company should treat all the shareholders in the same situation equally." According to the §218k they have the rights to the repurchase of their shares in case of fusion of the company.
Rights and responsibilities of statutory bodies members have been defined more unambiguously, information-related responsibilities of companies have been extended, and the legal certainty of partners has been improved, including minority shareholders. Conditions for raising and/or reducing equity of shareholding companies have been regulated (regulation of company divestments and mergers). The members of the Board of Directors should exercise their functions with appropriate care, which includes professional accuracy and acting in interest of the company and their shareholders. In case of damage they are obliged to refund it.
The rights of employees are very well defined in the Labor Code.
The relationship between the debtor - creditor is defined in Commercial Code and in some other special laws e.g. Act on Bankruptcy and Settlement.

Comments The legal definitions achieve the level comparable to developed markets, except for the position of creditors and partially also the protection of minority shareholders, which has been improved by the recent Commercial Code amendment. The creditors' position is the weakest point even after the changes in the bankruptcy legislation (see Question 6). Even the recent Commercial Code amendment focused rather on shareholders' rights. The least regulated group is the management. The law provides freedom in their action. In case of state enterprises this leads to problems that managers cannot be sanctioned for improper managing and asset stripping. The Commercial Code defines duties only for the Board of Directors.
It seems that enforcement of these rights causes more problems. Section 2 focuses on this issue.

2.2.3 Asserting the Shareholders' Rights

Question 3. Do shareholder rights include unrestricted opportunities to vote in general shareholder meetings, elect members of the board, and approve extraordinary ownership changes or adjustments (e.g. share issues, granting of minority stakes, mergers, or sale)?

Assessment Positive responses: 117
Negative responses: 25
Positive responses ratio: **83% (92%)**

Laws Every shareholder can participate in general shareholder meetings both in person and by an appointee (members of the Board of Directors and of the Supervisory Board

cannot serve as appointees). The General Assembly has in his competence (so implicitly also the shareholders according to their capital participation) the change of the Status, election and recall of the members of the Supervisory Board (employees' representatives are required in companies with more than 50 employees) and Board of Directors, to approve final accounts and to approve the decision of cancellation of the company or increasing and diminishing the basic capital.
The simple majority voting of shareholders present is the decision-making procedure. The Statutes can increase the number of votes necessary only in cases where law requires the qualified majority voting. Specific actions (increasing basic capital etc.) require two thirds of the votes.

Comments The OECD Principles emphasize the balance between two contradictory principles - an active participation of all (including small) shareholders in the decision-making of the company on the one hand, while limiting possible obstructions stemming from endless questions and debates during general meetings on the other. Therefore it is necessary to cope with the communication between shareholders and to create rules that will function at the general meetings that would balance both of these principles.
This question is the most positively perceived one among all, and there were no comments, remarks or restrictions from the side of our interviewees. So, it seems that shareholders' rights are well defined and also according to the OECD principles the legal definition contain all the important points.

2.2.4 Open Disclosure of Disproportionate Degree of Control

Question 4. Are structures which enable certain stakeholders to obtain a disproportionate degree of control relative to their stake openly disclosed?

Assessment Positive responses: 55
Negative responses: 85
Positive responses ratio: 39% (38%)

Laws Silent partnerships, dealing in consent, controlled and commanding person directly or indirectly are subjects of §675, §66b and §66a of the Commercial Code. The agreements binding shareholder to the company or its statutory bodies to vote according to their orders are prohibited by the Commercial Code in §186a and the law obliges to disclose any action decided upon in consent. These structures are sometimes used when the acquirer should declare a public offering (a costly and long procedure) or by exceeding the limits (5,10,20,30,50 and 65%) where information disclosure according to the Securities and Investment Services Act is required. The disclosure should contain the identification of the acquirer and issuer, ISIN and the exceeded limit.

Comments The OECD Principles build the recommendations on the thesis that pyramid structures and cross-ownership structures may be used to limit the possibilities of minority shareholders and that voting in consensus and other agreements between shareholders to pursue common objectives together would affect corporate governance and change the voting shares. Hence, it would be suitable if all such agreements were openly disclosed.
Cross-ownership and personal interconnections are common in the Slovak Republic and the obligatory disclosures of any action in consensus are not being kept. According to our respondents, indications are available to big players on the market that allow them detect such structures. Yet, a common entrepreneur does not have a chance to discover it. One positive example of cancellation of the validity of the General Assembly' decision where some groups were dealing in consent is Investičná a Rozvojová banka (Investment and Development Bank).
Higher level of cross-ownership is a result of development after privatization. Some groups were interested in creating unclear ownership structures within companies in order to exceed the legal ownership limits (investment funds) or to hide practices on the verge of legality (tunneling, transferring debts to "dead" companies etc.).
A specific characteristic of these structures is the involvement and role of the State (National Property Fund, Consolidation Bank and other institutions) and the

privatization of state-owned enterprises. Because of legal restrictions it was/is not possible to sell more than 49% of shares of the strategic enterprises, therefore the Slovak government offered these shares to investors also with managerial contracts including managerial rights.
In the companies privatized through vouchers, a significant amount of shares are dispersed to such an extent that an owner with relatively few shares can control a company. Therefore, the control does not reflect the ownership share but it stems from the fact that transaction costs of the minority shareholders voting are very high. On the other hand, there are some groups specialized in benefiting from the dispersion of the owners like Penta group[3].
To sum up, the disproportionate degree of control exist both in Slovakia as in the developed economies, but there is some difference in the degree of transparency of their disclosure.

2.2.5 Quality of Contracts

Question 5. In contracting with companies of this country, does a contract (be it as a lender, other creditor, minority investor, joint venture partner, etc.) confer a set of rights which "one would reasonably expect to be conferred if the transaction took place in a G7 country", and if not, are departures from reasonable expectations notified in clear documentation?

Assessment Positive responses: 58
Negative responses: 81
Positive responses ratio: 42% (46%)

Laws Different kinds of contracts are defined in §409-728 of the Commercial Code. Some dispositions are cogent, but most of arrangements are let to the partners.

Comments This question should report about the quality of contracting defined by the law and also about gentlemen agreements. For the first part we shall add that by now it has not been proved which system is a better one – either to have all the contracts defined by the laws (continental system) or to provide space for the individual agreement among partners (Anglo-Saxon system). Therefore, the authors do not agree, that yes-answer in this question really means lower risk for the country surveyed. Our respondents do not provide a clear answer to this question. One part of them thinks that in Slovakia it is better to have very detailed contracts and not to rely on common business practice. Therefore, because of lacking trust we cover more relations in agreements than G7 countries do.
Other respondents on the other hand hold an opinion that in G7-countries there is a larger number of relations covered by the contracts, because of more freedom in the legislation. Only the main things are enacted in the law. In Slovakia, the managers understand mostly that the law enforcement is based on other than legislative and contractual relations. They do not have feeling that they have to incorporate everything in the contract because if the other party will break it, the legal redress is anyway difficult and slow to enforce. People rely rather on other forms of enforcing their interests: payments in advance, etc. Contracts in G7 countries are more detailed, as they try to solve ex ante all the possible situations that can happen. It is not possible in Slovakia, because of permanent change of legislation. Sometimes, the imperfect contracts may have been caused by low legal experience of managers.
The today's situation has improved if compared to 2 or 3 years ago when many contracts were concluded knowing that they would not be kept. These tendencies have gradually been diminishing because the numbers of those involved and long-term relations between them in the respective industries have stabilized, and confidence and the space for gentlemen agreements grows as the parties get to know each other.

[3] The financial company is focused on using legal gaps for their personal profit but within the legal boundaries.

2.2.6. Bankruptcies

Question 6. Are bankruptcies and insolvencies managed through a clearly defined set of processes or procedures for the orderly distribution of liabilities, which involves independent (of management) distribution of assets?

Assessment Positive responses: 19
Negative responses: 120
Positive responses ratio: 13% (15%)

Laws The basic legal norm is Act on Bankruptcy and Settlement No. 328/1991 Coll. In the wording of Law 471/1992, 91/1993, 122/1993, 159/1994, 374/1994, 190/1995, 58/1994, 118/1996, 292/1996, 12/1998, 92/1998, 1997/1999, 281/1999, 238/2000 and 397/2001.
Postponing the drafting of bankruptcy-related legislation and/or backlogs of cases at courts had threefold negative effects: tunneling, capital stranding, and stranding of labor in surviving enterprises. The tunneling itself was warranted by legislation and its enforcement. Also, corruption of the corresponding institutions played a role. Tunneling can never be a matter of a single company since all stakeholders, including employees, minority owners, suppliers, clients, the local community and state, pay for it. Capital stranding is mostly understood mechanically – the company goes bankrupt, its assets are sold, by parts or (in the best case) as a whole to new owner(s), with the original production being at least discontinued and all the previous links being disrupted. A good legislation and a better institutional provision can be expected to result in bankruptcies, whereby enterprises are getting recovered under the administration of the biggest creditors and subsequently sold as a going concern with all their links and undisrupted production. This makes also creditors win since they achieve bigger yields; as do employees who do not have to discontinue work; and all the other stakeholders. In the final effect this is better since excess employment in a non-prospective enterprise or sector is addressed as soon as possible, so that the labor can look for other jobs, may invest into qualification (improvement or change), or establish own enterprises (small trade licensees).

