ARTICLES

THE EVOLVING LEGAL FRAMEWORK FOR PRIVATE SECTOR ACTIVITY IN SLOVENIA*

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1. INTRODUCTION

The government of Slovenia is moving rapidly to promote the growth of an efficient market economy and the development of the private sector. One of the major tasks it faces is the development of a legal framework that can act as a decentralized "invisible hand" to replace previous administrative controls and steer the private market in an efficient direction. This paper describes the current legal framework in Slovenia in several areas: constitutional, real property, intellectual property, company, foreign investment, bankruptcy, contract, and anti-monopoly law. These areas of law

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1 This Article is part of a larger research project in the World Bank studying evolving legal frameworks in Eastern Europe. Other studies include Cheryl W. Gray et al., The Legal Framework for Private Sector Development in a Transitional Economy: The Case of Poland, 22 GA. J. INT'L & COMP. L. (1992); Cheryl W. Gray et al., Romania's Evolving Legal Framework for Private Sector Development, 7 AM. U. J. INT'L L. & POL'Y (1992); Cheryl W. Gray & Peter Ianachkov, Bulgaria's Evolving Legal
serve to define (i) property rights, (ii) the means to exchange them, and (iii) the rules for competitive market behavior. In essence they form the bedrock of a legal system for a market economy.²

The Slovene case is rather unique in Central and Eastern Europe ("CEE") for three reasons. First, Yugoslavia took an independent course and began experimenting with the introduction of market forces soon after World War II. As a result, Slovenia, which was the richest of the Yugoslav Republics, is ahead of other CEE countries in standard of living, experience with markets, and openness to influences from abroad (particularly from Western Europe). Second, unlike other CEE countries, the federal structure of Yugoslavia over the past 40 years has given large law-making powers to the individual Republics. Thus, the issue of Federal-Republic legal relations and "conflicts of laws" has always been central. Third, Slovenia has since 1991 been trying to resolve the issue of which Yugoslav laws to adopt and which to replace with wholly new Slovene legislation. Legal "succession" has been a major issue.

Slovenia is also unique in its potential for successful reform. Its relatively advanced level of development, the high level of education and skills of its population, and its close proximity to Western Europe give it a distinct advantage over most other CEE countries. Recent elections, in December 1992, have brought a new degree of political stability that one hopes can last for an extended period. Although the cut-off of Yugoslav and Soviet export markets has been an economic setback and has exacerbated the economic costs of the reform effort, the government is intent on continued economic stabilization and adjustment.³ Inflation is carefully con-

² The paper does not discuss certain other areas of law that are also important to the private sector, including privatization, banking, taxation, and labor law. Privatization is considered a transitional issue, whereas the paper seeks to address the longer-term legal structure. The other areas of law are omitted due both to space limitations and to likely coverage in other World Bank or external studies.

³ For an analysis of economic developments since independence, see Boris
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Trolled. Major efforts at privatization and restructuring of the financial system are underway. The long-term prospects for the country are definitely favorable.

2. CONSTITUTIONAL LAW

The constitution of a country sets the most basic rules on the structure and role of the government and its economic system. On December 23, 1991, one year after the public referendum overwhelmingly voted in favor of an independent sovereign Slovenia, Slovenia adopted a new constitution. This is the culmination of a series of constitutional developments promoting ever-greater dissolution of Yugoslavia.

2.1. The Historical Setting

In contrast to the United States, with its 200 year-old constitution, constitutions in Eastern Europe change regularly. Post-war Yugoslavia had four constitutions—1946, 1953, 1963, and 1974. The 1946 constitution introduced central planning, while the 1953, 1963, and 1974 constitutions introduced and later revised the concept of worker self-

Pleskovic & Jeffrey Sachs, Political Independence and Economic Reform in Slovenia, in TRANSITION IN EASTERN EUROPE (Oliver Blanchard et al. eds., forthcoming 1993).


Yugoslav constitutions also tend to be long, with extensive sections on desired goals for the country. The 1974 Yugoslav constitution, for example, had over 400 articles on over 160 pages.\(^9\)

The federalist structure of Yugoslavia gave the Republics extensive powers over the legal frameworks within their jurisdictions, especially under the federal constitution of 1974. In addition to the federal constitution, each republic had its own constitution. Slovenia's most recent socialist-constitution dates from 1974, with amendments in 1981, 1989, 1990, and 1991.\(^{10}\) Federal law was supposed to set the basic legal foundation in any particular area, with specifics regulated by republican law; for example, federal law set the foundations of the tax system, with specific rates and regulations set by the republics. In case of conflict the federal law had priority, but the Republics began to question this priority as tensions developed in the late 1980s.

2.2. Moves Toward Independence

The 1990 and 1991 amendments to the Slovene Constitution\(^{11}\) were designed to further reforms toward a market economy and set the stage for the ultimate independence of Slovenia. For example, amendment 91 in March 1990 deleted the word "Socialist" from the Republic's title. Amendment 96 in September 1990 reversed the former rules regarding conflicts between federal and republican law, stating that articles of the Federal constitution would not apply if not in accord with the Slovene constitution, and that new federal

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\(^9\) The U.S. Constitution, in comparison, has 7 articles with 20 sections on 16 pages.


\(^{11}\) See Constitutional Amendments, supra note 10.
laws, regulations, and acts of federal authorities would be valid in Slovenia only after approval by the Slovene Parliament. Old Yugoslav laws were implicitly still valid unless specifically rejected by Parliament. As such, more than 200 Yugoslav laws implicitly remained in force.

The public referendum was held on December 23, 1990, followed in February 1991 by Parliamentary resolutions that granted Slovenia control over turnover and import taxes, with only a small payment authorized to support the functioning of federal institutions. The resolutions also directed the Slovene government to prepare an anti-inflation program, a proposal for the separation of financial assets and liabilities (including external debt) among federal units, several policies and laws in the areas of pricing, fiscal and monetary policy, and international economic relations. Amendment 99 in February 1991 then revoked Slovenia's authorization for the Federal government to manage Slovenia's international relations with foreign countries (including all international treaty authority). And on February 20, 1991, the Parliament adopted a resolution proposing the consensual dissolution of Yugoslavia. The resolution called for independence to be realized within 6 months of the plebiscite, as supported by the December referendum.

During this same period, the Slovene Parliament and government studied which federal laws should apply and which should not apply in Slovenia. Constitutional Laws of October 1990 and January 1991 declared null and void in Slovenia federal legislation in many areas, including (in the economic area) all or parts of laws on cooperatives, the tax system, economic planning, associated labor (with regard to worker self-management), internal trade, nationalization (the

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13 Sklepi [Resolutions], Official Gazette RS, No. 3 (1991), at 137.
14 Resolucija o predlogu za sporazumno razdružitev SFRJ [Resolution About a Proposal for Consensual Disunion of the SFRY], Official Gazette RS, No. 7 (1991), at 283.
1946 law), pension and social security, social capital transformation, ownership relations, labor relations, and financial management. On the other hand, changes in numerous federal laws made after October 1990 were accepted by decrees of the Slovene Parliament as binding in Slovenia (at least temporarily), including changes in the enterprise, accounting, bankruptcy, banking, and insurance laws.

Finally, on June 25, 1991, Slovenia proclaimed its independence with three documents: the Basic Constitutional Document on Sovereignty and Independence of the Republic of Slovenia, the Constitutional Law for its realization, and the Declaration on Independence. These documents were designed as the final step toward independence, transferring all remaining powers and duties from federal to Slovene institutions and asserting full control over borders, diplomatic relations and domestic economic policies. Numerous new (or renamed) institutions opened on that day, including the Bank of Slovenia; the Customs, Air Traffic, and Telecommunications Administrations; the Office for Standardization and Measurement; and the Patent Office. A package of new "laws of independence" was also adopted, including laws on citizenship, foreign affairs, customs, foreign exchange, the central bank, banking, bank restructuring, and prices.

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16 Odlok [Decree], Official Gazette RS, No. 42 (1990), at 2042; No. 44 (1990), at 2108; No. 44 (1990), at 2109; No. 44 (1990), at 2110; No. 48 (1990), at 2311; No. 48 (1990), at 2312; No. 4 (1991), at 192; No. 4 (1991), at 193; No. 5 (1991), at 229; No. 7 (1991), at 314.


18 Zakon o državljanstvu republike Slovenije [Law on Citizenship of the Republic of Slovenia], Zakon o tujcih [Law on Foreigners], Zakon o potnih listinah državljanov Republike Slovenije [Law on Passports of the Citizens of the Republic of Slovenia], Zakon o nadzoru državne meje [Law on Control of State Border], Zakon o zunanjih zadevah [Law on Foreign Affairs], Zakon o carinski službi [Law on Custom Services], Zakon o kreditnih poslih s tujino [Law on External Credit Relations], Zakon o deviznem poslovanju [Law on Foreign Exchange], Zakon o Banki Slovenije [Law on Bank of Slovenia], Zakon o bankah in hranilnicah [Law on Banks and Savings institutions], Zakon o cenah [Law on Prices], all in Official Gazette RS, No. 1 (1991), at 6-71.
to the existing Slovene constitution established the coat of arms and the flag of the Republic of Slovenia.

The federal government reacted negatively and forcefully to these acts of independence, as evidenced by the "seven-day war" that led to about seventy casualties. In early July the European Community brokered a three-month moratorium on further acts of both dissolution and armed aggression. When the three-month moratorium ended in early October, Slovenia introduced its own currency, the tolar. And on December 23, 1991 it adopted a new constitution.

2.3. The New Constitution

Slovenia's new Constitution consists of 174 articles organized in a preamble and ten chapters:

I. General Provisions (13 articles)
II. Human Rights and Basic Liberties (52)
III. Economic and Social Relations (14)
IV. State System (58)
V. Local Government (8)
VI. Public Finance (7)
VII. Constitutionality and Legality (7)
VIII. Constitutional Court (8)
IX. Procedures for Changing Constitution (4)
X. Provisional and Final Provisions (3)

Although most of the constitution's provisions are non-economic in nature, certain provisions are designed to create and protect individual economic rights in a private market economy. For example, Chapter 2 contains explicit protection of private property, freedom of occupation, free primary education, and protection of copyrights. Chapter 3 stresses the economic importance of ownership rights, but forbids foreign ownership of land, except if inherited on

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20 Slovene Constitution, supra note 4.
21 Id. art. 33.
22 Id. art. 49.
23 Id. art. 57.
24 Id. art. 60.
25 Id. art. 67.
principle of reciprocity.\textsuperscript{26} This chapter also promises freedom of entrepreneurship,\textsuperscript{27} forbids restrictions on competition, and proscribes unfair competition.\textsuperscript{28} It requires the state to create conditions for employment.\textsuperscript{29} It also guarantees the right to strike\textsuperscript{30} and the right of citizens to appropriate housing.\textsuperscript{31} The chapter calls for special protection of land, including the protection of agricultural land.\textsuperscript{32}

It is interesting to note that the draft article giving workers the right to participate in economic decision-making was omitted from the final proposal. After having the most extensive worker participation of any country in the world, the pendulum has swung back in the opposite direction, and the idea is now virtually abandoned in Slovenia. Worker management still exists, however, in state enterprises as a vestige of the past. The recently adopted privatization law envisions extensive future ownership of firms by their employees.\textsuperscript{33}

Effective yet limited government is essential for the private sector to grow and prosper. Chapter IV, on state structure, tries to insure a responsible state apparatus by setting up a system of checks and balances similar to that in other parliamentary systems in Europe, including those provided in the new constitutions of other CEE countries. It establishes a bicameral parliament, with a main chamber—the State Assembly—and a second, less important chamber, the State Council. This was a compromise solution between the opposition parties, which wanted a Parliament with two equal chambers (one weighted in favor of regional interests), and the ruling coalition, which favored a one-chamber Parliament.

\textsuperscript{26} \textit{Id.} art. 68.
\textsuperscript{27} \textit{Id.} art. 74.
\textsuperscript{28} \textit{Id.} art. 74.
\textsuperscript{29} \textit{Id.} art. 66.
\textsuperscript{30} \textit{Id.} art. 77.
\textsuperscript{31} \textit{Id.} art. 78.
\textsuperscript{32} \textit{Id.} art. 71.
\textsuperscript{33} The privatization law, adopted by the Slovene Parliament in November, 1992, provides that 20 percent of the shares of each enterprise will be sold at a discount to employees, and 40 percent more can be offered to employees at book value if certain conditions are met. Law on Privatization, Official Gazette RS, Nov. 20, 1992, \textit{translated in} Foreign Broadcast Information Service, JPRS-EER-93-012-S, Feb. 23, 1993.
The State Assembly has ninety members\(^4\) elected for four years.\(^5\) It has the sole power to adopt laws. The State Council, included as a compromise to protect regional interests and occupational groupings, has forty members elected to five-year terms by various interest groups.\(^6\) It has the power to propose legislation, to advise the State Assembly on proposed legislation, and to block the adoption of a proposed law and return it for renewed discussion.\(^7\) If the proposed law is then reconsidered and readopted by a majority of all delegates in the State Assembly, it becomes law and cannot again be blocked.\(^8\) This chapter also gives law-making authority to the public referendum, which may be called by either chamber of Parliament or by petition from at least 40,000 voters.\(^9\)

The power of parliament is counterbalanced by the other branches of the state—the president, the prime minister, and the judiciary. The president is elected directly by the public for a five-year term (with a maximum of two consecutive terms).\(^10\) The president is commander-in-chief of the army\(^11\) and proposes a candidate for prime minister to the State Assembly.\(^12\) If approved by Parliament, the prime minister then proposes ministers, who are scrutinized by parliamentary commissions.\(^13\) The judiciary is composed of three levels of courts—the basic courts, the higher courts, and the Supreme Court.\(^14\) Military and other extraordinary courts are prohibited in peacetime,\(^15\) although the Court of Associated Labor, formed under the socialist regime to handle labor disputes, still exists. Judges are proposed by the Court Council and

\(^{34}\) Slovene Constitution, supra note 4, arts. 80-95.

\(^{35}\) As in most CEE countries, the method of election is not governed by the Constitution but by an Election Law. The Slovene election law was passed by the Parliament (after extensive debate) prior to the December 1992 elections.

\(^{38}\) Slovene Constitution, supra note 4, arts. 96-101.

\(^{37}\) Id. art. 97.

\(^{35}\) Id. art. 91.

\(^{39}\) Id. art. 90.

\(^{40}\) Id. art. 103.

\(^{41}\) Id. art. 102.

\(^{42}\) Id. art. 111.

\(^{43}\) Id. art. 112.

\(^{44}\) Id. arts. 126, 127.

\(^{45}\) Id. art. 126.
appointed for life terms by the State Assembly. Unlike some other formerly socialist countries, Slovenia has maintained the institution of lay judges, who join professional judges on panels to decide cases and impose appropriate sanctions.

Chapter 8 provides for a constitutional court, another source of checks and balances in the system. Its primary role is to review the constitutionality of laws, regulations, and individual acts of the state or political parties. It is also empowered to review whether laws conform to international treaties and to decide disputes regarding the competency of the various branches of the state or local communities. Any person with a "legal interest" (presumably a case in controversy) may request review of a constitutional complaint. If the court finds a law to be unconstitutional, it is automatically annulled. This model of a specialized constitutional court, similar to that in other reforming socialist countries, has both pros and cons. On the positive side, it provides an explicit forum for checking the constitutionality of acts of the state. On the negative side, it takes away some of the power of the judiciary itself, which might otherwise develop into a constitu-

46 Id. arts. 128, 130.
47 Id. art. 128.
48 Lay judges bear some resemblance to common-law jurors in that they are intended to bring a layperson's perspectives and judgments into the legal arena. However, their role is not distinguished from that of the professional judge as in common law systems, where jurors decide facts (including guilt or innocence) and judges assure that the proceedings are in accordance with the law. In the continental tradition, lay judges and professional judges together decide on the law, the facts, and the appropriate penalties. The new Code of Civil Procedure allows their exclusion in certain civil cases (particularly commercial cases) if both sides agree.
49 Although not officially part of the judiciary, the Court is composed of 9 recognized legal experts selected for one-time 9-year terms by the State Assembly on proposal by the President. See Slovene Constitution, supra note 4, arts. 163, 165. All cases are decided by majority vote of at least 5 members. Id. art. 162. The 1974 Constitution also provided for a constitutional court, although to date the court has not had a strong and active role. If developments in other CEE countries are any indication, the court's role should grow significantly in the future. See supra note 1.
50 Id. art. 160.
51 Id.
52 Id. art. 162.
53 Id. art. 161.
tional watchdog much as it has in the United States.

The remaining Chapters of the Slovene Constitution deal generally with local government,\textsuperscript{54} public finance,\textsuperscript{55} constitutionality and legality,\textsuperscript{56} and amendment\textsuperscript{57} and transition procedures.\textsuperscript{58} A constitutional law, adopted on the same day as the Constitution,\textsuperscript{59} provides that existing laws remain valid but should be harmonized with the Constitution by the end of 1993.\textsuperscript{60} Numerous issues that remain undecided in the Constitution are to be addressed in later legislation.\textsuperscript{61}

3. RIGHTS TO REAL PROPERTY

As in most of Central and Eastern Europe, real property rights are in a state of flux in Slovenia as it untangles decades of socialist and labor-management influence. Private ownership of land and housing and privately-owned small businesses have long existed in Slovenia, albeit on a limited basis, and thus the concept is not as radical as in some of the more traditional former socialist states. Furthermore, basic principles of property law and a system of land registration\textsuperscript{62}

\textsuperscript{54} Slovene Constitution, \textit{supra} note 4, arts. 138-45.
\textsuperscript{55} \textit{Id.} arts. 146-52. As an additional check upon the state, chapter 6 provides for a "court of accounts" to inspect public finances and for a central bank responsible to the State Chamber and thus independent from the executive branch. \textit{Id.} arts. 150-52.
\textsuperscript{56} \textit{Id.} arts. 153-59.
\textsuperscript{57} \textit{Id.} arts. 168-71.
\textsuperscript{58} \textit{Id.} arts. 172-74.
\textsuperscript{60} \textit{Id.}
\textsuperscript{61} Two reasons help to explain why numerous issues remained undecided when the constitution was adopted. First, Parliament had promised and was under time pressure to adopt it one year after the national referendum on independence. Second, the ruling coalition of parties in Parliament only held 53 percent of the votes, while a two-thirds majority was needed to adopt the constitution. Therefore, numerous controversial issues had to be omitted for the document to be acceptable to opposing factions.
\textsuperscript{62} The Austro-Hungarian landbook law from 1871 and the land register (cadastre) law from the 1920s form the basis of the land registration system that exists today. The system of social property of the last 40 years, however, did significant damage to land records. Many transfers of social property and most transfers of private apartments were not registered. Prewar private owners of land and buildings often remain on the books,
inherited from the Austro-Hungarian empire remain in place. However, the major effort now beginning to return previously nationalized real property to former owners could create upheaval in property markets and uncertainty in real property rights for some time to come.

3.1. The Historical Legacy

A large part of Yugoslavia—including Slovenia, Croatia, Bosnia and Herzegovina—was part of the Austro-Hungarian empire before the creation of Yugoslavia in 1918. After 1918 Austrian law continued to heavily influence lawmaking in the new country, and the Austrian General Citizens Code (“Allgemeines Buergerliches Gesetzbuch”) of 1811 (as later amended) became the basis for property and contract relations among private natural persons and legal entities, whether in private or business activity. It was translated and essentially adopted as general law except in a few fields, such as bankruptcy, where specific Yugoslav statutes held precedence.

During the socialist period after World War II until 1990, three forms of property were legally recognized in Yugoslavia. The first, “social” property, was owned in principle by all the people and was managed under the uniquely-Yugoslav variant of socialism, the system of worker self-management.

thus providing a basis for implementing the denationalization law discussed below.

63 Allgemeines Buergerliches Gesetzbuch [General Civil Code], Oesterreichische I.G.S. No. 946 (1811).

64 The Austrian Code was very broad, covering not only property and contract principles, but also family law, inheritance, and (through later amendment) bankruptcy, taxation, and collateral.

65 Yugoslav Constitution, supra note 8.

66 Social property was in theory everyone’s property, but was in fact no one’s property because no private individual could transfer rights to the property. In practice, “usufruct” (use) rights were allocated to firms at low cost. This administrative allocation resulted in arbitrary and unequal access to social capital among workers.