The amendment to the Act on Bankruptcy and Settlement attempts to resolve „more trivial" problems of the existent regulation. Among the major improvements, the liability of the administrator and courts has been laid down to respect the interests of the creditors. So far, the tandem of an administrator and a judge basically ignored the creditors (see the recent big case of the Deposits Protection Fund), and informal talks with companies and banks suggest that the bankrupt's estate would frequently be divided between them. The classification of creditors has been made simpler, there are now fewer groups of them, and an automatic threshold has been introduced for bankruptcy to be opened – if payments are in delay for more than 30 days.[4]

Comments The opportunity to exit the market is one of the most appreciated criteria of the efficiency of one market. It is necessary to admit that it is very difficult to seize bankruptcies and insolvencies. Even G7 countries have problem to do it correctly. Another problem is the enforceability of such legislation, political will to pursue it and the general culture of enterpreneurship. The brilliant example is German construction giant Philip Holzman saved by the State although it should have gone to bankruptcy. On the other side of the ocean, the bankruptcies are a common phenomenon. The recent bankruptcy of Enron illustrates the rapidity and effectiveness of the Anglo-Saxon way of bankruptcy.
Bankruptcies are definitely assessed as one of the weakest parts of the Slovak entrepreneurial environment. They were practically not applied during some period and it was in paradox caused by the valid legal norm. In consequence of non-existence of effective bankruptcy and settlement many companies were present at the market that would not able to survive in a competitive environment. The situation has

[4] Marcinčin, A., Zemanovičová, L. (2001) : Slovakia: Improving Corporate Governance, INEKO, Bratislava

been changing slowly during recent years.

A survey conducted by INEKO showed that as many as 38% of companies believe that the new Act brought nothing new as courts continue working inefficiently; 22% of the companies do not utilize more efficient forms of collection of receivables such as payment orders and distraints. The Act is considered as an efficient tool for preventive improvement of the conditions of business relationships by 29% of companies. As much as 21% appreciate that various types of creditors have been made equal, and 14% of companies appreciate the opportunity to enforce their receivables as soon as within 30 days of the due date. (See Annex 1.)

There were many proposals on bankruptcies, but not many of them were solved until today. (See Annex 2.)
The Act on bankruptcy has some holes, e.g. if the creditor decides to remove the bankrupt's estate administrator and proposes another one, the judge is not obliged to confirm the next nominee. Open and unfinished processes are subject to the new rules, but the judges are afraid of using them because of interaction of the Supreme Court. Another problem is the corruption and manipulation of the executions. The position of judges is too strong, and that of creditors too weak.

2.2.7. Interests of Board Members

Question 7. Are members of a company's board required to disclose any material interest in transactions or matters affecting the company?

Assessment Positive responses: 58
Negative responses: 81
Positive responses ratio: 42% (38%)

Laws Within the Commercial Code, enactment in §136 (responsibility limited company) and §196 (joint stock company) determine that a member of the Board of Directors is not allowed to make deals that concern the subject of the company's business, to mediate for other parties, to be involved in a limited company, to be member of the board of a company within the same industry. The sanctions are mentioned in the §65.

The conflict of interest is defined also in some special laws e.g. the Collective Investment Act where according to the § 51,52,57 and 58 the members of the Supervisory Board and Board of Directors, confidential clerks and employees cannot prefer their own interests. There are also some restrictions on acquiring and selling of securities in the mutual funds managed by asset management company. The members of the Board of Directors and Supervisory Board of an asset management company cannot be the members of these bodies of another company or be a stockbroker in another company.

Comments It stems from the above mentioned ban that the members of a company's Board of Directors are not allowed to pursue their own interests at the expense of the company but they are not explicitly committed to disclose their private interests in relation to the company's activities. If owners require this, these requirements must be set in the company's Statutes or employment contracts. Absence of these statements in the laws harms minority shareholders because they, as opposed to the majority owners, cannot exert enough influence on the Board.
The information duties in Slovakia as well as in developed countries are not sufficiently defined. There is no obligation for example to take these material interests into account in the annual report.

2.2.8. Case Study: Deposit Protection Fund (FOV)

by Lívia Zemanovičová, INEKO

FOV was established in March 1996 and is governed by the Act No. 118/1996 NR SR on protection of deposits. FOV started its activity on October 10, 1996. The main aim of the FOV is to concentrate and manage the banks' contributions and deposit refund payments for inaccessible deposits of physical persons in banks according to the law. FOV paid the deposit refunds for all the bankrupted banks. According to the Act on Bankruptcies, FOV set up claims to the amount of refunds paid against bankrupted banks and became the majority creditor of AG Bank, SKB and Dopravná Banka.

Table 1. Deposit refund payments

Bank	**Bankruptcy date**	**Volume of refunds paid**	**Amount of deposits protected**
AG Banka, a.s., Nitra	13.4.200	1,75 bn SK	310 500
Slovenská kreditná banka, a.s., Bratislava	4.7.2000	4,32 bn SK	322 000
Dopravná banka, a.s., Banská Bystrica	22.8.2000	2,24 bn SK	328 000
Devín banka, a.s., Bratislava	28.8.2001	11,2 bn SK	355 000
Total	-	19,51 bn SK	-

The way bankruptcy courts approached and are approaching the splitting the bankrupt's estate among bank creditors is hardly understandable. If the FOV assumed banks´ liabilities – and it has cost it some SK 20 bn so far, see Table 1 – then it should be entitled (and this is not only in its own interest but also in the interest of all banks and the state) to have a corresponding share in the revitalization of bankrupt's estate.

At the investigative hearing of Dopravná banka at the end of 2000, the bankrupt's estate administrator denied the claim of the FOV against Dopravná banka. The reason was unclear wording of the §2 and §11 of the Act on protection of deposits (the claim of clients after the refund lapses, and so can not be transferred to another subject – not even the FOV). FOV lodged a complaint to court for recognition of his creditor claims. The Regional Court of Banská Bystrica fully recognized on March 14, 2001 the claim of the FOV. The creditor rights of the FOV were approved. Dopravná banka invoked the Supreme Court of the SR. Supreme Court of the Slovak Republic turned down FOV´s claim by ruling that the Fund was not a creditor of the bank. It means that although FOV paid the deposit refunds instead of the bank, he will receive nothing from the sale of the assets of the bankrupted bank.

Meeting of creditors of the Dopravná banka approved the creditors´ committee and realization of the bancrupt´s estate only after more than one year after the bankruptcy. Bankrupt's estate administrator did not recognized the claim of the FOV in the amount of 2,24 bn SK at the investigative hearing, FOV was present, but without voting rights. FOV succeeded to remove the bankrupt's estate administrator and to institute the creditors´ committee only on October 15, 2001.

AG Bank, the first bankrupted bank, has not yet convoked a meeting of creditors, no investigative hearing has been organized, and no creditor's committee has been established. As for the case of Dopravná banka, Supreme Court of the Slovak Republic turned down FOV´s claim by ruling that the Fund was not a creditor of the bank. In the case of SKB, creditor's committee could be established after more than a year, but FOV being majority creditor could not achieve a change in the person of the bankrupt's estate administrator.

2.3. Legal Processes Assessment

Summary of the Results:

2.	**Legal Processes**	**1,4 (1,6)**
	Question (percentage means the positive responses ratio)	**%**
8	Access to legal redress	21% (30%)
9	Speed of legal redress	1% (0%)
10	Cost efficiency of legal redress	8% (8%)
11	Arbitration	7% (0%)
12	Influence on court decisions	39% **(50%)**
13	Law enforcement	17% (31%)
14	Avoiding the verdict	44% (42%)

Among all the four surveyed areas of the Corporate Governance Risk, the assessment of legal processes appears to be the weakest one. The aim of this section was to inquire into the efficiency of legal systems and to show whether it provides sufficient redress to investors, creditors or other parties involved that suffer harm.
Potential inefficiencies have a vast impact on the shareholders position because it means that they cannot protect themselves effectively and fast enough against tunneling or the unfavorable use of earned profit either by the majority owner or the management. The situation is even worse for the enforcement of the rights of creditors. Furthermore, the question of effective law enforcement arises in this section as well as the possibility of the illicit influencing of judges.
Not a single question out of the seven was answered positively by the majority of the respondents. Most of the positive answers (44%) agreed upon that avoiding the verdict is complicating once the court pronounces it. 39% of respondents are persuaded that the decisions of the courts are not influenced by any of the parties in question.
On the other hand, most of the respondents were in a consensus in their negative perception of a whole range of problems. Complete unanimity (99%) was shown in assessing the slowness of legal processes, which allows the debtors the comfortable transfer of propriety into another legal entity. A strong majority (93%) agreed that even if arbitration has several positive effects on rapidity and acceptability of conflicts' solution, its use in Slovakia is marginal. According to the common opinion the loosing party would not accept the decision and meet the demands placed upon them by the commercial arbitration institution. They fear that such a decision would be either ignored or an appeal to the courts would be made anyway. Only 8% of the respondents perceive law enforcement to be cost efficient and slightly more than 20% believe in its accessibility at all.
This negative perception of law enforceability is proved also by the "Survey of economic elite opinion on actual questions of the Slovak economy development". The legal framework of enterpreneurship, mainly law enforceability, clarity of the law, quality of changes in the law, real solution of bankruptcies and settlements, creditor – debtor relations and effectiveness of the executions are perceived negatively by more than 30% respondents. Moreover, with a deteriorating trend. The respondents recognized only one positive trend – the improvement of the protection of foreign investors. On the other hand, the protection of domestic investors should be on the same level.
Our respondents identified also some positive development. The Swiss-Slovak project Court management has shown spark of hope for our jurisdiction. It has accelerated the delays of court procedures, engaged judges only in decision making while assistants did administration. Moreover, Slovak entrepreneurial environment is improving because of external reasons (approximation of the legislation with the EU) as well as internal reasons (increasing number of foreign companies who implement their entrepreneurial culture and habits and consolidation of domestic entrepreneurs with concentration to the long-term activities and so credibility towards all the partners). Furthermore, companies have found some tools to cope with the imperfect environment. New partners have par example to pay in advance or in cash.