67 Most of the principles and rules regarding forms of property and the system of worker self-management of social property were contained in the first law on self-management adopted in 1950 (Temeljni zakon o gospodarjenju z državnimi gospodarskimi podjetji in višjimi gospodarskimi združenji po delovnih kolektivih [Basic Law on Management with State Economic Enterprises and Higher Economic Associations by Working Collectives], Yugoslav Official Gazette, No. 43 (1950)), the constitutions of 1953, 1963, and 1974, and the Law on Associated Labor of 1976 (Zakon o združenem
Most of the economy, including ninety percent of all fixed capital, fell in this category. The second, cooperative property, was recognized but not as well-developed or widely used in Yugoslavia as in some of its socialist neighbors. The third, private property, was restricted to personal ownership of real property (with a general maximum of one medium-sized house or two to three apartments per person, not including vacation homes), small businesses (primarily individual service providers such as lawyers or craftsmen), and small private farms (with a maximum size of ten hectares, increased to thirty hectares in 1988). Unlike other socialist economies (except Poland), most farming in Slovenia was done on a small scale, and eighty-five percent of all land remained privately owned.

After World War II, a special 1946 decree prolonged the validity of any pre-war legislation not clearly in opposition to socialist principles until it could be replaced by new legislation. The private civil law adapted from the Austrian civil code remained essentially unchanged, although much of it fell into disuse. This law continued to apply only in the small area carved out for private property and private transactions. It took over thirty years for the country to adopt new legislation in the two main areas of private civil law—property and obligations. In the property area, the Law on Foundations of Property Relations was adopted in 1980. Even this law, however, retained many of the principles of the Austrian predecessor, and incorporated relatively few principles unique to socialism and worker self-management. Amendments in 1990 removed these few socialist principles from the law, returning it more or less to its original foundations from the Austrian empire.

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**Zakon o temeljih lastninskopravnih razmerij [Law on Foundations of Property Relations]**, Yugoslav Official Gazette, No. 6 (1980).

**Yugoslav Constitution, supra note 8, arts. 62, 65.**

**Id. art. 78.**

**Id. amend. 23.**

**Id.**

**Delu, Yugoslav Official Gazette, No. 53, (1976), amended by, Yugoslav Official Gazette, 40 (1989).**
3.2. Recent Slovene Initiatives

The Law on the Foundations of Property Relations remains valid in Slovenia, as do numerous special laws in the area of property rights that were adopted in Yugoslavia in recent years and not explicitly abrogated by Slovene laws. At some point the general law will be replaced by specific Slovene legislation. Already, specific Slovene laws have been adopted in the areas of denationalization, housing, cooperatives, and proposed laws on lands and forestry are being considered by Parliament. In addition, as noted earlier, the newly-adopted constitution guarantees private property rights and poses no limits on property ownership. Thus, rights of Slovene citizens to own and use real property in private business appear to have a solid legal basis.

These rights, however, do not extend to foreigners. The new Slovene Constitution specifically restricts foreigners from owning land in Slovenia, either for business or residential purposes, except in the special case of inheritance when reciprocity is provided by the home country of the heir. Although foreign ownership of buildings is not strictly illegal, the right of foreigners to own or obtain mortgages

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74 The draft laws on lands and forestry deal with the 15 percent of agricultural land and two-thirds of forests now under social ownership. Under these laws, these lands would first become the property of the state and then either be returned to previous private owners (pursuant to the denationalization law) or kept within special state funds under state ownership and management (with the possibility of lease to private parties). An earlier draft was rejected in Parliament because of a disagreement over which level of government, central or local, should own the funds.

75 Slovene Constitution, supra note 4, art. 33.

76 Id. art. 68.

77 In its original 1980 version, Chapter 6 of the Yugoslav Law on the Foundations of Property Relations prohibited foreigners from owning any real property in Yugoslavia, except in the case of inheritance if reciprocal rights were granted by the home country of the heir. Renting was permitted under 5-30 year leases. Under 1990 amendments to this law, foreigners could become owners of commercial building space if allowed by specific federal and republican laws (Yugoslav Official Gazette, No. 36, 1990, Article 82a). Some federal laws then granted broader property rights to foreigners. For example, amendments to the Law on Exchange and Disposition of the
for any real property was temporarily suspended in October 1991 until specific Slovene legislation covering the property rights of foreigners is adopted.

3.2.1. Reprivatization

The Slovenian reprivatization initiative, called "denationalization," is among the most radical to date of all similar initiatives in reforming socialist countries. Although the Slovene law on privatization of social enterprises was until recently entwined in political dispute within Parliament, a Law on Denationalization was adopted in November 1991. This law intends to "reprivatize" not only the land previously nationalized under the agrarian reform statutes of 1946, 1948 and 1953, but also the property and shares of businesses nationalized in 1946 and 1948, buildings nationalized in

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Social Capital (Zakon o prometu in razpolaganju z družbenim kapitalom, Yugoslav Official Gazette, No. 84 (1990), Article 4) granted the right of 99-year use, or "usufruct." Slovenia has not specifically abrogated this Yugoslav legislation.

78 Ustavni zakon za izvedbo ustavnega amandmaja XCVI k ustavi Republike Slovenije [Constitutional Law for Realization of the Constitutional Amendment XCVI to Constitution of the Republic of Slovenia], Official Gazette RS, No. 37 (1990), Art. 8b.

79 This temporary moratorium on the acquisition of property rights by foreigners not only hampers foreign companies wishing to buy property to invest in Slovenia, but also makes it impossible for foreign banks to take security interests in real property. New legislation on property rights for foreigners is now under consideration. Although the constitution prohibits foreigners from owning land, the new legislation is expected to permit foreigners engaged in business activity to own buildings and hold mortgages on all types of real estate.

80 Zakon o denacionalizaciji [Law on Denationalization], Official Gazette RS, No. 27 (1991) [hereinafter Law on Denationalization].


82 Zakon o nacionalizaciji zasebnih gospodarskih podjetij [Law on Nationalization of Private Economic Enterprises], Official Gazette FPRY, No. 98 (1946) and No. 35 (1948).
1958, and property confiscated in 1944 and 1946 from citizens accused of collaborating with the Germans. It was estimated during preparation of the law that some four billion deutsche marks (or US $2.5 billion) worth of social property would be subject to denationalization—about ten percent of all social property or seven percent of all property in Slovenia. Natural persons who were Yugoslav citizens at the time of nationalization (or their close relatives or heirs) are eligible, as are religious organizations. Legal entities other than religious organizations are not eligible. If possible, the property is to be returned in-kind. Otherwise, compensation is to be provided in substitute property, securities, or money. Eligible individuals have until June 1993 to submit a request.

Although it represents a clear statement of radical intent by the Parliament, the reprivatization law will not necessarily result in an efficient allocation of property rights. Furthermore, the law's long period to file claims is creating tremendous uncertainty. The process could take several years, especially given the limited capacity of the judicial system for processing claims and resolving disputes. Insecurity of property rights during that period threatens to impede the investment that is so badly needed for economic recovery and growth. Finally, the law is likely to exacerbate political tensions and uncertainty if it leads to large redistributions of wealth away from workers toward pre-war owners of property and their heirs, whether resident in Slovenia or abroad.

84 Zakon o konfiskaciji premoženja in o izvrševanju konfiskacije [Law on Confiscation of Property and on Realization of Confiscation], Uradni list Demokratične federativne Jugoslavije [Official Gazette of the Democratic Federation of Yugoslavia], No. 2 (1945), No. 40 (1945); Official Gazette FPRY, No. 61 (1946), No. 63 (1946), No. 64 (1946), No. 74 (1946).
85 Law on Denationalization, supra note 80, arts. 5, 9-13.
86 Id. art. 14.
87 Id. art. 2.
88 Id.
89 Id. art. 64.
3.2.2. Housing

In the same month that the denationalization law was passed, the Slovene parliament adopted a housing law that provides, among other things, for extensive privatization of socially-owned apartments. About fifty percent of the 229,000 apartments in Slovenia are being sold within two years to current tenants under this law. Because of administratively-determined prices and official discounts offered to purchasers, sale prices are low. For example, under the law, a one-bedroom apartment (fifty-five square meters) in the capital city, Ljubljana, could cost less than $8,000 at then-prevailing exchange rates.

While privatization of state-built housing is relatively easy because existing tenants have clear priority rights, privatization of previously nationalized housing is much more difficult because of the competing interests of current tenants and former owners. Because of strong support for tenants' rights, the strong push for reprivatization (or denationalization) throughout Central and Eastern Europe is most difficult to apply in the area of housing. In Slovenia the

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90 See Housing Law, supra note 73. The housing law also contains numerous other provisions dealing with landlord-tenant relations, lease contracts, and the management of multi-unit buildings.

91 Yugoslav citizens have always been allowed to own private housing, and thus about 70 percent of all apartments and houses in Slovenia were already in private hands before the housing law was adopted.

92 A 60 percent discount is given from the administratively determined price if the purchaser pays in full within 60 days. Housing Law, supra note 73, art. 119. Alternatively, the purchaser can pay 10 percent at the time of sale and the rest (with at least a 30 percent discount) over a period up to 20 years (with reasonable interest rates and values defined in domestic currency but indexed to foreign currency). Id. art. 117. A portion of the sale proceeds is earmarked for state and local housing funds, to be used to finance housing loans in the future. Id. art. 130.

93 For comparison, average annual salaries at that time were approximately $2500, and average annual per capita income was in the range of $4000-$4500.

94 Housing Law, supra note 73, art. 18.

95 The word tenant may be a bit misleading, because "housing rights" to state or enterprise-owned housing under the socialist system were more extensive than renters' rights in capitalist systems. For example, those with housing rights had life-time rights of occupation, could transfer those rights easily to relatives, and paid rent far below comparable market value (as measured by the "gray" rental market in some cities).
denationalization law takes precedence over the housing law. Previous owners can choose between compensation from a restitution fund or return of the property in kind. If they receive the apartment in kind, holders of the housing right are entitled to receive thirty percent of the value of the apartment plus a housing credit of the same amount if they vacate within two years.

3.3. Controls on Use of Real Property

Slovenia, like the other formerly-socialist economies of Central and Eastern Europe, needs to rethink the many controls on the use of real property that it has inherited from the socialist period. For example, like its neighbors, Slovenia has long protected agricultural land from "misuse" through strict zoning regulations. A permit is still required to convert agricultural land to nonagricultural uses. Not only is this permission difficult to obtain, but such conversion, if administratively approved, is also further discouraged through high taxation. As the market in urban and rural land develops, relative prices should become more of a gauge of the most productive use of scarce land and should over time replace many administrative controls.

Controls on the use of urban land also need rethinking. Most urban construction in CEE countries during the socialist period tended to be based on industrial large-panel construction methods combined with rigid and static land-use planning. Because no market in land developed to signal scarcity value, clusters of high-rise apartments buildings would

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96 Housing Law, supra note 73, art. 125.
97 Tenants cannot be forced to vacate, although new owners will have the right to renegotiate rents within certain limits.
99 For example, the tax charged to convert agricultural land to "building" land can be up to $8000 for a one-house plot.
100 Administrative intervention may be justified on economic grounds if private market prices do not fully reflect social costs. For example, governments sometimes set strict zoning limits to protect fragile yet socially-valuable ecosystems from individual encroachment, or to preserve quaint rural settings—and thus the widespread benefits of tourism—from incompatible private development.
typically be built outside the city center, often on prime farm land, leading to inefficient use of land and high transportation and infrastructure costs. Although Slovenia suffered less from this syndrome than more highly-centralized socialist systems, its construction and zoning rules\textsuperscript{101} had some of the same shortcomings. Furthermore, existing Slovene construction regulations contain a long list of required permits that are likely to be overly-restrictive, ill-designed, or redundant in a private market economy. If the past is an indicator, they are also likely to impose an expensive and time-consuming burden that will further hamper the emergence of a private construction sector.\textsuperscript{102}

4. RIGHTS TO INTELLECTUAL PROPERTY

Until recently there was little need for intellectual property protection in Slovenia or other socialist countries. Not only was there less incentive for invention within the relatively rigid and static socially-owned enterprises, but the basic concept of individually-owned intellectual property was anathema to the socialist system. Intellectual property, like other industrial property, was owned by enterprises rather than individuals and ultimately under the control and discretion of the state. Foreign intellectual property was nominally protected under existing intellectual property laws, as discussed below, but the protection was weak and inconsistent. Without extensive foreign involvement in the economy, however, intellectual property protection was not an important issue. It is becoming so only now as foreign investment is more eagerly sought and as the domestic private sector begins to grow.

4.1. Patents and Trademarks

After declaring independence, Slovenia recognized all federal Yugoslav laws in the field of intellectual property as applicable in the new republic. These include the law on the


\textsuperscript{102} Obtaining a permit for building construction typically takes at least one year.
protection of industrial property of 1981 (covering patents and trademarks),\textsuperscript{108} the copyright law of 1978 (as amended),\textsuperscript{104} and the statute setting up the patent office.\textsuperscript{105} Slovenia is now moving to update and replace these laws with legislation that is more in line with market-based international norms.\textsuperscript{106} On the institutional side, in June 1991 it established the Agency for the Protection of Industrial Property,\textsuperscript{107} which is supposed to assume the functions previously carried out by the analogous Yugoslav federal agency. Registrations previously made in the federal agency remain valid in Slovenia.

The applicable law for patents and trademarks in Slovenia until March 1992 was the Yugoslav industrial property law of 1981—the Law on the Protection of Inventions, Technical Improvements and Distinctive Signs.\textsuperscript{108} When adopted, this law was a step backward from its predecessor in terms of the legal protections it provided. For example, patents and trademarks were protected for only seven years, with the possibility of extension for seven more,\textsuperscript{109} and many items such as pharmaceuticals were excluded from protection altogether.\textsuperscript{110} Internal and external pressure led to amendments in 1990\textsuperscript{111} that improved patent and trademark protection. Simultaneously, Yugoslavia moved to expand its participation in relevant international conventions.


\textsuperscript{105}Pravilnik o patentnih uradih [Statute on Patent Offices], Yugoslav Official Gazette, No. 25 (1963).

\textsuperscript{106}Much of the information on the new legal framework is taken from Bojan Pretnar, Protection of Intellectual Property in Slovenia (1991) (unpublished manuscript).

\textsuperscript{107}Zakon o organizaciji in delovnem področju republiške uprave [Law on Organization and Working Field of the Administration of Republic], Official Gazette RS, No. 27 (1991).

\textsuperscript{108}Law on Building Land, supra note 101.

\textsuperscript{109}Id. art. 51.

\textsuperscript{110}Id. arts. 20, 23.

Slovenia passed a new patent law in March 1992. The new law is similar in structure to the amended federal law of 1990, but broader in coverage. It provides patent and trademark protection closely in line with modern international standards and existing international conventions. The period of patent protection is extended to twenty years, the first ten upon request without examination as to novelty or applicability and the second upon submission of written proof of testing (the so-called "Document of Evidence") by an approved foreign testing institution (as specified in the Patent Cooperation Treaty). Compulsory licenses—pursuant to which the government can force the issuance of a license to a third party to produce a patented product if the patent holder does not produce it—continue to be a feature of the law.

4.2. Copyright

The Yugoslav Copyright Law of 1978, as amended in 1986 and 1990, remains valid in Slovenia. The original law was heavily influenced by the self-management philosophy of the time and was a step backward in legal protection from the previous law of 1968. The 1990 amendments were more...
extensive. Among other things, they eliminated the self-management rhetoric in the original law and introduced copyright protection for computer programs. Copyright protection under the current law lasts during the author's life and for fifty years after his or her death; in this and most other ways it fully meets international norms for protection. Although the Slovenian government has announced its intention to adopt a new copyright law in the future, the need is not urgent and preparation has not yet begun.

Needs are greater on the institutional side. The previous Yugoslav copyright agency consisted of a main office in Belgrade and regional offices in the capital of each republic. In mid-1991, the Ljubljana office became the Slovenian Copyright Agency, without change to its general functions or staffing. As in the case of patents and trademarks, institutional development is critical to the development of a reliable legal framework for copyright protection. Additional technical assistance, training, and equipment in both the Industrial Property and the Copyright Agencies could help those agencies meet the growing demand from foreign investors and domestic private entrepreneurs for viable intellectual property protection.

4.3. International Conventions

Yugoslavia ratified the major conventions in the field of intellectual property, including the 1883 Paris Convention for the Protection of Industrial Property (1967 Stockholm text), the 1891 Madrid Agreement for the International Registration of Trademarks (1967 Stockholm text), and the Berne Copyright Convention (Paris text of 1971). Slovenia has indicated its intention to be a signatory to these conventions in its own right.

No. 30 (1968).

120 Copyright Law, supra note 118, art. 82.


122 Yugoslav Official Gazette, No. 14 (1975). Several more recent conventions, such as the Patent Cooperation Treaty and the Hague Agreement for the Protection of Industrial Property, are in the process of ratification.

123 The International Court of Justice in the Hague recently ruled that
5. COMPANY LAW

5.1. Background

For some thirty years prior to 1989, Yugoslav companies operated under the unique Yugoslav concepts of social ownership as the means of production and worker self-management. These principles, enshrined in successive constitutions and laid out in greatest detail in the Law on Associated Labor of 1976,124 gave no one true ownership rights over enterprise assets but gave ultimate managerial power, at least formally, to workers' councils elected by the workers' assembly.125 Separate enterprises with legal personality—called "basic organizations of associated labor" or "BOALs"—could be formed by any group of workers, whether or not these enterprises constituted logically separate economic entities. The only three conditions required for a BOAL to be formed were (1) that it be a working unit, (2) that the value of its product could be separately calculated, and (3) that self-management rights could be exercised.126 Thus, the industrial economy was carved up into a multitude of small self-managed units, often themselves departments of larger operating entities. The government used fairly ad hoc taxes and subsidies to redistribute income among these units, thus keeping the weaker ones afloat and preserving employment. Incentives in this extreme version of worker democracy under "soft budget constraints" ran counter to efficiency and growth, as workers tended to be more concerned with increasing wages and benefits—and the government with preserving employment—than with preserving and enhancing the productive

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Yugoslavia's disintegration is a case of succession, not secession. This would imply that Slovenia would automatically be considered signatories to any conventions previously ratified by Yugoslavia, including those on intellectual property, and would—together with other successor states—be bound by previous Yugoslav obligations and entitled to all its rights. The principle of succession was also applied by the IMF and World Bank in approving Slovene membership in early 1993.

125 Id. arts. 490-95.
126 Id. art. 320.
capital stock of the firm.127

The Yugoslav Enterprise Law adopted in 1988,128 which took effect January 1, 1989, represented a radical departure from the past. It introduced modern company forms into Yugoslavia and provided equal treatment for privately-owned and socially-owned firms. Together with the new Foreign Investment Law129 that took effect the same day, it also provided greatly expanded avenues for foreign investment and similar treatment with domestic investment. The Enterprise Law repealed most of the Law on Associated Labor—except Article 196 dealing with labor relations—and called for the BOALs to be consolidated into larger units and reorganized into stock companies.130 It downgraded the powers of workers’ councils.131 Also, the 1990 amendments to the law did away with the requirement of obligatory establishment of workers’ councils in joint stock and limited liability companies.132

The Yugoslav Enterprise Law is still the currently applicable law in Slovenia133 although lawmakers have prepared a draft of a new law that is expected to be adopted later in mid-1993. The new law, the Law on Economic Companies, closely follows the German model. Although it contains company forms similar to those in the current law (as discussed below), it is a longer law and its provisions are far more detailed.134

129 Zakon o tujih vlaganjih [Law on Foreign Investment], Yugoslav Official Gazette, No. 77 (1988) [hereinafter Law on Foreign Investment].
130 Company Law, supra note 128, art. 192.
131 Id. art. 131.
133 The August 1990 amendments to the Law on Transfer and Use of the Social Capital [Zakon o prometu in razpolaganju z družbenim kapitalom, Yugoslav Official Gazette, No. 46 (1990)] dealing with the distribution of shares to workers were applicable only by special permission of the Agency for Privatization [Constitutional Law for Execution of Constitutional Amendment XCVI, Official Gazette RS, No. 37 (1990) and No. 4 (1991), art. 5]. Thus, they were in essence rejected in late 1990 in the expectation that the issue would be dealt by a new privatization law.
As described below, both the current and proposed laws and the procedures for setting up a company are relatively well-adapted to the needs of a private market economy.

5.2. Types of Ownership and Forms of Companies

The 1988 law distinguishes four types of ownership—social, cooperative, mixed, and private—and four forms of companies—the joint stock company, the limited liability company, the limited partnership, and the general partnership. Social ownership is a remnant of the previous regime. Enterprises with social ownership continue under this law to be worker self-managed, although they may for the first time be set up as joint stock or limited liability companies.