2.3.1. Access, cost efficiency and the speed of legal redress

Questions 8, 9 a 10 are linked to such a high degree that we will comment on them together.

Question

8. Is access to redress through legal processes reasonably practicable for most business parties?
9. Is redress through legal processes reasonably speedy?
10. Is access to legal redress reasonably cost effective?

Assessment

Question	**8**	**9**	**10**
Positive responses:	30	2	12
Negative responses:	112	140	130
Positive responses ratio:	21% (31%)	1% (0%)	8% (8%)

Comments

Our interviewees do not have any negative experiences with enforcement of their rights, they try do ensure them already at the early stage of contracting or in the early stages of the legal process (executions, distraints). But it is commonly stated that legal redress is in fact not always accessible mainly to some groups like minority shareholders and creditors. At the same time, there are some groups with 100% enforceability (Penta group) of their rights. And it is often possible to corrupt the executor or bankrupt's estate administrator. The strongest agreement was reached in question 9 about the slowness of the legal processes. There are many cases not solved even for years. When one compares the costs and potential benefits of the whole case, it is often simply not worth the trouble and especially for small and medium companies. If it is clear that the company will not be paid for delivered goods or services, then is better to destroy invoices and at least avoid taxation from such fictive earnings. Many smaller firms are even not trying to obtain redress. The most expensive way of redress is that by the courts, therefore out-of-court redress is more frequent. For bigger companies, the costs of legal processes are not high, but the main cost represents time and the risk of asset transfer to another legal entity. Revenues from court decisions concerning minor issues rarely exceed the costs.
The situation is improving very rapidly. The progress from the situation 2 years ago is enormous. It may be due to the changes in the mentality and Slovak entrepreneurial environment as a whole and the improvement of the repressive tools. The positive example can be the Swiss-Slovak project Court management at one district court in Banská Bystrica, which has accelerated the delays of court procedures, engaged judges only in decision making while assistants did the administration.

2.3.2. Arbitration

Question

11. Is there a strong tradition of effective commercial arbitration?

Assessment

Positive responses: 11
Negative responses: 131
Positive responses ratio: 8% (0%)

It the context of the Czech-Slovak history, this question is somewhat misleading. Commercial courts prior to year 1989 had a form of arbitration in the consumer-supplier relationship. Next to that a strong tradition of effective arbitration existed during the "First Republic" (years 1918 – 1938). Traditions of this kind are not the subject of the question so the word tradition should have been left out.

Comments

The institution of arbitration is only emerging in the Slovak economy under the auspices of the Slovak Commercial and Industry Chamber, but only in marginal extent. The core principle of arbitration lies in the fact that both parties respect and fulfill the requirements of the arbiter. The main advantages of the arbitration consist in more flexible and speedier process of decision, cost savings, specialization of arbiters and private character of the process. In the Slovak situation where the decisions of the court are often too slow and corrupt it could be the ideal perspective, but it is very questionable, how it would function. The cabinet of Prime Minister M. Dzurinda recently approved the Act on Arbitration. The former legal norm was not functioning, too restrictive and rarely used. The main problems were cited as narrow extent of affairs submitted to the arbitration, rigidity by the choice of arbitration structures and non-standardized rules. The new norm enlarges the extent of affairs,

provides liberalization of arbitration so that the domestic as well as the foreign subjects can more frequently use it and it specifies mechanisms to enforce the decisions. The Act has not been approved by Parliament yet.
On the other hand, the international arbitration is used (the case ČSOB versus State).

2.3.3. Influence on court decisions

Question 12. Are court decisions largely uninfluenced by commercial, political, or improper considerations?

Assessment Positive responses: 54
Negative responses: 85
Positive responses ratio: 39% **(50%)**

Comments There are many elements to take into account. First of all, it is necessary to distinguish between big and well-known processes, which are mainly distorted by political impacts and the smaller ones. Majority of these cases is influenced by the commercial considerations and at the same time there is also an interconnection between politics and economy. The biggest cases are solved differently from smaller ones, which are mostly not influenced by any improper interests. In general, there is mainly business influence on the court decisions and is linked to the volume of money involved. Secondly, sometimes the biased result of a process is not due to any influence but judges still lack experience and the willingness to solve difficult commercial matters. In practice, they prefer adhering to the letter of the law and formalities rather than seeking to find the core of the whole matter and its solutions. The number of unfinished processes increases and the judges are being forced to deal with more and more cases simultaneously, which logically affects the quality of decision-making.
Finally, some respondents consider judges as a profession clan, strong since communist era which is hard to punish and quasi impossible to reform by their own inner forces. The corruption in jurisdiction is often present at "lucrative affairs" like nomination of bankrupt's estate administrator, fees for speeding or prolonging the lawsuit processes and bidding processes.

2.3.4. Law enforcement and avoiding the verdict

Questions
13. Does an effective system for ensuring respect and enforcement of legal decisions operate within the country?
14. Is it difficult to evade the consequences of legal judgements against business entities?

Assessment

Question:	**13**	**14**
Positive responses:	24	61
Negative responses:	117	79
Positive responses ratio:	17% (31%)	44% (42%)

Comments The respondents consider that relatively effective tools in ensuring and enforcement of legal definitions are executions and distraints. For the executors it is business on their own, so they are motivated to achieve a good result, still on the other hand, there is a risk of corruption. Some companies used the services of agencies specialized on debt recovery. Almost half of the respondents think that after final verdict it is complicated to avoid bearing the consequences of the verdict. If there is a final decision of the court, then it is enforced. The problem is to arrive at this decision. It is more efficient to evade in the former stages of the legal process, to make obstacles, prolong the legal process, etc.

2.3.5. Case Study: Project Court Management

by Lívia Zemanovičová, INEKO

The Slovak Ministry of Justice approved the Swiss-Slovak project "Court management" with the aim to improve and verify the work procedures used in court structures, to optimize them and test in the pilot running. The pilot project was implemented at the Regional Court in Banská Bystrica in August 2001. The project team prepared the global analysis of the circulation of a lawsuit document in different departments and in different kinds of processes. The analysis focused on territorial emplacement of offices as well as on the redistribution of the tasks between judges, court secretaries, office managers and office assistants. One of the most important result was increase in the effectiveness of a lawsuit document circulation within one court, accompanied by the opportunity to monitor that movement and minimize internal correspondence. It was possible to increase the number of judicial decisions on the start of a legal proceeding within 3 months since the proposal even by 70%. The new procedures of work last more on court administration that is now preparing the law-suit document and the judge has acquired up to 70-80% of his time, which has been occupied by non-professional administrative activities before the project has been applied. The average time interval since the registration of a complaint to the determination of the first hearing decreased from 73 days to 49 days and the time interval between the first and the second hearing decreased as well from the average value of 38,8 days to 16 days. The number of days between the admission of the case by the judge and his decision decreased from 123,5 days to 50,5 days. According to the previous procedures, the judge and 3 employees had to perform 2103 operations between registration of a complaint up to the determination of the first hearing, when 90 lawsuit documents are considered. According to the new procedures the judge and 2 employees have to do only 561 operations with the same number of lawsuit documents. The application "Registry" makes it possible to register the lawsuit document in electronic form. It ensures the monitoring of the lawsuit document movement during its life cycle. The application enables to find the lawsuit document within a few seconds, to inform where the lawsuit document actually is and in what stage of accomplishing. The judges are assigned to cases by a random sampling, without the possibility of human influence.
The pilot project would be extended to another 4 courts. It should be applied progressively also at others regional courts what will depend mainly on finances from the Ministry of Justice.

2.4. Regulatory Regime Assessment

Summary of the Results:

3.	**Regulatory Regime**	**3.0 (4.0)**
	Question (percentage means the positive responses ratio)	**%**
15	The regulator of capital markets	42 % **(78%)**
16	Central Bank	**71 % (85 %)**
17	Financial watchdogs	40 % **(77 %)**
18	Insider trading	**52 %** (31 %)
19	Fair competition regulation	44 % (**62 %)**
20	Company records	15 % (25 %)
21	Audit	31 % (42 %)

As Crichton-Miller and Worman (1999) mention, for an acceptable investment climate it is essential that regulators perform their main functions that need to be well defined through the laws and commonly accepted industry practices. Since we do not distinguish in details between the legal definitions and its application by the regulator in practice, crucial point in each question is the perceived credibility of the regulator. Credible regulatory regime in a given country shall be secured by regulators (be it the central bank, antitrust office, or capital market regulator) actively pre-empting possible out-of-law or economically dangerous activities and punishing for such steps to the extent their competence allows them to. Regulatory regime is closely linked to the issue of transparency and up-to-date information on the business, as well as protection of business secrets. Questions on insider trading practices, reliability of company records and financial audit cover these issues.

Among the 4 parts of the questionnaire, regulatory regime ranks second, with 3 out of maximum 7 points. Seven questions in this section investigate either the perceived credibility of different types of regulators, or general conditions or outcomes of the regulatory regime (insider trading, company records or international audit standards). The most positively perceived regulatory institution is the central bank (71% positive answers). A narrow majority considers insider trading illegal or unethical (52%). Three questions were perceived slightly below average: regulator of capital markets, financial watchdogs and fair competition regulation (all between 40-45%). Worst results stem from low dissemination of international audit standards (31%), by now typical only for the big or foreign firms, and from a weak quality of the company records (15%). The latter result is caused by not up-to-date or sometimes inaccurate company records (See the Case study on Companies Register for more details) that can promote environment suitable for fraud. If only results from interviews are taken into account, this section would receive higher rating (4,0) and most of questions would gain higher score, with exception of question 18.

2.4.1. The Regulator of Capital Markets

Question 15. Does the stock market regulator (in case of the Slovak Republic the Financial Markets Commission) show evidence of consistent and impartial action?