Cooperative ownership continues to be recognized, although it has never been widely used in practice. Cooperatives can in principle be organized in any of the four forms as well as a more traditional cooperative enterprise. Mixed ownership refers to any combination of social, private, and/or cooperative ownership, whether or not there is participation by foreigners. Wholly private ownership—involving neither social nor cooperative ownership in any way—can similarly be either domestic or foreign. Firms with mixed and private ownership—those most relevant to the topic of this paper—can be set up in any of the four company forms provided by this law. In addition, small private activities such as shops, farms, or services (such as lawyers or craftsmen) can be carried on less formally with simple registration. In principle all forms of enterprise under all types of ownership have the same status, rights and responsibilities in the economy. The new draft law provides for the same four forms of companies, although it no longer distinguishes among different types of ownership.

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135 Company Law, supra note 128, art. 2
136 Id. arts. 36-41.
137 Id. art. 143.
138 Id. arts. 81-131.
139 Id. arts. 138-42.
140 Id. arts. 141-42.
5.2.1. Characteristics of the Joint Stock Company

Like other CEE countries, Slovenia follows continental European models of company law, which provide generally for four types of companies. The most formal is the joint stock company, as represented by the French S.A. (“société ano-nyme”) or the German AG (“Aktiengesellschaft”). These forms are similar to the Anglo-American public corporation. They allow for various classes of shares, with different rights and powers, and they impose relatively strict oversight, audit, and disclosure rules. They are the most appropriate form for companies seeking a large number of shareholders and/or anticipating public offerings. While minimum capital requirements for this form tend to be quite high in Europe, minimum required capital in Slovenia is still relatively low. Until recently it was 150 million old dinar, or 15000 tolar—worth approximately $29,000 in December 1988 but less than $1500 just one year later and less than $200 in 1992. This minimum was raised to 450,000 tolar (about $4000) in 1992, and under the new proposed law it will again be raised to three million tolar (about $27,000). Although meant to protect shareholders and creditors, these high minimum capital requirements can be costly to the economy if they deter entry. Capital contributions can be in money or in-kind, and contributions must be paid-in before the first shareholder meeting.

Shareholders' rights and duties are quite flexible in this

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141 Id. arts. 81-103.
142 See supra note 1.
143 For an in-depth description of the German case, see NORBERT HORN ET AL., GERMAN PRIVATE AND COMMERCIAL LAW: AN INTRODUCTION (1982).
144 For example, the minimum required capital is currently the local currency equivalent of some $18,000 in Poland, $35,000 in the Czech Republic, $38,000 in Bulgaria, and $130,000 in Hungary. See supra note 1.
145 Yugoslavia suffered severe inflation in 1989, and nominal amounts in the law were not adjusted accordingly.
146 An alternative means to protect creditors is to increase the availability and credibility of collateral through changes in laws, institutions, and attitudes. In such a way more extensive property or contract rights, i.e., contingent or “collateral” rights on moveable property can replace distortionary direct controls, i.e., high minimum capital requirements.
147 Company Law, supra note 128, art. 95.
148 Id. art. 98.
form of company, and the company's articles of association have wide latitude to tailor them to the needs of the company. Both bearer and registered shares are allowed, and both may be freely transferred, the former by delivery and the latter by endorsement and entry in the share register. Shares can be divided into common and preferred, with the latter having priority with regard to dividends or return of capital upon liquidation. Although the general voting rule is "one-share-one-vote," some shares may be accorded more than one vote or the total votes of any one investor can be limited by the articles. Non-voting shares are also allowed. Thus investors have wide latitude to separate control from ownership and to tailor shareholders' rights to the specific concerns of individual investors. For example, some foreign investors—such as those with highly sophisticated technology—may want management control despite having only a minority ownership interest. Or they may be more risk averse than the Slovene partner and prefer priority in the event of liquidation. These flexible rules allow joint investors to accommodate each others concerns.

CEE company laws generally follow the German model of oversight for joint stock companies, providing for hands-on management by an administrative board (sometimes called a Board of Directors or Management Board) and oversight functions by an independent supervisory board. Unlike in the United States, persons may not serve on both boards simultaneously. For larger companies, independent auditors may also be required. In both law and practice, the division of responsibility among these various bodies can vary greatly by company (within general guidelines set out in the laws).

The 1988 Yugoslav law provided for these two levels of

149 Id. art. 175
150 Id. art. 177.
151 Id. art. 122.
152 Id. art. 89.
153 Bulgaria has a hybrid system, in that a joint stock company can have either a "two-tier" system (Management and Supervisory Boards) or a more simple "one-tier" system (a Board of Directors only). Romania differs from the others in that its company law does not provide for a supervisory board, although its "Board of Administration" may delegate some of its powers to a managing committee, thus in effect creating something like a U.S.-type system.
corporate governance—a managing board and a supervisory board. The managing board was responsible for appointing the company's senior managers and setting general guidelines for their performance. The supervisory board was supposed to oversee the managing board by reviewing annual reports, accounts, and proposals regarding profit distribution. Members of both boards (minimum of three each) were to be appointed for four-year terms by the general meeting of shareholders or partners. Amendments to the law in 1990 eliminated the requirement of a supervisory board, although one could still be provided for in the company's articles of association. The new proposed Slovene company law provides once again for mandatory supervisory boards for large joint stock companies.

Aside from setting this basic structure for corporate governance, the law is flexible. The company can determine the number of members of each board and special conditions for selection in its articles of association or bylaws.

As noted earlier, workers no longer have an explicit role in management. Even the requirement that joint stock companies have workers' councils, which was contained in the 1988 law, remained only as option in the 1990 amendments. Workers' councils are still required in socially-owned companies, but the law envisions that such companies will soon be transformed into share-issuing joint stock companies in which workers' managerial rights will derive solely from any share ownership they may have. Workers' rights in joint stock companies will henceforth be protected by

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154 Company Law, supra note 128, arts. 124-27.
155 Id. arts. 128-30.
156 Id. art. 123.
157 Zakon o spremembah in dopolnitvah zakona o podjetjih [Law on Changes and Additions to the Company Law], Yugoslav Official Gazette, No. 46 (1990), art. 44.
158 Company Law, supra note 128, art. 123.
159 Only workers in socially-owned enterprises continue to have an explicit role in management under the new law. See id. arts. 63-75. If such enterprises invest jointly with private investors in mixed enterprises, their workers will have a management role in such mixed enterprises, but it will be strictly proportional to the amount of resources invested. Id. art. 122.
160 Id. art. 45.
161 Id. art. 47.
collective bargaining agreements governed by republic-wide standards combined with enterprise-specific agreements.\textsuperscript{162}

5.2.2. Characteristics of the Limited Liability Company\textsuperscript{163}

The limited liability company is the other company form in traditional continental European company law that offers limited liability to all owners. Examples are the French S.A.R.L. (“société a responsabilité limitée”) and the German GmbH (“Gesellschaft mit beschränkter Haftung”). This form is popular because of its simpler structure, fewer formal requirements, and lower minimum capital requirements, ranging from the local currency equivalent of under $1,000 in Poland, Romania and Slovenia to $13,000 in Hungary. Minimum capital in Slovenia was originally set at 20 million old dinar\textsuperscript{164} (about $4000 in 1988 but only $200 one year later) and is now 100,000 tolar (about $900). As with the joint stock company, it will be raised under the proposed new company law—to one million tolar (about $9000). Although there is no minimum or maximum number of partners prescribed by law, a partner cannot sell shares to outside parties without the consent of the other partners.\textsuperscript{165} This restriction reflects the nature of the company. Close control over the activities and ownership of the company is desired;\textsuperscript{166} all investors are expected to play an active role.

Management and oversight structures are generally simpler for limited liability companies, reflecting their smaller number of owners and the underlying assumption that the owners know each other and have regular contacts. Prior to the 1990 amendments noted above, however, the Yugoslav


\textsuperscript{163} Company Law, supra note 128, arts. 104-08.

\textsuperscript{164} Id. art. 104.

\textsuperscript{165} Id. art. 107.

\textsuperscript{166} Common law systems do not have a form of company that is closely analogous to the continental limited liability form. This form has some resemblance to the U.S. Subchapter S corporation in its less formal structure and limits on number of owners and transfer of shares. It differs in other ways, however, one being that it is not a pass-through entity for tax purposes.
Enterprise Law adopted in 1988 law required a two-tiered supervisory structure for limited liability as well as joint stock companies. The new draft law does not include this requirement for limited liability companies.

5.2.3. Characteristics of the Two Types of Partnership

In addition to these two forms, Slovene law, like other company laws both in Europe and the United States, recognizes general and limited partnerships. In the general partnership,\(^{167}\) all partners are jointly and severally liable for the partnership's liabilities. The limited partnership\(^ {168}\) consists of limited partners, whose liability is limited to their contribution to the partnership, and one or more general partners with unlimited liability who are responsible for actively managing the company. Both forms are quite flexible, as partners are able to negotiate their own arrangements concerning capital contributions, distribution of profits and losses, and allocation of voting and managerial rights. Share capital can be transferred to third parties only with the agreement of the founders, unless otherwise specified in the articles of association.\(^ {169}\) In Slovenia and most other CEE countries (with the exception of Poland and the former CSFR), neither type of partnership is a pass-through entity, as they are in the United States. Thus, both are subject to tax at the entity level.

5.3. Procedures for Establishing a Company

Setting up a company has typically been relatively easy and inexpensive in Slovenia. The founders must first prepare the articles of association and deposit the initial capital in a temporary account with the Service of Social Accounting.\(^ {170}\) The signatures of the firm's directors must be approved by the

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168 The partners have the option of raising capital through the issuance of individual shares, in which case the rules on share purchase provided for joint stock companies are applicable. Id. art. 114. This is similar to the "limited partnership divided by shares" found in some other European countries.
169 Id. arts. 112, 119.
170 Id. arts. 81-84.
court.\textsuperscript{171} Approval of the firm’s articles by a notary is not required under the current law but is expected under the proposed new law. A new Notaries Act, which would introduce this institution in Slovenia for the first time, is now being debated.\textsuperscript{172} Companies with foreign participation must then submit the joint venture agreement (or similar document) to the Ministry of Foreign Affairs, whose approval is deemed granted if no response is received within thirty days. All companies must then send all relevant documents to the regular court at the seat of registration, which is supposed to issue its decision within thirty days.\textsuperscript{173} The company is a legal entity upon approval by this court. In practice approvals by both the Ministry of Foreign Affairs and the courts have been relatively quick. The final step is entry in the court register (at which time it is binding against third parties) and publication in the Official Gazette.\textsuperscript{174}

6. FOREIGN INVESTMENT

Foreign investment was first allowed in Yugoslavia in the 1978, with the passage of the Law on Investment of Foreign Persons into Domestic Organizations of Associated Labor.\textsuperscript{175} This law was, however, relatively restrictive, with high requirements for invested capital and strict limits on profit repatriation. Furthermore, foreign investment had to accommodate the Yugoslav self-management rights of workers, which in practice meant an often intolerable sacrifice of managerial control for the foreign partner. Amendments in 1984 and 1986 did little to change this restrictive regime. As a result, the flow of foreign investment was small, amounting

\textsuperscript{171} \textit{Id.} art. 184.