Assessment Positive responses: 53
Negative responses: 72
Positive responses ratio: 42 % **(78%)**

Comments The newly established Financial Market Commission (FMC) has a very short track of existence since January 2001. In their answers, questionnaire respondents (late 2000) therefore referred to the decade when the Ministry of Finance (MF) itself played this role and received a very bad reputation. As noted by several interviewed persons, "instead of regulating the MF has in fact killed the market." Interviewees (late 2001/early 2002) could have expressed also their perception of the FMC. Although establishing the FMC has certainly been a right decision, respondents feel that its real independence from the MF must be proven in practice and also unless FMC is able to attract and employ the elite within the market, which it by now did not, it is not supposed to achieve good results anyway.

2.4.2. Central Bank

Question 16. Is the Central Bank, in its role as regulator of the banking sector, politically independent in its actions?

Assessment Positive answers: 98

Negative answers: 40

The percentage of positive answers: **71 % (85%)**

Comments This question received the highest ranking in the section. As confirmed during the interviews, perception of the Slovak central bank has been twofold: conduct of the monetary policy in general has been considered reliable and professional, backed up by relatively sound results in terms of inflation and the exchange rate. On the other hand, the bank supervision has been rather negatively evaluated mainly because of the recent case of Devin bank. Although the situation in this area is expected to improve substantially after personal changes in the central bank and privatization of state banks. Results are therefore affected by the weight each respondent assigned to these two factors. The interviews were conducted after scandalous bankruptcy of the Devin bank, indicating political ties of central bank supervision in this case. Devin bank is the 4th bank that bankrupted in recent decade in Slovakia. This number is relatively low (as compared to e.g. the Czech Republic) mainly due to a conservative bank license provision by the Slovak central bank. Central bank in Slovakia presents a relatively successful story of a regulator in a transition country. As expressed by one of our interviewees "since the very beginning, the central bank relied on international standards and rules, but could not have applied them strictly. Otherwise, it could have closed down most of the banks in the early 90-ties. Nowadays, all these rules can be applied fully."

2.4.3. Financial Watchdogs

Question 17. Do there exist effective independent financial watchdogs possessing their own investigative powers and resources? (In Slovakian case e.g. financial police, tax offices, Supreme Audit Office)

Assessment Positive responses: 55

Negative responses: 82

Positive responses ratio: 40 % **(77%)**

Comments Our respondents have questioned the efficiency and activity of most institutions – financial watchdogs. Although some institutions. e.g. financial police are considered to be professional and with enough competence, sometimes there is discrepancy between them and the courts. Courts are perceived as the weakest part in the system. Recently, the MF introduced a new body in this field – tax police. As the survey carried out by INEKO[5] reveals, economic elite in Slovakia considers this body to create a new duplicity with the already existent financial police. On the other hand, the Government expects more efficacy and success in the battle with economic criminality.

In the area of public finance (we referred mainly to the state owned companies), most respondents referred to the Supreme Audit Office (SAO) and its activity, which has been criticized due to unsuccessful sanctions enforcement. SAO is accountable to the Parliament and in transition countries this constitutes for a weak pressure. Another issue in this area is the real independence of these institutions. Once their budget can be influenced by either Parliament or government (via MF regulation of the state budget during the year) or their head can be easily removed, it is hard to expect independent and active functioning.

2.4.4. Insider Trading

Question 18. Is insider trading illegal or considered unethical?

Assessment Positive responses: 71
Negative responses: 66
Positive responses ratio: **52 %** (31%)

As mentioned in the Czech CGR report, in formulating the question the authors assumed that if something is considered illegal it is also considered unethical. Because such assumption does not always hold, the answer to this question could be obscure. This is exactly what the Czech and also Slovak respondents felt. If the question inquired about the legality of insider trading, then the answer would clearly be positive. The misuse of confidential information is still taking place quite frequently and is considered to be evidence of special talent more than a case of an ethical lapse. So the final answer is negative.

Comments Insider trading is illegal in Slovakia (see the Act on Securities and Investment Services and Commercial Code for details on abuse of information and business secrets). Yet, in practice it is considered to be a common and attractive business. Insider information is used for personal profit, but in our country it is in general still not perceived as a big problem as compared to e.g. USA. When considering possibilities for turnaround of this situation, we cannot rely on the equity market to bring about positive changes. Big players who could have brought the culture in the market are not active in the Slovak equity market. Mainly little players with not that good culture are present (so called „investment boutiques").

2.4.5. Fair Competition Regulation

Question 19. Are there regulatory bodies concerned with monitoring competition and improper commercial behavior that possess formidable powers of investigation and sanction? (In Slovakian case the Antimonopoly Office)

Assessment Positive responses: 59
Negative responses: 76
Positive responses ratio: 44 % **(62%)**

[5] Survey HESO Q4 2001, for more information see http://www.ineko.sk

Comments Almost all our respondents recognized there is an institution – the Antimonopoly Office – possessing power of investigation and sanction. But, the activity, or passivity of the Antimonopoly Office has been criticized from several points of view: low independence, improper reactions in several cases, inefficient use of their competence and low sanction tools, to mention just the most frequent comments.
Independence of the Antimonopoly Office has not been defined well in the past; this has improved with the recent amendment of the Act on Economic Competition in 2001. But it shall take some time till the result occurs in practice as well. The Office possesses enough competence, but its sanctions are still low (if it levies a monopoly with a few million SKK sanction, it is a negligible sum) and also the regulator is often passive in its actions. There are cases of bad or none (which may be sometimes equally bad) reactions of the Antimonopoly Office. Our respondents mentioned the case Internet providers vs. Slovak Telecom, recent Slovak Telecom price increases, UPC (cable TV provider) case, Slovnaft oil-refinery merger with gasoline company or the provision of state aid. The result is that there is not enough trust in activity of this institution.

2.4.6. Company Records

Question 20. Are company records maintained which are thorough, dependable, and up to date, with sanctions and safeguards against either the submission of inaccurate or untimely information or of tampering with those records?
(Disclosure quality should include an assessment of the quality of disclosure of financial and operating results, subsidiaries, shareholders and voting rights, members of the board and their remuneration, and issues such as contingent liabilities and risks.)

Assessment Positive responses: 21
Negative responses: 113
Positive responses ratio: 15 % (25%)

Comments Transaction costs when doing business are highly affected by the level of access to timely and accurate information on enterprises. Most of our interviewees focused on the Companies Register, only a few considered the disclosure rules of the stock exchange.
Companies Register in Slovakia suffers from its slow operation and before the recent amendment of the Commercial Code also from imprecise legislative enactment. The amendment in force since January 1, 2002 solved many of the previous legal problems and increased the transparency of the process (See the Case study on Companies Register). Still, there is a lot of fraud based on inaccurate and not up-dated information in the Register. As one of our respondents points out "still we are more informed about foreign companies than we are about the Slovak ones." The sluggish operation of the Register has been heavily criticized by all the respondents. At the same time it is obvious that certain operations can be done within 24 hours, not in a couple of months (visible in case of several companies using the formal person to bankrupt the indebted company and have built a prosperous business on their fast activity). According to the World Bank – USAID (2000) survey, the Companies Register is a place where firms often encounter corruption. Among the firms that interacted with the Companies Register in Slovakia, 15% reported that they had paid some bribe, and less than 40% gave a favorable quality assessment. The year when registering companies were most likely to pay bribes was 1994. The Internet based Companies Register provides only informative extracts and is up-dated with a 2-week periodicity, not in the real time. Yet it is perceived as a benefit for companies with even more potential after it is improved in speed.

2.4.7. Audit

Question 21. Are international standards of auditing adhered to as a matter of routine?

Assessment Positive responses: 43
Negative responses: 96
Positive responses ratio: 31 % (42%)

Comments International auditing standards are already a matter of routine in large and in foreign joint-stock companies. When talking about the market as a whole, the situation is reversed. As to the information value the audit reports provide for the business, the full trust cannot sometimes be given even to big 5 auditing companies. According to anecdotal evidence, they have given distorted audit results to some banks in troubles. For the smaller auditing companies, there is a risk of biased audit reports they produce for their major clients and also the practice of „buying" audit results exists.

To present the latest development in this area, Slovakia has become involved in the international project „Strengthening of the National Accounting and Reporting System" organized under the auspices of UNCTAD and IFAD, and has been participating in the work of the International Accounting Standards Committee. A commission was established to develop, during the first half-year of 2001, an analysis of differences between Slovak and international accounting standards. Based on such an analysis, an amendment to the Accounting Act and to Auditors Act will be drafted in 2002. With an expected effective date January 1, 2003 harmonization of the legal standards of Slovakia in the field of accounting with EU directives as well as international accounting standards will thus be provided for.

2.4.8. Case study on the Companies Register in Slovakia

by Martina Kubánová, SGI

The Companies Register is designed to maintain information standards in the business environment. Furthermore, it is also the first step in the process of starting doing business in Slovakia. A non-resident (foreign investor) can set up a subsidiary commercial company according to the Commercial Code with its headquarters in Slovakia, or he can set up an enterprise or a part of it in Slovakia. According to the Commercial Code (§21, Section 4), a non-resident (except for natural persons from the EU and OECD-member countries) "shall be entitled to conduct business activities in the territory of the Slovak Republic starting from the day on which enterprise of such party or the organizational part of its enterprise are incorporated into the Companies Register to the extent of the scope of business recorded in the Companies Register." Furthermore, the Companies Register shall be a public register of data, including the Collection of Deeds as stipulated by the law. The Companies Register shall be kept by a Register Court designated by a special Act. The facts entered into the Companies Register shall be effective towards any party as of the day on which they were publicized. The Commercial Code enacts in much more detail the issues of effects on third parties.