\textsuperscript{172} \textit{Zakona o notariatu [Law on Notary], draft.} The requirement of notarial approval is proving to be an expensive and time-consuming process in some other reforming socialist countries, and Slovenia should consider its merits carefully before introducing it. Part of the problem in these other countries arises from the shortage of notaries, in part due to long-standing government monopolies over the profession.

\textsuperscript{173} Company Law, \textit{supra} note 128, arts. 183-87.

\textsuperscript{174} \textit{Id.} art. 186.

\textsuperscript{175} \textit{Zakon o vlaganju sredstev tujih oseb v domačs organizacije združenega dela [Law on Foreign Investment into Domestic Organizations of Associated Labor], Yugoslav Official Gazette, No. 18 (1978), amended at, Yugoslav Official Gazette, No. 38 (1986).}
to less than one percent of domestic investment over this period (but still more significant than that in any other CEE country in that period).

The Foreign Investment Law of 1988,\textsuperscript{176} introduced simultaneously with the Enterprise Law, represented a radical departure from the previous regime. Pursuant to this law, which is still the law in force in Slovenia today,\textsuperscript{177} foreigners (whether legal entities or natural persons) may freely invest in Yugoslav firms and may own up to 100% of the assets.\textsuperscript{178}

The form of foreign investment is governed by the enterprises law (with its four forms as outlined above), and foreigners are free to invest in firms with social, cooperative, mixed, or private ownership.\textsuperscript{179} No matter the form or ownership, they are guaranteed management rights and the right to share in profits or returns of capital in proportion to the amount invested.\textsuperscript{180} No limits are placed on profit repatriation.\textsuperscript{181}

Broad national treatment is provided by Article 8: "Enterprises with foreign investments shall have the same status, rights and responsibilities on the unified Yugoslav market as socially-owned enterprises."\textsuperscript{182}

The law does not specify particular tax regimes or special tax incentives for foreign investment. Rather it provides that the individual republics shall decide on the tax regime, leaving the determination of tax reliefs on start-up profits or amounts

\textsuperscript{176} Law on Foreign Investment, \textit{supra} note 129.

\textsuperscript{177} As with many of the other Yugoslav laws discussed in this paper, Slovenia implicitly recognized this law as applicable in late 1990, with the only change being the approving ministry (which is now the Slovenian Ministry of Foreign Affairs). A new foreign investment law is now under preparation in Slovenia.

\textsuperscript{178} Law on Foreign Investment, \textit{supra} note 129, art. 10.

\textsuperscript{179} Article 9 also specifies that foreigners may invest in banks and other financial institutions, insurance organizations, and "other forms of cooperation and joint business as specified by statutes." Law on Foreign Investment, \textit{supra} note 129, art. 9. Article 19 requires legislative approval for investment in extractive industries, and under Article 21 wholly-owned foreign investments are prohibited in armaments, rail and air transport, communications and telecommunications, insurance, publishing, and the mass media. \textit{Id.} arts. 19, 21.

\textsuperscript{180} \textit{Id.} art. 5.

\textsuperscript{181} \textit{Id.} \S 6.

\textsuperscript{182} \textit{Id.} art. 8.
reinvested to the local republic. Slovenia recently reformed its tax structure. Its thirty percent corporate income tax rate is now among the lowest in Europe. New firms or firms that reinvest their profits, whether domestic or foreign, get special treatment. Special tax incentives for foreign investment alone are not advisable; not only do they complicate tax administration and unfairly discriminate against domestic firms, but they are also unlikely to have a major impact on the volume of investment as long as the underlying tax structure is reasonable.

Despite the far-reaching changes in attitude and treatment toward foreign investment embodied in the 1988 law, the most important change introduced that year for foreign investors was the repudiation of worker self-management and the introduction of modern corporate forms contained in the Enterprise Law. The concept of worker self-management was in constant tension with the desire of foreigners to control and manage their investments. Even if foreigners obtained day-to-day management rights by agreement, they could not remove the workers’ ultimate power to repudiate such agreement. The new laws for the first time give managerial authority clearly to the owners of a firm, and provide flexible rules within which the investors can work out their own optimal balances between ownership and authority.

Even with these important changes in 1988, there has been relatively little foreign investment to date. The main reasons are clear—extreme economic instability coupled with political instability. Yugoslavia’s inflation soared to an estimated 2800% in 1989 due to a lapse of fiscal and monetary control in the face of growing enterprise deficits. Dramatic attempts at stabilization at the beginning of 1990 succeeded in bringing down inflation and resurrecting some positive economic signs, but they were quickly followed by the

183 Id.  
187 See FABRIZIO CORICELLI & ROBERTO ROCHA, Stabilization Programs
growing political crisis and eventually civil war. As its independence begins to be recognized around the world, the returning calm in Slovenia gives renewed hope that the political and economic climate will support the legal framework introduced earlier to stimulate a renewed inflow of foreign capital.

7. BANKRUPTCY

Although Yugoslavia, like most of the other socialist countries, had a bankruptcy law on the books throughout its socialist period,\textsuperscript{188} this law was put to little use. Bankruptcy procedures typical of those in industrial market economies were not appropriate in the socialist setting because of the absence of a clear conflict of interest among various claimants—whether shareholders, workers, or creditors. In most Central and Eastern European countries all of these claimants were arms of the state or ultimately supported by the state. For example, state-owned banks had little incentive to collect on bad debts because the state explicitly or implicitly guaranteed such debts. Workers were guaranteed jobs, steady income, and related support systems whether or not their particular firms thrived. Measures in lieu of bankruptcy, including financial “rehabilitation” and “compulsory settlement,”\textsuperscript{189} were relied upon to keep the ailing firms alive and preserve employment.


\textsuperscript{188} The 1929 law (Dika, M.: Stečajno pravo i pravo prisilne nagodbe, Informator 2341, Zagreb, 1976, page 2) was applied in Yugoslavia until 1965, when a new law was adopted. [Zakon o prisilni poravnvi in stečaju [Law on Compulsory Settlement and Bankruptcy] Official Gazette FPRY, No. 15 (1965)]. The latter was amended several times (Official Gazette SFRJ No. 55 (1969), No. 39 (1972), No. 16 (1974). It was replaced by the new law [Zakon o sanaciji in prenehanju OZD [Law on Rehabilitation and Liquidation of the OALs], Official Gazette SFRJ, No. 72 (1986), amended in, Official Gazette SFRJ No. 69 (1988)]. Finally, it was replaced by the 1989 law, discussed infra.

\textsuperscript{189} The compulsory settlement procedure called on debtors and creditors to reach mutual agreement under which creditors collected reduced amounts and the debtor remained alive.
Bankruptcy takes on much more importance as these economies attempt to transform their economies and develop private markets. Just as a modern and comprehensive enterprise law is needed to govern the entry of new private companies into the market, so a bankruptcy law is needed to govern the exit of private firms that fail.

Many new or privatized firms are likely to fail as the economy undergoes fundamental structural adjustment. Bankruptcy law is important not only to firms' shareholders, employees, and creditors, but it is also of critical importance to the newly emerging private firms themselves. The ability of banks and other financial creditors to collect on bad debts is an essential element for the growth of private credit, which is itself essential to the start-up of new firms.

Yugoslavia passed a new bankruptcy law in December 1989. The same month it adopted a new package of economic policies designed to bring down the hyper-inflation of 1989 and open the economy to foreign competition. The government vowed to stop bailing out loss-making firms by forcing them into bankruptcy. The Social Accounting Service was instructed to file a bankruptcy case any time a social enterprise was in arrears for more than sixty days. As a consequence, the number of bankruptcies increased rapidly. While only sixty-two bankruptcy petitions were filed in Slovenia between 1983 and 1989 (with forty-one ending in closure), 134 petitions were filed in 1990 and 234 in the first half of 1991. Among them were numerous large firms,

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180 Zakon o prisilni poravnavi, stečaju in likvidaciji [The Compulsory Settlement, Bankruptcy, and Liquidation Law], Yugoslav Official Gazette, No. 84 (1989) [hereinafter Bankruptcy Law]. This was part of an expanded effort during this time to adopt a legal framework (such as the enterprise and foreign investment laws described above) suitable to a market economy. In addition to bankruptcy and compulsory settlement, the 1989 law has a chapter devoted to liquidation for reasons other than insolvency.

181 These included tight monetary and credit policies, a devalued and newly-pegged exchange rate, and a dramatic opening of the economy to international trade. See CORICELLI & ROCHA, supra note 187; GELB & GRAY, supra note 186.

182 These numbers may somewhat overstate actual attempts to close companies, as the bankruptcy procedure was sometimes used to shed unwanted labor or rid the company of its debt burden, while the firm continued its activity under a new name. In fact, bankruptcy is currently one means to “spontaneous privatization” in Slovenia, as firms rid themselves of unwanted liabilities and are sold at low prices to new private
and the rate of unemployment more than doubled in Slovenia from 1990 to 1992. Fearing the social disruption that would result from the ever-increasing number of bankruptcies, the Yugoslav authorities suspended the right of the Social Accounting Service to bring cases in early 1992. Although the suspension was formally lifted in October, 1992, relatively few cases are currently being brought; there still appears to be an informal moratorium on most cases until privatization and other modes of restructuring are given a chance to proceed.

Under the 1989 Yugoslav law, now still valid in Slovenia, bankruptcy proceedings may be initiated by creditors, the Social Accounting Service, the debtor himself, or other persons as determined by law. A bankruptcy board composed of three judges oversees the proceedings, with the day-to-day management of the proceedings conducted by a fourth, non-board member bankruptcy judge. Through public notice creditors are asked to post their claims. If requested by creditors representing more than half of all claims, the board may form a board of creditors to represent their interests.