More than the legal enactment, it is the real situation on the register courts that can point out to existent deficiencies in the functioning of the Companies Register. Most of the complaints are due to:

- slow registration process,
- and lack of transparency in this process.

Registration is ensured by the net of 8 register courts located in the seats of the 8 regional courts. By the year 2000, the system has not yet been centralized nor interconnected in terms of IT system. Situation improved in 2000-2001 period, with the Commercial Code amendment and the application of Internet based Companies Register, though with 2-week up-date and informative nature only.

According to the document Framework (2000) based on a research carried out by the World Bank, foreign investors revealed that the whole process of establishing a company in Slovakia (incl. obtaining the trade license) would have normally taken 2 to 6 months. Yet with the proper "motivation" of the register court it could have been performed within 3 weeks. The Companies Register is among the organizations with the most expensive bribes, averaging over 6,000 SK, as the World Bank – USAID (2000) reveals. Among the firms that interacted with the Companies Register in

Slovakia, 15% reported that they had paid some bribe, and less than 40% gave a favorable quality assessment. The year when registering companies were most likely to pay bribes was 1994.

Slow registration is not necessarily an inevitable fact in transition countries. Some post-communist countries like Latvia can register a company even within several days. Problems with the slow courts in Slovakia can be assigned to 2 groups of factors:

- Low efficiency of the Slovak judicial system as it has a low technical capability, e.g. not enough computers, poor or none centralized information systems, etc. and as it restricts the action to be taken to judges only even in case of simple administrative procedures. The latter has improved with the recent Commercial Code amendment.
- Judicial system itself has substantial incentives to maintain the status quo and is prone to corruption.

Given the current technical capacity, the working load of the registry courts is substantial. During 1998-99 period they received 81,761 registration proposals, wherefrom more than 60,000 requested establishment of new limited liability companies. Moreover, the courts have to deal with proposals for changes in the records (in May 1999 they received 2,800 such proposals). Apart from the already mentioned problems, decisions of register courts have been biased in some cases due to subjectivity and unclear procedure. Problems with interpretation of the Companies Register enactment in the Code can be improved by clarifying the enactment and terminology of legal norms related to the Commercial Code and also by employing standardized registration forms.

There were several amendments to the Commercial Code in the course of nineties. They have to some extent changed the rules governing the Companies Register as well. We shall mention the previous changes (amendment in October 3, 2001, in force since January 1, 2002) as they account for the major changes of the Commercial Code as a whole. The recent amendment includes the principles of the EU regulation No. 68/151/EEC as of March 9, 1968 and introduces several other important changes with regard to the Companies Register:

- the list of obligatory data recorded in the Companies Register has been extended,
- the Collection of Deeds at the Companies Register has been established, so that anyone can access the source data as well as the resulting records in the Companies Register,
- the opportunity to negate the validity of a company establishment has been enacted more properly, so that neither the founders nor the third parties could question the validity of company establishment *after* the registration, except for exactly named cases,
- other persons than judges were allowed to file some basic declaratory records in the Register,
- IT systems of the registry courts were interconnected and the Civil Court Order amended so that each register court could provide information recorded by any other register court.

2.5 Assessment of Ethical Overlay

Summary of the Results:

4.	**Ethical Overlay**	**1.9 (2.5)**
	Question (percentage means the positive perception ratio)	**%**
22	Combating the organized criminal activity	12 % (8%)
23	Role of criminal groups	48 % **(62%)**
24	Corruption rating	15 % (0%)
25	Business violence	40 % (46%)
26	Extra fees	41 % **(77%)**
27	Tender processes	20 % (39%)
28	Bribes	14 % (31%)

The legal and regulatory system, be it perfectly designed, applied and enforced, can be disrupted when in touch with a culture tolerating criminal activity, corruption, trespassing law and unethical behavior of economic agents. Crichton-Miller and Worman (1999) grab our attention to multiple examples of wide-spread corruption in Russia and conclude that ethical overlay in emerging markets "has a strong and direct effect not only on the cost of doing business but also, less well understood, on the risks of doing business."

Section "Ethical Overlay" is the second worst ranked section in the Slovak part of the research with only 1.9 points out of maximum of 7. None of the seven questions is perceived positive, the only one close to the average value is the perception of the role of criminal groups in the economy. Most negatively perceived is the failure to combat the organized criminal activity (12%), "wide perception of government officers" to expect bribes (14%) and the corruption rating by the Transparency International (15%). If we consider single results from interviews, we can see they are sometimes more critical (questions 22 and 24) than the whole sample, but usually more optimistic. The interviewees do not think that extra fees for services occur in Slovakia more frequently than in G7 countries (77% positive perception) and also think that the role of criminal groups in substantial industry sectors is not significant (62% positive perception ratio).
Slovakia ranked 51-54th in the recent 2001 ranking of Transparency International[6] with CPI 2001 index 3.7 (upper and lower bounds are 2.1 - 4.9). Results for other Visegrad-4 countries are as follows: Czech Republic 3.9 (47-49th place), Poland 4.1 (44-45th place), Hungary 5.3 (31-33rd place). Comparing the CPI index development over the period 1998-2001, Hungary ranks best and receives stable ranking around 31-33rd place with approx. 5.0-5.3 points. Poland ranked between 39-45th place with around 4.1-4.6 points. The Czech Republic experienced the biggest fall in the CPI index over this period, falling from 4.8 points and 37th place in 1998 gradually down to 3.9 points and 47-49th place. The Slovak Republic received relatively stable ranking of around 3.7-3.9 points (47-54th place). In 2001 there was a slight improvement in the CPI index for Slovakia, but it cannot be considered to be a trend tendency yet.

2.5.1. Combating the Organized Criminal Activity

Question 22. Are law enforcement and fraud investigative bodies perceived to be ineffective in combating organized criminal activity?

Assessment Positive perception (responses "no"): 17
Negative perception (responses "yes"): 123
Positive perception ratio: 12 % (8%)

Comments Combating organized criminality is a difficult task *per se* and a corrupted environment in Slovakia makes it even harder. Our respondents almost unanimously expressed their discontent with weak or no results of fraud investigative bodies. They assign it mainly to the incompetence of investigators, but also to their links to mafia-like

[6] see http://www.transparency.sk for more details

organizations and people involved in corruption activities. Organized criminal groups are viewed not to be only "cowboys" but also financial criminals operating in both the public and private sector; abuse of EU funds, past asset stripping in the big state-owned banks and in state monopolies to name just a few. This question ranked worst in the whole section, and is negatively assessed by both written- and oral-form respondents.

2.5.2. Role of Criminal Groups

Question 23. Is there evidence of criminal groups (e.g. Mafia-like organizations) playing a significant role in controlling any substantial industry sectors?

Assessment Positive perception (responses "no"): 63
Negative perception (responses "yes"): 68
Positive perception ratio: 48 % **(62%)**

Comments Assigning a yes/no answer has been mainly influenced by the perception of the words "significant role" and "substantial industry sectors". Some respondents have argued that mafia-like organizations control many restaurants and casinos, but not substantial industry sectors. Groups or people holding control over major companies use other ways of rights enforcement - rather by legal instruments. Yet, their activity may be considered legal, but at the same time not necessarily ethical. On the other hand, some respondents were more critical and suspicious, claiming that one of the worst impacts of the recent Government (1994-98) being in power was that they let the organized criminal groups enter the big business through political connections. Privatization of many state-owned companies and banks is expected to improve the situation to some extent.

2.5.3. Corruption Rating

Question 24. Is this a country ranked below 30th place within the Transparency International corruption rating system?

Assessment Positive perception (responses "no"): 20
Negative perception (responses "yes"): 110
positive perception ratio: 15 % (0%)

Comments According to the recently published corruption index (CPI 2001) assessed by the international anti-corruption organization Transparency International, Slovakia ranked 51-54th with CPI 2001 index 3.7 points (upper and lower bounds are 2.1 - 4.9).
The level of corruption represented by the CPI index of 3.7 is measured on the scale of 0 (a completely corrupt country) to 10 (country without corruption) in 91 assessed countries. As revealed by the World Bank – USAID (2000) study, enterprises encountered bribery during 1998-2000 mostly at customs, import and export licensing, the Certification Authority, construction permits, and State Business Supervision. The bribes reported by enterprises ranged from 40 to 500,000 SK, with the largest bribes being paid in the areas of banking services, import and export licenses, courts, telecommunications and customs. The courts and banking services were the recipients of the highest average bribes and the highest median bribes. More details are provided in the Case study on Corruption in Slovakia.[7]

2.5.4. Business Violence

Question 25. Does the country experience a material level of assassinations, kidnappings, or threats to business figures each year?

Assessment Positive perception (responses "no"): 51
Negative perception (responses "yes"): 77
Positive perception ratio: 40 % (46%)

[7] For more information on CPI index, please see http://www.transparency.sk.

Comments Except for cases described by the daily press, it is not widely known about the real threats and harms to businessmen. In practice, we can indicate that unwillingness of people to enter some type of business (e.g. restaurants) is due to worse situation in this sector than the average. Our respondents mentioned several cases when influential businessmen, lawyers or public official were assassinated (former Minister and Slovak Gas Industry chief J. Ducky, directors of a footwear factory in Partizanske, etc.)

2.5.5. Extra Fees

Questions 26. Is the country one associated with the payments of extra fees for services for which such fees are not usual in the United States or EU (e.g., payment to enter a tender process)?