The management of the insolvent company is turned over to a trustee, who takes active steps to wind down the activities of the company. Workers are let go, an estate in bankruptcy is formed, the accounts of the debtor are suspended, and all activities are terminated except for the completion of transactions already begun. Assets are sold, and the proceeds are used to pay the costs of the proceeding and to satisfy creditors’ claims, generally on a proportional basis.

Although the law does not allow specifically for reorganization, an insolvent debtor is entitled to propose a compulsory settlement to creditors prior to or concurrent with bankruptcy owners.

193 Bankruptcy Law, supra note 190, art. 3.
194 Id. art. 13.
195 Id. art. 53.
196 Id. arts. 61-64.
197 Id. art. 93.
198 Id. art. 95.
199 Id. art. 97.
200 Id. art. 119.
201 Id. art. 121.
proceedings. If creditors representing over fifty percent of all claims agree, the three judge settlement board can approve a settlement whereby a percentage—not less than fifty or sixty percent—of each claim will be repayed over three years and the remainder of the claim forgiven. In contrast to reorganization, compulsory settlement does nothing to change the structure or activities of the debtor and thus insure that the indebtedness problem is alleviated in the longer run.

Although Slovenia continued to use the Yugoslav law after declaring its independence, the Slovene government is now debating a new draft bankruptcy law. The new draft law is intended to remedy some of the deficiencies of the old one. Most importantly, it introduces the possibility of financial reorganization in lieu of either compulsory settlement or closure of insolvent firms. Such reorganization could include, for example, sale of part of the assets of the firm, streamlining the activities of the firm or laying off workers to reduce costs, merger of the firm with another, or sale of the entire firm as a going concern. The debtor can introduce a plan for financial reorganization concurrently with a plan for compulsory settlement, and both are voted on by creditors. Because of the possibility of financial reorganization, compulsory settlement is no longer the only alternative to bankruptcy, and thus it takes on less importance. The bankruptcy board is no longer obligated, for example, to test the compulsory settlement route by trying to assess either the willingness of the majority of creditors to settle or the adequacy of the bankrupt's assets to meet the claims under such settlement. Rather, the board and the creditors can consider the alternative of reorganization simultaneously or in lieu of either of the other options.

The Slovene draft also contains other changes, including the downgrading of the Social Accounting Service (which is no

202 Id. art. 18.
203 Id. art. 47.
204 Id. art. 21.
205 Predlog za izdajo zakona o prisilni poravnavi in stečaju [Proposal to Adopt Law on Compulsory Settlement and Bankruptcy] (Internal Material, Government of the Republic of Slovenia).
longer competent to introduce bankruptcy proceedings), the introduction of the concept of shareholders' claims (which are subordinate to those of creditors), and the replacement of the bankruptcy judge by the president of the bankruptcy board. Liquidation is not covered by the new draft, but is to be regulated instead by a new company law now under discussion.

The main problem with regard to bankruptcy in Slovenia, as in other reforming socialist economies, is not the law but rather the incentives still inherent in the system. Creditors are very hesitant to bring cases to court for several reasons: the high costs of the proceedings in money and time,\textsuperscript{206} the inexperience of most judges and trustees, the questionable value of the remaining assets of the debtor (especially in today's recessionary environment), and the lingering hope that the public treasury will bail them out from bad debts. More generally, many Slovene enterprises are illiquid or insolvent, and the government and Parliament both fear the social disruption that strict enforcement of bankruptcy laws might create.\textsuperscript{207} Meanwhile, other means to collect on bad debts, including creation and foreclosure of security interests in real or moveable property, are themselves underdeveloped in both law and practice.\textsuperscript{208} Bankruptcy is only one part of this larger legal arena of debtor and creditor rights that will take some time to develop.

\textsuperscript{206} These costs are exacerbated by the requirement that creditors prove that a valid claim exists and was not able to be satisfied in any other way.

\textsuperscript{207} A two-track approach may be optimal in Slovenia and other CEE countries, with one track—traditional bankruptcy—applying to new private sector firms and a second—an extra—judicial workout procedure—applying to the stock of illiquid or insolvent firms carried over from socialism. Slovenia is working actively to design an integrated program of bank restructuring, enterprise restructuring, and privatization. Such a program would involve both financial and real reorganization and/or liquidation of a substantial number of loss-making public enterprises outside of the traditional bankruptcy route. Thus, it could help relieve judicial institutions from the extra burdens now being faced in Hungary, where such loss-making firms are being forced into judicial bankruptcy procedures. See supra note 1.

\textsuperscript{208} Mortgages on real property are impeded by the poor state of land registration and the difficult of evicting tenants. Security interests in moveable property, although legal under the Law on Obligations, are not used in practice, in part because of the absence of any central registry.
8. CONTRACT LAW

In 1991 Slovenia implicitly adopted the Yugoslav law on contracts, the 1978 Law on Obligations. This law, along with the Law on the Foundations of Property Relations discussed earlier, had replaced the Austrian Civil Code which had previously governed both property and contract relations. The 1978 Law on Obligations did not depart radically from its Austrian predecessor, and its principles fit squarely within the civil law tradition. For example, the generally-applicable sections in Part I of the law provide for freedom of contract and equality of rights among the parties and set out modern rules of offer and acceptance, concepts of capacity and invalidity (on grounds of error, deceit, or duress), notions of consideration (or equivalence of things exchanged), standards for completion, and remedies for breach of contract. The law then provides in Part II special rules for particular types of contracts, including (among others) sale, gift, rent, employment, storage, business representation, insurance, warranty, assignment, and secured and unsecured credit.

Although drafted during the socialist period, the 1978 law included few references to socialist or self-management principles. This was because it was always meant to govern relations between private parties, while relations involving public entities were to be covered by other laws. Thus, major revisions were not needed (as, for example, were needed in Poland) for the law to provide an adequate framework for private contracts in the post-socialist era.

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210 Some private contracts in particular areas, such as securities, are also governed by specific legislation. Zakon o vrednostnih papirjih [Law on Papers of Value], Yugoslav Official Gazette, No. 64 (1989), with most recent amendment Yugoslav Official Gazette No. 29 (1990).

211 See supra note 1.

212 The law does include some provisions regarding the relationship of private obligations to the plan and to self-management agreements. These provisions, to be removed in future amendments, do not interfere with the sections governing purely private obligations.
9. ANTI-MONOPOLY LAW

As in other CEE countries, Yugoslav firms were quite large. Industry and trade were quite concentrated during the socialist period in comparison to industry in market economies at a similar level of development. Collusion was actually encouraged in Yugoslavia, as all producers of a certain product were obligated to form associations with each other, and traders of that product were required to conclude self-management agreements with producers. Traders were also encouraged to form sector-specific trade monopolies. Although they were not formally supposed to collude in price-setting or market sharing behavior, once brought together they were able to collude and also to exert a powerful force in lobbying for protection from international competition. The resulting hierarchy of power in the economy put producers first, traders second, and consumers—who remained unorganized and unrepresented—last.

Clearly these old ideas and practices must radically change as Slovenia moves to a private market economy. Anti-monopoly law is needed to break up monopolies and end collusive behavior among producers and/or traders, and unfair competition legislation is needed to prevent deceptive trading practices. The existing legal framework is inadequate in both areas. The only relevant law now in force in Slovenia is the Yugoslav federal Law on Trade (1990), which remains applicable in Slovenia after its independence. It replaced the federal Law

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213 Some CEE countries with more classically-socialist systems than Yugoslavia's specifically followed a one product-one firm principle. Although highly inefficient in a capitalist system, such organization was more efficient in a socialist one because it minimized transaction costs and thus facilitated top-down administrative control.

214 Zakon o obveznem združevanju dela in sredstev OZD, ki se ukvarjajo s prometom blaga in storitev, s proizvajalnimi OZD [Law on Obligatory Association of Work and Assets of OALs, which Deal with Transfer of Goods and Services, with Production OALs], Yugoslav Official Gazette, No. 66 (1980), most recent amendment Yugoslav Official Gazette, No. 70 (1985). Traders were in practice in a subordinate relationship to producers. This result concurred with Marxist doctrine, which considered only material production to be value-enhancing and essentially branded trading as "unproductive exploitation".

215 Zakon o trgovini [Law on Trade], Yugoslav Official Gazette, No. 46 (1990) [hereinafter Law on Trade].
on Unfair Competition of 1974. Although it provides a beginning framework for limiting anti-competitive behavior, this law applies only to trading activities, whether retail or wholesale. Similar behavior in production or services is not covered by the law. Furthermore, the law has hardly been applied in practice and thus has little relevance in practice, although the previous 1974 law is generally thought to have had some positive effect on business practices.

The trade law prohibits certain monopolistic practices, unfair competition, speculation, and “limitation of the market.” Prohibited as monopolistic agreements or anti-competitive behavior are such practices as division of market share, price collusion, refusals to deal, and “misuse” of a dominant position (defined as controlling over forty percent of the Yugoslav market). Prohibited as unfair competition are, among other things, advertising with an inability to deliver, the misuse of trademarks, and the hiding of defects in merchandise. “Speculation” includes provoking disruptions in the market or “unjustified” price increases. This last category is somewhat of a hold-over from the socialist period and could include many strategic moves of competitive companies that are entirely legal in industrial market economies. Finally, “limitation of the market” is a broad category that includes acts which block free entry or exit or the free exchange of goods. In addition to prohibiting supposedly anti-competitive activities, the law establishes a federal commission of consumer protection, and charges inspection officers within the ministry of trade with enforcement

217 Law on Trade, supra note 215, arts. 21-29.
218 Id. at arts 30-32.
219 Id. art. 33.
220 Id. arts. 33-34.
221 Id. art. 31.
222 Id. art. 32.
223 Id. art. 33.
224 Id. art. 34.
225 Id. art. 16.
responsibilities. Both civil suits and criminal penalties (fines) are envisioned as remedies for breaches of the law.

Slovenia is currently in the process of preparing a new law on the protection of competition which is expected to pass in 1993. The draft law is broad, combining not only monopoly regulation and unfair competition, but also anti-dumping. For purposes of enforcement, the draft law envisions the creation of a new specialized agency, the Agency for the Protection of Competition, which follows the general model of the Bundeskartellamt in Germany or of the Federal Trade Commission in the United States. The Agency would render rulings in administrative proceedings, with a right of appeal to the Slovene Supreme Court.