Assessment Positive perception (responses "no"): 54
Negative perception (responses "yes"): 76
Positive perception ratio: 41 % **(77%)**

Comments Our respondents, based on their professional background, referred either to large tenders (privatization), or common tenders. Their experience can be generalized in case of large tenders as all respondents *unisono* claim that fees for entering public tenders – big privatization deals – shall be even higher. Thus the important information shall be secured and enabled only to really serious bidders. Information security in G-7 countries is higher and fees are higher as well than in Slovakia in this regard. The experience concerning the smaller or common tenders is mixed. Most respondents say that only fees to cover tender preparation cost are paid, which is common anywhere. Some consider them too low, some too high and do not consider it fair that fees to enter public tender are not returned to unsuccessful bidders. Written-form respondents could have referred also to extra fees required for speeding up certain processes and for problem-free solutions. Such transactions would normally be carried out even without extra fees but at a slower pace, which could cost the companies dearly.

2.5.6. Tender Processes

Question 27. Are the outcomes of tender processes and other open market auctions of commercially valuable rights felt to be biased, opaque, and likely to have been influenced improperly?

Assessment Positive perception (responses "no"): 26
Negative perception (responses "yes"): 108
Positive perception ratio: 20 % (39%)

Comments As quoted in the Czech CGR report „it is a custom, even in the most developed markets, to doubt the fairness of the tender outcomes by the unsuccessful participants." To assess this question fairly, respondents had to assign weights to "general" or "average" tenders and to those mainly big cases, focused on by media. In general, big tenders were not considered to be transparent and performed in accord with the legislation in the past, but this has significantly improved. What is hard to consider is the final decision between the remaining 2-3 best candidates. The biggest tenders are not formulated to fit the preferred candidate only, but in the case of smaller tenders, the practice is completely different. As confirmed by some respondents from small or medium firms, perception that tender outcomes are opaque is heavily decreasing their willingness to enter any tender.
Apart from classic tenders, the government provides to businesses a wide variety of export and import licenses. Deputy Prime Minister for Economy prepared recently a new draft system of licensing. Main change is that 84% of automatic licenses have been abolished, and the rest of licenses 2 new categories are created: automatic licenses with other than quantitative limit, and non-automatic licenses on goods with quantitative limits. The latter shall be provided in auctions where the highest bidder

gets the license. The new system introduces also transparency and efficiency measures. Processing of license requirements shall shorten to 5 days from previous 30 or 60 days. Furthermore, state administration bodies are obliged to publish all the data regarding license provision on the web (e.g. criteria and results of the license procedure, license commission members, list of applicants, list of applicants who were provided a license, reasons for not providing a license, etc.).

2.5.7. Bribes

Question 28. Are government officers widely known to expect or require payment for either preferential or basic discharge of their powers?

Assessment Positive perception (responses "no"): 18
Positive perception (responses "yes"): 115
Positive perception ratio: 14 % (31%)

Comments As with some other questions, respondents faced dilemma of assigning weight to frequency of the issue or to its volume (big cases with media impact). Most of our interview respondents claim that it cannot be considered a general rule or general perception that government officers expect or require payments for either preferential or basic discharge of their powers. Anyway, this phenomenon is relatively widely spread in Slovakia. Also, by slow speed and unwillingness, the officers indirectly "blackmail" the businessmen. More information on the perception of corruption by enterprises is provided in the case study on corruption in Slovakia.

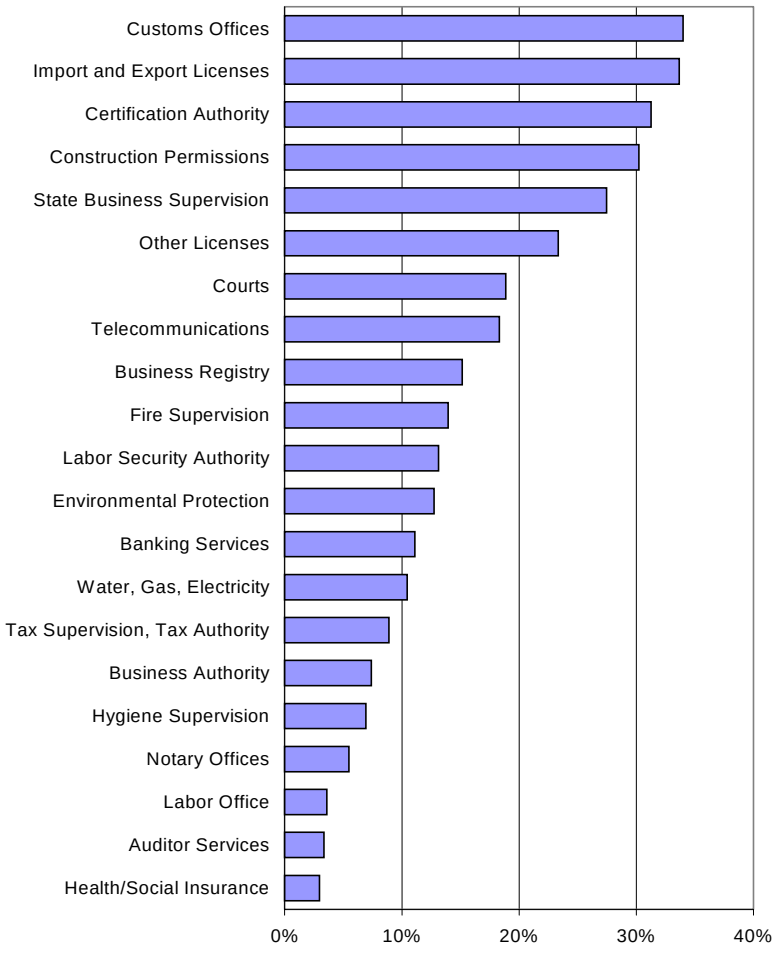
2.5.8. Case study on corruption in Slovakia. What is the perception of enterprises?[8]

by Martina Kubánová, SGI

Corruption is perceived as a serious problem in Slovakia. The measure of corruption perception by the CPI index published by Transparency International confirms this statement. In the course of last 4 year, our ranking in terms of CPI has been relatively steady at approx. 3.5-3.9 points out of a positive maximum of 10 points.

The surveys performed by the World Bank - USAID (2000) reveal that corruption in Slovakia is a common phenomenon with impact on all the key sectors of the economy. Individual citizens were most affected in the social sectors, with 60% indicating provision of gifts, tips and bribes to obtain hospital services and 25-35% for other medical services and higher education. Enterprises are most affected by licensing and regulatory bodies, courts and customs, with incidences of bribes reported by 1/3 for many of these offices. Public officials, enterprises and households identified the judicial system[9] as a major area of corruption.

Chart 1: Percent of Enterprises that Encountered Bribery in Previous Two Years[1]
(of those that interacted with the body or service)



In the enterprise survey, managers were asked how many times they had visited each of 26 different bodies (mainly state agencies, incl. state-owned utilities, banks and notaries) and how many visits it was made known to them that they should pay a bribe or that they felt before-hand that they must pay a bribe. As can be seen in the chart on the right side, on the top of the list is customs, import and export licensing, the Certification Authority, construction permits, and State Business Supervision.

The bribes reported by enterprises in the survey ranged from 40 to 500,000 SK, with the largest bribes being paid in the areas of banking services, import and export licenses, courts,

[8] Case study is prepared based on information provided by the document World Bank - USAID (2000): Corruption in Slovakia. Results of Diagnostic Surveys. Available at http://www.government.gov.sk.

[9] Enterprises reported frequent bribes in court cases and consider slow courts and low execution of justice to be most important obstacle to business. Households report paying frequent bribes to court personnel, mainly to speed up the process and those who found experiences with courts to be inefficient and slow were much more likely to report process was corrupt.

telecommunications and customs. The courts and banking services were the recipients of the highest average bribes and the highest median bribes.

Table 1. The Size of Bribes Encountered by Enterprises

	N	median	average	min	max
Courts	8	11,250	25,500	1,000	100,000
Banking Services	15	10,000	63,155	120	500,000
Business Registry	17	6,500	6,629	40	22,500
Water, Gas, Electricity	15	5,000	9,107	100	50,000
Import and Export Licenses	25	5,000	14,184	100	190,000
Construction Permissions	15	5,000	7,533	500	30,000
Environmental Protection	9	5,000	3,213	120	10,000
Other Licenses	12	3,500	7,875	500	50,000
Business Authority	10	3,500	3,412	120	10,000
Fire Supervision	9	3,000	2,331	180	5,000
Telecommunications	31	2,000	7,539	100	100,000
State Business Supervision	15	2,000	3,513	200	10,000
Tax Supervision/Authority	21	2,000	5,683	150	20,000
Labor Security Authority	11	2,000	2,965	120	10,000
Certification Authority	17	2,000	5,965	400	50,000
Hygiene Supervision	5	1,000	1,480	100	3,000
Customs offices	36	1,000	5,795	100	100,000
Notary Offices	7	1,000	4,429	1,000	15,000
Health/Social Insurance	5	500	1,430	150	5,000
Labor Office	5	500	1,304	120	5,000

Source: World Bank – USAID (2000), page 12.

3 Conclusions

The aim of this study was to identify the index of the corporate governance risk in the Slovak Republic, which is a proxy variable for accessing the quality of business environments in various countries at various time periods. From the answers of 118 respondents, who were mainly managers of influential companies in SR, the average **risk index is 10** points from the possible 28. According to the scale of risk of Crichton-Miller and Worman the country ranges in the upper zone of **high risk** for investors. The countries of G7 rank between 21 and 28 points. Although, there are many indications of permanent improvement of the situation.