In the areas of unfair competition and anti-monopoly policy, the draft law appears to follow international norms. With regard to unfair competition, it prohibits such activities as deceptive advertising and misuse of a competitor's trade secrets. The section of the draft law concerning anti-monopoly policy addresses both horizontal and vertical restraints on competition. With respect to horizontal restraints, the draft law prohibits cartels in restraint of trade, prohibits the "abuse" of a "dominant position" (defined as forty percent or more of the Slovene market), and requires that the competition office approve mergers that would lead to a market share of over sixty percent. Certain cartel agreements, such as joint R&D, are not prohibited, but such agreements must be submitted to the competition office for informational purposes. In the area of vertical restraints, Article 8 of the draft law closely follows EC law and prohibits such behavior as resale price maintenance, tied sales, and refusals to deal. However, it recognizes that certain restraints may be appropriate in particular contractual arrangements (such as franchises). In all cases

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226 Id. arts. 35-39.
227 Id. arts. 40-41.
228 Id. arts. 42-47.
230 Id. arts. 19-21.
231 Id. art. 22.
the approach of the draft law is "per se" rather than "rule of reason."

While these characteristics of the draft law are based directly on European models, they are not uncontroversial. Anti-monopoly policy and enforcement in the United States has departed from these models over the past 15 years, especially in the area of vertical restraints, as more and more economic analysis has shown that such constraints are often benign, if not actually efficiency-enhancing. Even in Europe, the OECD is arguing strongly that EC "per se" rules are too strict and are preventing many potentially positive types of competition. Competition laws in some other countries of Central and Eastern Europe, including Poland and Czechoslovakia, have adopted many of the same basic principles but have taken a more flexible "rule of reason" approach, allowing their anti-monopoly offices to use discretion in applying the law in individual cases. This is the approach also urged by the OECD for the EC, particularly in the case of vertical constraints. The cost of such flexible approach is the uncertainty that it generates; businesses are never sure what is allowed and what is not. However, the benefit of a flexible approach is that the anti-monopoly authorities can concentrate on the cases that appear to be the most harmful to competition.

Another issue is whether the competition office should be given the authority to break up existing monopolies. The Slovene industrial structure, like that of other CEE countries, tends to be more concentrated than that of typical market economies. As the economy transforms to a market economy based on private ownership, this industrial structure will need to change if the Slovene economy is to achieve its desired degree of domestic efficiency and international competitiveness. Some large firms may need to be broken up into smaller competitive pieces. Yet few monopolies break up willingly, and unless the competition office has the authority to mandate such break ups, today's socially-owned monopolies could become tomorrow's privately-owned monopolies. One convenient way to promote changes in the industrial structure is to

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explicitly link anti-monopoly policy with the process of privatization. Both Poland and the former CSFR have made this explicit link by requiring that the monopoly office review all privatization proposals to see whether a break-up of the firm would be economically efficient and therefore should be required prior to privatization.

Of course the first line of defense against monopolistic behavior, particularly in a small, open economy like Slovenia, is international competition. If trade barriers (tariffs and quotas) are kept low, large Slovene firms will be forced by international competition to remain competitive. However, trade may not always provide sufficient competitive pressures in the short run, or at all for firms producing non-tradeable goods or services (such as construction). Furthermore, domestic producers will often lobby for increased protection, and one of the main roles of a competition office should be to provide a counterweight to such efforts, that is, to aggressively and publicly advocate free and fair competition.

Two other rather controversial provisions were included in the original draft law. One concerns "speculation," defined in the draft as "the exploitation of irregular market conditions for the purpose of gaining undue wealth, if such acts result or may result in interference in the market or in supply or in undue price increases." Somewhat similar provisions allowed the Executive Council to impose market restrictions not only during natural disasters but also if:

appreciable disturbance is or may be caused on the market due to the lack of goods essential for production . . . , if necessary to ensure [inputs] for production of strategically important products . . . , or if imports and exports of goods create appreciable disturbance on the domestic market or they threaten the supply of the domestic market or cause or may cause appreciable damage to production or trade within the Republic of Slovenia.

In short, both of these provisions provide wide discretion for the competition office to intervene in markets and could result

233 Protection of Competition Law, supra note 229, sec. IV.
234 Id. sec. VI.
in serious misapplication. It is unclear whether they will be included in the final law.

Another issue concerns the "dumping" of foreign goods into the Slovene market and whether the competition office should be authorized to impose additional levies (countervailing duties) in cases of dumping. Anti-dumping policy is essentially protectionist in nature, and thus it goes against the spirit of competition and the mission of a competition agency. If Slovenia is to adopt anti-dumping legislation, it should be done in a separate law and be administered by a separate agency. Furthermore, Slovenia should seriously consider whether it wants to adopt anti-dumping legislation at this time. Such legislation is often a backdoor way of protecting inefficient local production, thus forcing consumers to pay higher prices, and consequently damaging the international competitiveness of local firms.\(^{285}\) If Slovenia does consider such legislation, costs of production or international prices should be the applicable standard rather than domestic prices.

10. JUDICIAL INSTITUTIONS

The many parts of the legal framework discussed above will take on true meaning only as they are interpreted and enforced through judicial institutions, including courts and arbitration panels that resolve disputes and attorneys who advise and educate clients about the relevant law for their business. Although far more exposed to market-oriented norms and principles than some of their socialist neighbors, Slovene legal institutions still have far to go in gaining the experience and expertise needed to fulfill the promise of the evolving legal framework.

10.1. The Legal Profession

There are many trained legal professionals in Slovenia, but few who are well-trained for the needs of a newly-emerging private market economy. Yugoslavia has traditionally had a very high number of law students relative to other coun-

tries, in part because it was one of the very few countries offering a short (two-year) first degree program. However, its number of lawyers is proportionately much lower when compared with other countries because a high percentage of law students do not graduate. Although still high by international standards, Slovenia has traditionally had fewer law students and a higher graduation ratio than other Yugoslav republics. Approximately 300 new second degree law students graduate from the two Slovene law schools annually.

Despite the sizeable number of law graduates, there have traditionally been relatively few practicing professional lawyers in Yugoslavia and Slovenia. Most law graduates have been employed in general business or government administration, with only between five to ten percent of law graduates going into law practice or the judiciary. Attorneys have tended also to work for the public sector. Private lawyers, although allowed to practice by law, have been rare indeed, approximately only 600 in Slovenia. However, the number of private attorneys is expected to increase rapidly with the increasing role of private market forces. New drafts of laws prepared at the beginning of 1992 are designed to regulate the profession and set higher standards for entrance through a bar examination.

Furthermore, those lawyers that do work in legal professions tend to be inadequately prepared for the legal demands of a market economy. Until the mid-1980s the law schools' curricula and the practice of law provided little exposure to market-oriented commercial law principles. Social property and all relations and obligations stemming from it were the principle topics of study and work. This began to change, however, in the late 1980s, when the principles and institutions of industrial market economies began to creep into law

236 In fact, in the early 1980s Yugoslavia had the highest number of law students relative to its population of any country in the world. Franjo D. Stiblar, Zaposlovanje pravnikov v Jugoslaviji, Zbornik znanstvenih razprav, XLIII, Pravna fakulteta v Ljubljani, Ljubljana (1984).

237 Id.

238 Out of 80,000 lawyers in Yugoslavia in 1988, about 6000 were judges and roughly the same number were attorneys. STATISTICAL YEARBOOK OF YUGOSLAVIA 1989. Federal Statistic Office, Belgrade (1989).

curricula. Many law professors had been formally educated in the West, and they should draw on their earlier learning to introduce these new areas of study.

But while current law students are getting increasing exposure to market-oriented commercial law, the job of educating existing judges and lawyers is a major challenge. Although judges in particular remain respected for their honesty and integrity, they understandably lack experience and expertise in many of the more complex areas of law applicable to market economies. Technical assistance, training, and time will help to remedy this situation, as well as increased publication of legal articles and court decisions.

10.2. The Court System

In addition to the constitutional court discussed earlier, the Slovene court system is divided into three levels, with eight basic courts, four appellate courts, and one supreme court. Twelve specialized "courts of associated labor," which deal mainly with labor disputes in socially-owned enterprises, are also still in operation. As described earlier, cases litigated in basic courts are handled by panels of professional and lay judges, while those litigated in higher courts are handled exclusively by professional judges. Slovenia's fourteen courts are currently staffed by approximately 500 professional judges and almost 7,000 lay judges.

The courts are used extensively in resolving disputes. Some 150,000 civil cases were handled by first-level courts and some 94,000 by appeals courts in 1990 alone. As a result of such extensive use, the wait is long; on average it takes three to five years and sometimes as long as ten years for a civil case to be decided. The court system, while not particularly inefficient when compared to systems in neighboring countries, could benefit from enhanced training and technical assistance, particularly in the relatively new and unfamiliar commercial areas such as company, bankruptcy, and competition law.

240 See Zakon o rednih sodiščih [Ordinary Court Law], Official Gazette SRS, No. 10 (1977); see also Official Gazette SRS, No. 8 (1990) for the most recent amendment.
As in other post-socialist economies, arbitration is not well-developed in Slovenia. It has not been seen as a viable alternative to regular court procedures in handling domestic commercial disputes, despite the lengthy procedures and long delays typical in the courts. However, arbitration in the area of international trade is an accepted tradition, and has been handled in Yugoslavia by the Chamber of Commerce since 1981. But only in 1990 did Slovenia authorize its Chamber of Commerce to set up a general commercial arbitration facility applicable to domestic as well as international disputes. Although still in its infancy, this is a promising new venture. The general commercial arbitration facility offers a way to “privatize” dispute resolution and thus save on scarce legal and administrative resources that could usefully be supported and expanded in the future.

11. CONCLUSION

Slovenia is making steady progress in creating a basic legal framework in which the private sector can grow and develop. It benefitted from the efforts of Yugoslav economic and legal reformers since mid-1988, and from the fact that it was willing to adopt many of the Yugoslav solutions upon independence rather than try to start again from scratch. Few changes appear to be needed in some areas of the law, including company, foreign investment, and intellectual property. In others, however, such as bankruptcy and anti-monopoly law, both the legal framework and the legal institutions needed to interpret and implement them are still lacking an adequate structure and sufficient credibility to support a private market economy. As in other post-socialist economies, real property law is an area of uncertainty, both because of Slovenia’s determination to reverse the past through reprivatization and because of the limits placed on foreign ownership.

All in all, Slovenia is one of the most advanced CEE countries in economic, legal, and institutional reform. If the current commitments to political stability and economic reform continue as expected, the country should provide an increasingly attractive setting for new private sector investment from

both domestic and foreign sources over the medium and the long term.