3.1 Identification of Specific Risks in Corporate Governance

The level of the index of CGR in the Slovak Republic was evaluated at 10 points. Another question, however, remains as to what the 10 out of the 28 characteristics are that the respondents consider as functioning well relative to the developed markets. The table on the next page shows that in a whole sample a clear positive agreement (100-80% of positive answers) was achieved only in one question and in another one the agreement exceeds 60% of the respondents. If we use the simple majority as the criteria for an agreement, we get 4 positively assessed characteristics.
On the other hand, 10 characteristics were perceived as definitely negative (20-0% of positive answers) and another 6 as rather negative (40-20% of positive answers). There were 24 characteristics negatively assessed.
After 8- month time delay the sample of interviewees perceived 2 characteristics as clearly positive and another 7 as rather positive. If we use the simple majority as the criteria for an agreement, we get 10 positively assessed characteristics.
The numbers of definitely negative agreements declined to 6. Another 8 characteristics are perceived rather negatively. The number of questions answered negatively by the simply majority of respondents declined as well to 18.
If we were to identify the three most crucial factors that increase the corporate governance risk in the Slovak Republic today, they would be:

1. The law enforceability;
2. the low effectiveness of bankruptcies;
3. and the high level of corruption.

The characteristics are more precisely listed in the following tables.

Questions	*% of positive answers of the whole sample*	*% of positive answers of the interviewees*
3. Shareholder rights to vote in general meetings and elect members of the board are well-defined.	83	92
16. The Central Bank is a politically independent regulator of the banking sector.	71	85
2. The definition of the rights of all parties.	58	77
18. Insider trading is considered to be illegal or unethical.	52	31
1. The transparency and security of the registration of claims upon companies.	48	69
23. No substantial industrial sector is controlled by any criminal group.	48	62
14. It is difficult to evade the consequences of legal judgements against business entities.	44	42
19. The Antimonopoly Office possesses powers of investigation and sanction.	44	62
5. The quality of contracts is comparable with that in the G7 countries.	42	46
7. Members of company's board are forced to disclose their material interests in the company's activities.	42	38
15. Impartial and consistent action of the regulator of the capital market.	42	78
26. Extra fees for services for which such fees are not usual in the US or EU.	41	66
25. Level of assassinations, kidnapping, or threats to business figures does not exceed that on the developed markets.	40	46
17. The effectiveness and independence of financial watchdogs.	40	77
4. The disclosure of a disproportionate degree of control.	39	38
12. Non-influencing of the court decisions by any improper interests.	39	50
21. The use of international standards of accounting.	31	42
8. The possibility of access to redress through legal process for all the involved parties.	21	31
27. Tenders are not biased, opaque, and likely to have been influenced improperly.	20	38
13. The enforcement of legal decisions is effective and respectable.	17	31
24. Transparency International corruption rating below 30th place.	15	0
20. Company records are thorough, dependable, and up to date, with adequate sanctions and safeguards.	15	25
28. Government officers are not known to expect or require payment for either preferential or basic discharge of their powers.	14	31
6. Bankruptcies are clearly defined and lead to the orderly discharge of liabilities.	13	15
22. Combating organized criminal activity is effective.	12	8
10. The access to legal redress is cost effective.	8	8
11. The commercial arbitration has a strong tradition.	8	0
9. The redress through legal process is reasonable speedy.	1	0

3.2 The Assessment of the Four Elements of CGR

The questions in the questionnaire were divided to four sections that characterize four elements of corporate governance risk. One of the contributions of this methodology is that it brings structure into the complex and inter-related debate about corporate governance and enables the measurement of separate dimensions of this issue.

Element	**Average Points**
Corporate Law	3,3 (3,8)
Legal Processes	1,4 (1,6)
Regulatory Regime	3,0 (4,0)
Ethical Overlay	1,9 (2,5)

Maximum number of points for each element is 7.

The worst-assessed element, which at the same time increases corporate governance risk to the highest degree, is Legal Processes. Not even one question of this section was answered positively by more than a half of the respondents. In other words, this survey supports the claims of those who see the main barrier for entrepreneurs as an insufficiently functioning infrastructure of law enforcement.
The best-assessed element is Corporate Law where two (three) out of seven questions were positively answered by a majority of respondents (interviewees).

4 References

Obchodný zákonník SR v znení ostatnej novely č. 500/2001 Z.z. (Transl.: Commercial Code in the wording of the recent amendment No. 500/2001 Coll.) Available at http://www.zbierka.sk

Survey HESO Q4 2001. Available at http://www.ineko.sk

Statistical Yearbook of the Ministry of Justice (2000). Available at http://www.justice.gov.sk

World Bank - USAID (2000): Corruption in Slovakia. Results of Diagnostic Surveys. Available at http://www.government.gov.sk

Zákon o cenných papieroch a investičných službách 483/2001 (Securities and Investment Services Act 483/2001). Available at http://www.zbierka.sk

Zákon o ochrane vkladov 118/1996 (Act on Deposit Protection Fund 118/1996). Available at http://www.zbierka.sk

Zákon o kolektívnom investovaní 385/1999 (Collective Investment Act 385/1999). Available at http://www.zbierka.sk

Zlepšenie právneho, regulačného a daňového rámca na podporu podnikania a investícií (Transl.: Improvement of the legal, regulatory and tax framework supporting business and investment). Document approved by the Slovak Government in August 2000. In the text referred to as "Framework (2000)". Available at http://www.government.gov.sk

Benčík, P. (2001): Novela obchodného zákonníka je krokom vpred (Transl.: The Commercial Code amendment is a step forward). Trend 31. 10. 2001

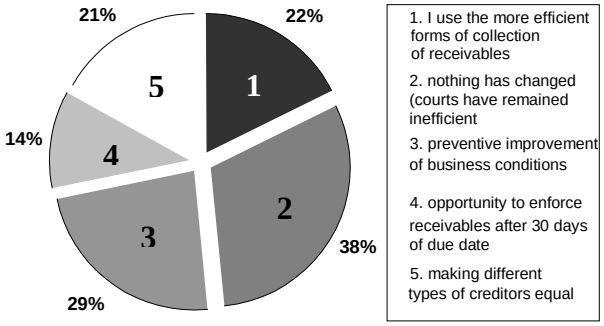
Marcinčin, A., Zemanovičová, L (2001).: Slovakia: Improving Corporate Governance, September 2001, INEKO, Bratislava

http://www.oecdprinciples.org
http://www.fov.sk
http://www.government.gov.sk
http://www.ineko.sk
http://www.justice.gov.sk
http://www.transparency.sk

Annexes

4.1 Annex 1

Where do you see benefits of the new Bankruptcy and Settlement Act?



Source: INEKO (2001)

4.2 Annex 2

Numbers of bankruptcies in the SR

	1997	1998	1999
New cases	1.755	1.831	2.161
Processed	488	702	1.289
Bankruptcy opened	229	786	659
Non-processed	3.873	5.025	5.897

Source: Ministry of Justice.

4.3 Annex 3

INEKO

Institute for Economic and Social Reforms

Bajkalská 25, 82718 Bratislava 212, Slovakia, fax: (421 2) 5823 3487,
Tel: (421 2) 5341 1020, e-mail: kubanova@ineko.sk, zemanovicova@ineko.sk

Súbor otázok pre výskum

KVALITY PODNIKATEĽSKÉHO PROSTREDIA V KRAJINÁCH STREDNEJ EURÓPY

Slovenská časť výskumu: INEKO v spolupráci s ČSOB a.s.
Partneri: Institut ekonomických studií, Karlova Univerzita Praha, CZ
Fakulta ekonomických vied Varšavskej univerzity, PL
Stredoeurópska univerzita v Budapešti, HU

Žiadna časť tohto výskumu nebude použitá na iný účel než vyššie menovaný akademický výstup a všetky poskytnuté informácie budú považované za dôverné. Meno respondenta a firmy nebude uvádzané v žiadnom zverejnenom dokumente, pokiaľ s tým respondent nevysloví súhlas (viď str. 6).

Medzinárodný výskum kvality podnikateľského prostredia sa realizuje za štyri krajiny strednej Európy: Česko, Poľsko, Maďarsko a Slovensko. Výskum je inšpirovaný víťaznou esejou[10] v súťaži The Institute of International Finance na počesť Jacques de Larosiere v r. 1999. S investovaním v cudzom prostredí sú vždy spojené vyššie riziká, investori si preto vytvárajú nástroje na meranie makroekonomických a politických rizík. Účelom dotazníka je skúmať **vnímanie podnikateľského prostredia podnikateľmi**, nie jeho ohodnotenie expertom na danú oblasť. Výsledkom tejto časti dotazníka bude index, ktorý bude možné porovnávať v čase a v priestore. **Možné odpovede sú áno a nie**. Každé áno v prvých troch sekciách a každé nie vo 4. sekcii znamená 1 bod. Súčet bodov predstavuje index s maximálnou hodnotou 28. V štátoch G7 sa index pohybuje v rozmedzí 21 až 28 bodov. V Českej republike mal index hodnotu 11 bodov (r. 2000), v Poľsku 16 bodov a v Rusku 4 body (r. 1999).

Index	Riziko
0 – 5	veľmi vysoké
6 – 10	vysoké
11 – 20	mierne
21 – 28	nízke

[10] Crichton-Miller, D. – Worman, P.B. (1999): *Seeking a Structured Approach to Assessing Corporate Governance Risk in Emerging Markets.* http://www.oecd.org

1. Základné údaje o podniku:

1.1Veľkosť podniku

1. malý (do 50 zamestnancov),
2. stredný (50-249 zamestnancov),
3. veľký (250 a viac).

1.2 Právna forma

1. akciová spoločnosť,
2. spoločnosť s ručením obmedzeným,
3. iná.

1.3 Odbor činnosti

1. priemysel,
2. služby,
3. obchod.
4. doprava,
5. poradenstvo,
6. iné.

1.4 Kraj _____

1.5. Najväčší vlastníci

	*Typ vlastníka	Vlastnícky podiel v %
Najväčší vlastník		
Druhý najväčší vlastník		
Tretí najväčší vlastník		

*Typ vlastníka:
1-zahraničný investor ,
2-banka (nie zahraničná),
3-podnik v skupine (nie zahraničný),
4-investičný fond alebo spoločnosť (nie zahraničný),
5-domáci investor – fyzická osoba,
6-iný typ domáceho investora,
7-štát (FNM, MH SR,…),
8-iný (spresnite, prosím).

1. Zákon o spoločnostiach / *Corporate law*

		áno yes	***nie no***
1	Je registrácia akcií či iných nárokov voči spoločnostiam transparentná a bezpečná? *Is the registration of stock and other claims upon companies transparent and secure?*	☐ ☐	☐ ☐
2	*Definuje Obchodný zákonník jasne práva akcionárov, veriteľov, zamestnancov a manažmentu?* *Does the system of corporate law provide clear definitions of the rights of shareholders, trade creditors, employees, management, and different classes of lender?*	☐ ☐	☐ ☐
3	*Majú akcionári právo bez obmedzení hlasovať na valnom zhromaždení, voliť členov predstavenstva a schvaľovať mimoriadne vlastnícke zmeny alebo úpravy (napr. emisia akcií, zabezpečenie minoritných akcií, fúzie alebo odpredaje)?* *Do shareholder rights include the unrestricted opportunity to vote in general shareholder meetings, elect members of the board, and approve extraordinary ownership changes or adjustments (e.g. share issues, granting of minority stakes, mergers, or sale)?*	☐ ☐	☐ ☐
4	Sú viditeľné štruktúry, ktoré umožňujú určitým akcionárom získať stupeň kontroly neproporcionálny k ich kapitálovému vkladu? *Are structures which enable certain stakeholders to obtain a disproportionate degree of control relative to their stake openly disclosed?*	☐ ☐	☐ ☐
5	Je bezpredmetné v kontraktoch (medzi veriteľmi a dlžníkmi, minoritnými akcionármi, partnermi v joint venture, apod.) na Slovensku upravovať významne vyšší počet vzťahov než v krajinách G7, vzhľadom na to, že v týchto krajinách sú už upravené všeobecne záväzným právnym predpisom alebo zvyklosťami? *In contracting with companies of this country, does a contract (be it as lender,other creditor, minority investor, joint venture partner, etc.) confer a set of rights which „one would reasonably expect to be conferred if the transaction took place in a G7 country„ and, if not, are departures from reasonable expectations notified in clear documentation?*	☐ ☐	☐ ☐
6	*Podliehajú bankroty a platobná neschopnosť jasne definovanému súboru procesov a postupov smerujúcim k riadnemu vysporiadaniu záväzkov, čo zahŕňa aj od manažmentu nezávislé rozdelenie aktív?* *Are bankruptcies and insolvencies managed through a clearly defined set of processes or procedures for the orderly discharge of liabilities, which involves the independent (of management) distribution of assets?*	☐ ☐	☐ ☐
7	*Sú členovia predstavenstva spoločnosti povinní priznať akýkoľvek materiálny záujem na transakciách alebo záležitostiach ovplyvňujúcich spoločnosť?* *Are members of a company's board required to disclose any material interest in transactions or matters affecting the company?*	☐ ☐	☐ ☐

Komentáre / *Comments* :

2. Právne procesy / *Legal Processes*

		áno *yes*	nie *no*
8	*Je možné dosiahnuť právnou cestou odškodnenie pre všetky zúčastnené strany?* *Is access to redress through legal processes reasonably practicable for most business parties?*	☐ ☐	☐ ☐
9	Je odškodnenie dosiahnuté právnou cestou dostatočne rýchle? *Is redress through legal processes reasonably speedy?*	☐ ☐	☐ ☐
10	Je využitie právnej cesty dostatočne efektívne z hľadiska nákladov? *Is access to legal redress reasonably cost effective?*	☐ ☐	☐ ☐
11	Existuje na Slovensku silná tradícia efektívnej hospodárskej arbitráže[11]? *Is there a strong tradition of effective commercial arbitration?*	☐ ☐	☐ ☐
12	Sú rozhodnutia súdov väčšinou neovplyvnené obchodnými, politickými alebo inými záujmami? Are court decisions largely uninfluenced by commercial, political, or improper considerations?	☐ ☐	☐ ☐
13	Funguje na Slovensku efektívny systém zabezpečujúci rešpektovanie a presadzovanie právnych rozhodnutí? Does an effective system for ensuring respect and enforcement of legal decisions operate within country?	☐ ☐	☐ ☐
14	Je pre ekonomické subjekty komplikované vyhnúť sa dôsledkom rozhodnutí súdov v ich neprospech? *Is it difficult to evade the consequences of legal judgements against business entities?*	☐ ☐	☐ ☐

Komentáre / *Comments* :

[11] Mimosúdne riešenie sporov.

3. Regulácie / Regulatory Regime

		Áno *Yes*	nie *no*
15	Svedčí činnosť regulátora kapitálového trhu (v podmienkach SR Úrad pre finančný trh) o konzistentnosti a nestrannosti jeho akcií? *Does the stock market regulator show evidence of consistent and impartial action?*	☐ ☐	☐ ☐
16	Je centrálna banka politicky nezávislá v roli regulátora bankového sektora? *Is the Central Bank, in its role as regulator of the banking sector, politically independent in its actions?*	☐ ☐	☐ ☐
17	Existujú nezávislé finančné dozorné inštitúcie (v podmienkach SR finančná polícia, daňové úrady, NKÚ, ai.) disponujúce vlastnými zdrojmi a možnosťami vyšetrovania? *Do there exist effective independent financial watchdogs possessing their own investigative powers and resources?*	☐ ☐	☐ ☐
18	Je insider trading[12] nelegálny alebo považovaný za neetický? *Is insider trading illegal or considered unethical?*	☐ ☐	☐ ☐
19	Existuje regulačná inštitúcia zaoberajúca sa monitorovaním voľnej súťaže a nevhodného obchodného správania (v podmienkach SR Protimonopolný úrad) disponujúca vyšetrovacím a sankčným potenciálom? *Are there regulatory bodies concerned with monitoring competition and improper commercial behaviour that possess formidable powers of investigation and sanction?*	☐ ☐	☐ ☐
20	*Vedú sa dostatočne podrobné, spoľahlivé a aktualizované záznamy o spoločnostiach a existujú sankcie a zabezpečenie proti predkladaniu nepresných alebo zastaraných informácií a proti falšovaniu záznamov ? (Táto odpoveď by mala zahŕňať kvalitu výpovedí o finančných a operačných výsledkoch, dcérskych spoločnostiach, akcionároch, volebných právach, členoch predstavenstva a ich odmenách, rovnako ako aj o otázkach prípadných záruk a rizík.)* *Are company records maintained which are thorough, dependable, and up to date, with sanctions and safeguards against either the submission of inaccurate or untimely information or for tampering with those records? (Disclosure quality should include an assessment of the quality of disclosure of financial and operating results, subsidiaries, shareholders and voting rights, members of the board and their remuneration, and issues such as contingent liabilities and risks.)*	☐ ☐	☐ ☐
21	Patria medzinárodné audítorské štandardy k bežnej rutine? *Are international standards of auditing adhered to as a matter of routine?*	☐ ☐	☐ ☐

Komentáre / *Comments* :

[12] Zneužívanie interných informácií, ktoré ešte neboli zverejnené, v niektorých krajinách je trestné.

4. Etické prostredie / *Ethical Overlay*

		áno *yes*	nie *no*
22	Sú inštitúcie vynucujúce dodržiavanie práva a vyšetrujúce spreneveru vnímané ako neefektívne v boji s organizovanou kriminalitou? Are law enforcement and fraud investigative bodies perceived to be ineffective in combating organised criminal activity?	☐ ☐	☐ ☐
23	Existujú dôkazy o tom, že kriminálne skupiny kontrolujú dôležité sektory hospodárstva? *Is there evidence of criminal groups (e.g. mafia-like organisations) playing significant role in controlling any substantial industry sectors?*	☐ ☐	☐ ☐
24	Je Slovensko zaradené nižšie ako na 30. mieste v rámci ratingového systému Transparency International Corruption Rating? *Is this a country ranked below 30th place within the Transparency International corruption rating system?*	☒ ☐	☐ ☐
25	Sú vraždy, únosy alebo vyhrážky voči predstaviteľom podnikateľskej sféry na Slovensku častejšie v porovnaní so štátmi G7? Does the country experience a material level of assassinations, kidnapping, or threats to business figures each year?	☐ ☐	☐ ☐
26	Sú na Slovensku bežné dodatočné úhrady za služby, pri ktorých takéto poplatky nie sú bežné v USA alebo Európskej únii (napr. platba za zaradenie do verejnej súťaže)? Is the country one associated with the payments of extra fees for services for which such fees are not usual in the United States or EU (e.g., payment to enter a tender process)?	☐ ☐	☐ ☐
27	Sú výsledky verejných súťaží a iných verejných aukcií na komerčne použiteľné práva všeobecne považované za predpojaté, netransparentné a pravdepodobne ovplyvnené nevhodnými záujmami? Are the outcomes of tender processes and other open market auctions of commercially valuable rights felt to be biased, opaque, and likely to have been influenced improperly?	☐ ☐	☐ ☐
28	Je všeobecne známe o vládnych úradníkoch, že očakávajú alebo vyžadujú úplatky za preferenčné alebo ústretové použitie svojich právomocí? Are government officers widely known to expect or require payment for either preferential or basic discharge of their powers?	☐ ☐	☐ ☐

Komentáre / *Comments* :

Dotazník je anonymný, ale v prípade Vášho záujmu o výsledky výskumu, ako aj o rôzne iné aktivity INEKO, vyplňte prosím nasledovné údaje:

Názov podniku:

Kontaktná adresa:

Tel.:

Fax:

E-mail: