Kosovo Business Agenda 2011

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Kosovo Business Agenda
Foreword

Many reports of prestigious international organizations, including the World Bank Doing Business in Kosovo report have indicated that it is very difficult to do business in Kosovo, and in this regard the American Chamber of Commerce in Kosovo and the USAID Business Enabling Environment Program (BEEP) launched the Kosovo Business Agenda project, aiming to meet with businesses and business associations throughout Kosovo in order to hear from the first hand the issues that business community is facing, both in local and central level of governance.

In this regard, Kosovo Business Agenda 2011 is a document which contains the opinions and feelings of the business community, namely representatives of private companies and business associations, on the doing business environment in Kosovo.

The document is unique as it does not only contain the voice of the businesses, consequences they suffer as a result of the issues they face with, but it also contains the recommendations for resolving these issues. AmCham’s role in this process strengthens the slogan of this organization – of being “A business voice for Growth”, given that we strongly believe that the best solutions would come from those who are confronted with certain issues or problems on daily basis. Moreover, the document and the entire project aim at showing that business community is ready to fulfill its share of responsibility towards further improvement of the public-private sector dialogue.

The document contains a detailed analysis and sets of recommendations on numerous issues, which will be addressed to the respective government institutions, who have in many cases expressed their commitment towards creating a better business environment, which however was not supported with practical actions.

The issues presented in this document are presented by various businesses and business associations and do not necessarily present the stance of the American Chamber of Commerce or the USAID Business Enabling Environment Program.
Methodology

The issues, analysis and recommendations included in this document have been rendered from two series of fourteen focus groups and roundtable discussions with around 150 representatives of business community in eight cities of Kosovo. The focus group meetings began in Peja on March 9, to continue in Gjakova, Prizren, Ferizaj, Gjilan, Mitrovica, Gracanica and finally in Prishtina, whereas the second round of six roundtable meetings was organized in Prishtina. The meetings were moderated by the AmCham Policy Department and co-moderated by USAID BEEP coordinators in each of the municipalities in which the meetings have taken place.

Summary

The Kosovo Business Agenda 2011 document contains issues that businesses confront with on daily or other basis. The identified issues have been categorized into eight sections, namely: Customs Issues; Tax Issues; Public Procurement; Manufacturing Issues; Power Supply; Municipal Issues; Late payments; and Labor Law Issues. Every section contains specific issues, their brief analysis, quantification of problems (where applicable) and finally the recommendation for most of the issues.
Customs Issues
1. Customs Issues

Issue 1.1. Customs officers do not accept the invoice values of imported goods as presented

Customs officers do not accept the value of the invoice and other import related documents as presented by the importers themselves. Businesses believe that this practice is unnecessary given that official customs figures say that only 5% of presented documents are false or undervalued. The biggest concern of businesses regarding this issue is the high discretion that Custom officers have in the valuation of imported goods. Importers who have faced such problems with Customs say that in many occasions they have asked the Customs officials to issue a written statement, stating their reasons for not accepting the value of goods as shown in the original invoices presented to Custom officers. This is also addressed in Item 3 of Article 12 of the Customs and Excise Code of Kosovo (CECK), which states that “Decisions adopted by the Customs in writing which either reject requests or are detrimental to the persons to whom they are addressed shall set out the grounds on which they are based.” However, according to businesses, it seems to be a common practice that the Customs officers refuse to comply with this legal provision.

Businesses are obliged to pay the import duties pursuant to the decision of the Customs officer. Paying these, however, does not imply that businesses have no right to appeal against this decision. This right is also granted by Item 1 of Article 291 of CECK which states that “Every person has the right of exercising the request of decision review brought by the Customs regarding the application of customs legislation which is related to it directly or indirectly.”

According to businesses, Customs officers are under pressure from the Government to increase revenue collections, and this is one of the ways for raising revenue receipts.

Issue 1.2. Non-recognition of original prices because of the difference with prices contemplated by TARIK

There are often cases when importing companies purchase certain goods at a lower price from the one set forth in the document of Integrated Tariff of Kosovo (TARIK) or the market price which are often ten times bigger than the times of imported goods. These companies are forced to pay the customs duties pursuant to the base price provided by TARIK. As a result, business faces other issues since they cannot sell their products at the lower price, as Tax Administration of Kosovo does not accept the selling price to be lower from the one imposed by Customs. An example of this would be as follows: a trading company has purchased computer desks in China for USD 9, while Customs set a fixed price of EUR 15 for all computer desks. The company is forced to pay the import dues and VAT pursuant to the value set by Customs. Now the company is forced to set a final price of the product that exceeds the amount set by Customs and all the fees that had to be paid for it at the border, even if the company can still afford to keep the final price at a lower range from the one set by Customs.

The imposition of mandatory minimum values is illegal under the Kosovo Customs Code. There is no provision in law that prevents Customs from verifying and insisting on the price paid or payable for imports, but at the same time, nothing in law allows Customs to impose arbitrary or fictitious values.
**Recommended actions for 1.1. and 1.2.** Customs should review their practice of not accepting the value presented by importing companies at the border. They should apply revaluation only in cases where they have sufficient grounds for claiming that the value presented in an invoice is undervalued. Customs should establish proper mechanisms for checking the authenticity of the submitted invoices. This would only increase mutual trust, since currently businesses believe that Customs is there only to collect more revenues from the businesses by fining them, while Customs treat all businesses as acting dishonestly. Businesses recommend that Customs should accept the value submitted by the companies for determining the amount of customs duties to be levied. On the other hand, Customs should retain its power to initiate procedures for checking the authenticity of the presented invoices, and where they learn that the invoice is not genuine, they should not only force the fraudulent company to pay the customs duties on the higher value, but also impose severe penalties as foreseen by law.

**Issue 1.3. Discounted purchases not recognized by the Customs**

Another issue that importing businesses confront arises when Customs does not accept the discounted value for certain products, which are mainly aimed for promotional usage, although this is documented properly and in a separate invoice or form from the supplier. In addition to the separate invoices, the businesses also regulate this in the contract with the supplier, which stipulates that the supplier will provide a certain amount of products to the importer at lower prices or free of charge.

**Recommended action:** The verification of purchases in cases of discounts or promotional purchases should be made more quickly by the customs with the vendor or with the country of origin of imported goods. The practice of referring only to TARIK should be avoided, because it does not account for discounts or promotional purchases.

If the practice of non-acceptance of invoices for discounted purchases prevails, importers should file formal appeals to have the actual price paid or payable for the imported goods accepted by Customs. In such cases the importers should be required to provide proof to Customs on what exactly was paid and how – with supporting evidence.

**Issue 1.4. Appeal procedures are lengthy and time-consuming**

Cases when businesses are not satisfied with a decision of Customs lead to a situation when another issue comes into play – that of appeal procedures, which according to businesses’ claims sometimes takes up to more than 30 days, despite the fact that Item 4 of Article 291 of CECK clearly states that “The Customs, within 30 days will bring the decision act regarding the request for decision review.” Customs officials claim that they try to resolve every case within the legal deadline of 30 days; however in cases when the nature of the issue is more complex, their decision is extended beyond this period, with a prior notification of the appeal party about the reasons for extending the deadline.
It must be noted that in 2010 alone Customs received 1446 complaints from businesses 74% of them dealing with issues related to revaluations, of which 30% of the cases were resolved in favor of the appeal parties.

**Recommended action:** With regards to reviewing decisions, Customs should improve their current practices and comply with Item 4 of Article 291, which clearly states that the reviewing process should be completed within 30 days after the request for review has been submitted.

**Issue 1.5. Decisions of the Customs are not consistent**

Decisions of the Customs also often contradict other decisions it has taken on similar cases. To cite one instance, there was a case when an importing company appealed against a decision of a Customs officer for the revaluation of imported goods and received a ruling in its favor. The same company faced a similar issue of revaluation of the same goods six months later, and consequently decided to appeal again, confident that the ruling would again be in its favor, since the circumstances were the same. Surprisingly, the ruling on the second appeal went against the appellant on the grounds that the amount of the value in Euros (EUR) was different from the amount presented in the first case, despite the appellant’s showing that there was a change in the EUR-USD exchange rate during the six-month period.

The businesses are then eligible of presenting another appeal to the Independent Board for Revision of TAK and Customs Decisions. However it must be noted that this Board has not been functioning for a long time, despite the crucial role that it plays. The reason why the Board has not been functioning for a long time is that the mandates of the previous members of the border had expired, and the new members could not have been appointed as a result of the delay in functionalization of country’s institutions after the recent elections.

**Recommended action:** Customs should also avoid issuing contradictory decisions in cases that are similar.

**Issue 1.6. Lack of clear description of goods in Customs Code and Regulations**

Businesses have also raised complaints concerning the lack of clear descriptions of goods in TARIK and other regulations. In this context, a company that deals with packaging tea is obliged to apply for an import permit from the Agency for Pharmaceutical and Medical Products for import of herbal plants (unprocessed tea material), despite the fact that the packaged tea (as a finished good) is not categorized as a pharmaceutical or medical product. This creates a dual categorization of herbal teas: unprocessed teas, which are imported in Kosovo for further packaging, are categorized as medical products, while packaged teas, which are imported as finished goods, are not subject to pharmaceutical or medical regulations and permits.

As a result of this situation, food distribution companies are eligible to import packaged tea without being required to have such permit from the aforementioned Agency, while domestic companies that deal with packaging tea are not eligible to import herbal plants without having the aforementioned permits, even though the products are all intended for the same usage. There were
other similar complaints as well: some large pharmaceutical companies raised the same issue of wrongful categorization of some medical products as textile products – a concrete example of this would be when Customs have valued a type of elastic bandage as textile goods, and thus become subject to higher import duties.

**Recommended action:** Given that a number of businesses complain that TARIK does not provide a clear description of all goods, Customs should also revise the TARIK, taking into consideration the comments made by businesses. The description of goods in TARIK should be reviewed and clarified, in order to prevent dual interpretations. Also, the categorization of goods should be consistent and accurate, in order to avoid cases such as the one with tea plants and pharmaceutical products (described above).
2. Tax Issues

Issue 2.1. Collection of Value Added Tax at the border

Collection of Value Added Tax (VAT) at the border for goods destined for internal sale locks up the needed capital for operations and increases the total cost of trade, although this remains a key source of collection of budget revenues. An example of problems emerging from VAT payment at the border would be a company importing German products two years ago, having to pay VAT at the border. Unfortunately the company could not manage to sell its products, for which it had already paid the VAT. As a result of lack of cash flow, the company could not plan further investments.

Recommended action: Businesses recommend the payment of VAT should be done after the goods have been sold and after the invoices have been issued, as this would provide them a sustainable cash flow situation, but would also impact reducing unnecessary paper work. This would be made possible by moving from an accrual based VAT to a cash based VAT system (the UK allows businesses to opt for this). In order for this to happen, the respective institutions should amend the Law No.03/L-146 on Value Added Tax, i.e. Article 23 - Chargeable event and chargeability of VAT in respect of importation of goods, item 1, which reads “The chargeable event shall occur and VAT shall become chargeable when the goods are imported.” However, economy experts stress that this practice should not be abolished, having in mind that it poses a key source of Kosovo budget funding. At the same time, these experts claim that this practice of payment of VAT is a standard practice all over the world. If this proposal were to be accepted, then domestic production would be discriminated against in favor identical or similar imported products. The VAT is a simple, non-cascading sales tax system and does not discriminate between imports and domestic production - and hence is totally compliant with WTO principles for National Treatment. Businesses may also use the advantages provided by customs warehouses. Though, in order to avoid cash-flow problems of businesses, TAK should improve its VAT reimbursement practices (see Issue 2.2.).

Issue 2.2. VAT reimbursement is burdensome to businesses

Given that VAT reimbursement is a burdensome and time-consuming process, many businesses decide not to apply for VAT reimbursement at all. There are many allegations that every VAT reimbursement request results in a tax audit, where the businesses end up paying more taxes. This practice provides another reason why a large portion of businesses are reluctant to apply for VAT reimbursement. It is estimated that TAK has not reimbursed some € 70 million to Kosovo businesses. If they would invest this amount in banks at an interest rate of 3%, then they would gain € 2.1 million annually. Withholding these funds from business prevents businesses from making further investments or employing new people.

Recommended action: The paragraph 1.6.1 of the Article 21 – VAT Refund Claim of the Administrative Instruction no.10/2010 on the Implementation of the Law on Value Added Tax, states that:
“The request for VAT reimbursement shall end in the course of 60 days upon receipt of request for reimbursement submitted to the Taxpayers Service Office of the appropriate Regional TAK Office. After this date, if there are no reasons for delay, an interest shall be calculated since the 61 day as set out under the TAK legislation.”

Given that many businesses complain that the legal deadline for reimbursement of VAT, then TAK is recommended to respect the above quoted article. In case of delaying VAT reimbursement, TAK should pay an interest rate which will be equivalent to the interest rate foreseen in the new Law on Obligations which is expected to be adopted soon by Kosovo Assembly.

**Issue 2.3. Registration/inspection of stock are carried out during regular working hours**

Businesses also complain about the fact that tax inspections and registrations of goods often take place during the regular work schedule. This is especially problematic for businesses that sell directly to retail customers, namely the large shopping centers, which are practically forced to close their business until the registration is completed. In one particular case, a large business in Prizren claims that it received a € 5.000 fine, because of a small discrepancy that occurred during the time of the actual inspection, and this was obvious, because the business was operating and people were buying goods in meantime.

**Recommended action**: Tax inspections/registration should schedule the registration of goods at a time which would not force businesses to close their business. A possible timing of registration would be the weekend. These tax inspections should not take place without prior notice sent to the businesses, at least three days before such inspection is intended to take place. This is already regulated in the Administrative Instruction 05/2005 on the implementation of the Law no.2004/48 – On Tax Administration and Procedures, however it needs to be respected. Although this Administrative Instruction provides for exception to the above article, stating that the Director of TAK may order unannounced inspection on the grounds that businesses may try to conduct a tax-related offence. However, we believe that this provision should not be misused and should really be applied on the grounds stated on the law and upon the decision of the TAK director and no other official.

**Issue 2.4. TAK and other respective institutions to create an environment in which more businesses will be encouraged to join the formal economy**

Businesses and business associations believe that Tax Administration inspectors devote too little attention to the informal sector, and they present many arguments as to support their claims. The informal economy seems to be a major problem for all sectors of economy. For example, a representative of the barbers association in Gjakova says that around 25-30% of the 60 barber shops in Gjakova are not registered as businesses and therefore are not subject to paying taxes and other fees. Inspectors for some reason (corruption may be one) seem not to deal with them. One of representatives of the Barbers Associations says that there is lack of understanding of the importance of being part of the formal economy. Unfair competition is a result.
**Recommended action:** In the view of the business representatives, Government institutions should remove the current unnecessary barriers, which prevent businesses from joining the formal economy. Businesses should see the benefits of being part of formal economy. As the current situation stands, the informal sector businesses believe that it is more beneficial for them to operate their business in the informal market.

**Issue 2.5. Lengthy procedures in processing tax statements**

The processing of tax statements is slow and sometimes prevents businesses from participating in tenders, since it takes from 3 days to one week to receive a tax clearance document. One company failed to apply in a € 6 million tender, because it was unable to receive the tax clearance document, despite the fact that it had fulfilled all its tax obligations. There were other cases when the tax administration software system automatically charged penalties for late filings of tax statements, when in fact they were not processed on time. Yet, because the software was not flexible, the tax inspectors or TAK staff could not rescind this penalty, and the interest is still accruing. In order to prove that this interest rate is being calculated incorrectly, the business person must present many documents every time he/she needs a tax clearance document.

**Recommended action:** TAK should also process tax statements more efficiently. Businesses often receive tax clearances statement with great delay, and as a result of this, they lose the chance to participate in public procurement tenders. Intragovernmental communication and sharing of data must be increased, i.e., the public procuring agencies/bodies should not require businesses to present tax clearance documents, but rather should establish proper mechanisms for referring these queries to TAK or Customs.

**Issue 2.6. Deduction of VAT for specific items/ Luxurious cars**

When talking about deducting VAT for specific purchased items/commodities, the Law does not allow for deducting of VAT in case of purchasing “luxurious cars”. The businesses complain that there is no exact definition or explanation as to what “luxurious” means.

**Recommended action:** Tax Administration should allow for deduction of VAT for luxurious (passenger and transportation) cars just as for other transportation vehicles that are used for business needs.

Businesses suggest the deletion of paragraph 6, of the Article 19 - The Right to Deduct VAT, of the Administrative Instruction no.10/2010 for implementation of the Law on Value Added Tax which provides:

“Pursuant to Article 36 paragraph 5.2 the purchase costs and current expenditures as regards cars used for both private and business purposes, the right to deduct input VAT is only allowed to a maximum of fifty percent (50%) of the VAT paid or due in regard of such cost”.

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**Issue 2.7. Problems emerging from the application of fiscal cash registers**

Under its efforts to fight fiscal evasion and the informal economy, which is currently quite large in Kosovo, the Tax Administration of Kosovo last year began requiring the installation of fiscal cash registers, a process that was implemented with many irregularities and allegations of corruption and monopoly. These allegations were based on the high price of the fiscal cash registers, which businesses were forced to purchase. In addition to the initial price of installation, the businesses complained about the high maintenance costs of these cash registers. The businesses are charged with very high additional amounts, hundreds of Euros, every time they have to make an update or modification of the software. This occurred when the Tax Administration of Kosovo began issuing new VAT certificates which contained new numbers, which had to be modified in the fiscal cash register software. Similar problems will occur in the future with the announced unification of all business numbers, as a measure of simplifying the business registration procedures.

Businesses are dissatisfied with the quick implementation of the fiscal cash register project. What adds to their dissatisfaction is the lack of financial support or financial subsidies for this process. They say that respective institutions should have followed the examples of neighboring countries in implementation of the similar initiative, for example Albania has subsidized the installation of fiscal cash registers.

**Recommended action:** Tax Administration of Kosovo should as quickly as possible functionalize this system as it would largely help bringing more businesses to the formal economy and increase of tax revenues. In addition, the implementation of this project would set grounds for more efficient usage of TAK human resources.

**Issue 2.8. Lack of information**

In the view of private businesses and business associations there is a lack of information about business opportunities, service providers and legal and regulatory requirements, particularly those regarding tax-related issues. It is a general concern among businesses that many responsible officials do not provide written responses to their inquiries. However, if the businesses insist on a written response, then they should expect the process to take a long time.

**Recommended action:** In view of the many complaints from the businesses regarding the availability of necessary information, the TAK education department should improve its staff’s knowledge of applicable legislation and procedures, since this would enable faster and accurate responses to any inquire that might come from businesses. It would also be of great significance to the businesses if these responses are provided in written. Businesses themselves have recommended establishment of business information centers in every municipality, or publication of short guides on doing business requirements.
Public Procurement Issues
3. Public Procurement Issues

General

When it comes to the public procurement procedures, businesses have many complaints. These complaints are not only related to the damages that businesses themselves suffer as a result of unfair and corrupt practices during the awarding of contracts, but also high losses inflicted on the Kosovo budget, since often tenders have to be reannounced as a result of poor results. This leads to the violation of Paragraph 1 of the Article 1 of the Law on Public Procurement 03/L-241, which reads:

The purpose of this law is to ensure the most efficient, cost-effective, transparent and fair use of public funds, public resources and any other funds and resources of contracting authorities in Kosovo by establishing the requirements and rules that shall be observed, the procedures that shall be followed, the rights that shall be respected, and the obligations that shall be performed, by persons, economic operators, undertakings, contracting authorities and public bodies conducting, or involved, participating or interested in, a procurement activity involving or relating to the use of such funds and/or resource.

But the violation of this law also arises in connection with other sections. Namely, the paragraph 3 of the Article 1 reads, “Finally, this law is intended to promote the establishment of an institutional culture of unbiased, ethical and materially disinterested professionalism among all public official...” Given the many complaints from business community, it seems that the law has failed to promote these valuable and underlying principles. The best examples of this are the frequent public tenders of road repair services that are announced within a very short period of time after their initial construction.

Issue 3.1. Compilation of tender requirements or technical specifications

Business representatives suggest that the manner in which public procurement is conducted seems to arise directly from the formulation of tender requirements and technical specifications. Businesses claim that the calls for proposals are written in such a manner that they predict the tender winner beforehand, since the terms of reference very often include requirements that Kosovo companies cannot fulfill. The procuring agencies/bodies are also imposing a new practice of requiring companies to provide various certificates for themselves and their employees, which discourages many companies from applying. As concerns the technical specifications, businesses cite three types of specifications. The first includes those technical specifications that are extremely poorly written, where the drafter of the tender seems not to be informed at all about what the procuring agency/body is requesting. The second set of technical specifications are those that look like “wish lists,” when procuring bodies seek to satisfy all their needs despite a limited budget for their fulfillment. And finally the third set includes technical specifications that are clearly written. Some procuring agencies very often require qualifications that cannot be obtained in Kosovo and are often irrelevant to the tender.
**Recommended action:** Given the many complaints on unclear technical specifications, companies suggest that tender requirements be written by experts in the area for which the tender is being announced. There are few good examples of such practice, particularly in the case of larger tenders, such as for the construction of a highway, construction of a new power plant etc. Such a practice would prevent ambiguity intenders and improper awards. The Law on Public Procurement contains a clear legal provision on this issue, stating that “A contracting authority shall establish technical specifications in a manner that is both consistent with the purpose of the procurement and directed at providing the greatest possible access to all potentially interested economic operators and tenderers.” (Paragraph 2, Article 28 – Technical Specifications). The same paragraph of the Article 28, further reads that “A contracting authority is specifically prohibited from establishing a technical specification that favors or disfavours one or more economic operators.” In the view of the business community, this Article is often clearly violated.

**Issue 3.2. Arbitrary cancellation of tendering process**

Another key issue is the arbitrary cancelation of the tendering process, regardless of the fact that companies have spent a lot of time, as well as considerable human and financial resources, in preparing the tender proposals.

The termination of public procurement activities is provided in the Law on Public Procurement, in paragraph 1, Item 1.3 of Article 62 of the Law on Public Procurement, which provides for termination of the procurement activity prior to the opening of tenders due to objective and demonstrable events and/or reasons that are beyond the contracting authority’s control. Paragraph 2 of the Article 62 requires the contracting authorities to publish a notice in which they must state, among other things, the factual reasons and legal basis for such cancellation.

Companies claim that it takes at least two months of work by a team of 5 people in order to get everything ready for a serious tender,. In addition to the regular administrative costs, the companies also mention that sometimes they have to send their personnel abroad for training or consultation with international supply companies for receiving the aforementioned needed certificates prior to applying in the tender.

**Recommended action:** It is also important that procuring institutions/organizations cease their practice of arbitrarily cancelling their tenders, in view of the time, money and efforts spent by the companies. One way of doing this is by holding accountable those responsible for cancelling public procurements without providing factual justification along the lines of Paragraph 1 of the Article 62 of the Law on Public Procurement. The contracting authorities should also make all necessary arrangements and secure financial and procedural clearances (particularly with other agencies or organizations) before publishing a contract notice, in order to predict possible objective events that might be beyond the control of the contracting authority.
Issue 3.3. Responses for tender clarifications not provided on time

When it comes to unclear tender requirements, the companies have to request clarification of the technical specifications. This poses another specific problem related to the issue of public procurement in general: such requests are often not responded to in a timely manner, or the responses themselves are not sufficiently explanatory or substantial, leaving room for differing interpretations by the tender applicant and the procuring body/officer. Such interpretations in most cases disadvantage the individual businesses. The Paragraph 7 of the Article 53 - Providing Additional Information to Candidates and Tenderer, states that “...any additional information is provided is less than 10 days from the deadline set for the receipt of tenders.” The same paragraph also states that “…the contracting authority shall extend such deadline to give economic operators at least ten (10) days from the date on which such information is provided to submit their tenders.”

Recommended action: Delays in response to companies’ inquiries should be eliminated and information should be made available to applicants on time, in order for them to be able to make fully informed decisions. Paragraph 7 of the Article 53 - Providing Additional Information to Candidates and Tenderer, states that “...any additional information is provided is less than 10 days from the deadline set for the receipt of tenders.” It is important for procuring bodies to adhere to this legal provision, in order to establish grounds for fair competition.

Issue 3.4. The overdependence on the lowest price criterion in awarding tenders to low quality companies

Businesses are also concerned by the fact that tenders are mainly awarded on the lowest price criterion, which means that awards are made to low-quality companies. As a result of this practice of focusing on the lowest price, a major international company was forced to submit a tender proposal in Kosovo with products of other manufacturers and not its own brand. As a result, large international companies are avoiding the Kosovo market, despite Government claims that it is trying to make Kosovo a better place for foreign investors. The most troubling fact in this connection is that the lowest price criterion is also applied in the tenders announced by the Ministry of Health, regardless of the fact that these tenders involve the procurement of products of sensitive nature, such as medicaments and medical appliances. The lowest price criterion also forces Kosovar companies to compromise on their company values on quality, and this is gradually becoming a general issue.

Recommended action: Regarding the process of evaluating tender proposals, procuring bodies / tender evaluation committees should cease to rely wholly on the lowest price criterion (item 1.1, paragraph 1, Article 60) and apply other criteria as well, including the applicant’s previous relevant experience and references in similar public procurement projects. This would not only help economize on public funds by reducing the number of tenders that have to be repeated, but would also encourage companies to apply higher standards of quality. This would attract more quality brands and companies to Kosovo. As far as corrupt and non-transparent public procurement procedures are concerned, companies suggest a tendering procedure which is already being implemented successfully in some neighboring countries: conducting electronic procurements. This
allows for more transparency and consistency, because paragraph 1, of Article 7 - Equality of Treatment/Non-Discrimination and Transparency, clearly provides “A contracting authority shall treat economic operators equally and non-discriminatory and shall act in a transparent way or that [does not] discriminates against or in favor of one or more economic operators.”

Item 1.2, paragraph 1, of the Article 60 – Contract Award Criteria provides for awarding the contracts to the tenderers submitting the most economically advantageous responsive tender. However there should be a clear description of what does “economically advantageous” really imply.

**Issue 3.5. Discrepancies on the period of execution for tenders is noticed**

Evaluation bodies base their decisions on the proposed period of performance of the contract. A company claims that in one case it was obvious that the normal period for performance of certain services was one year, where a company that won the tender committed to perform the work in 15 days.

**Recommended action:** The procuring agencies should make sure that in cases when companies commit themselves to executing a tender within a short period of time, or 15 days as stated by businesses, the provided works, goods or services are of high quality standards.

**Issue 3.6. Business disputes are not handled properly**

In cases when businesses are not satisfied with the award decision, they may appeal. However, in practice such decisions are rarely reversed. A company referred to a case where the reviewing body issued a ruling that the appeal of the party was dismissed, since the tender did not involve “serious violations”, i.e., while violations occurred, they were not “serious,” even though the reviewing body did not elaborate on what “serious” meant in this case.

**Recommended action:** Contracting authorities should suspend actions surrounding procurement if and when a complaint has been filed, as clearly provided in paragraph 1, Article 112 of the Law on Public Procurement. Businesses say that currently this Article of the Law is not being implemented

Kosovo institutions should increase their adherence to the rule of law and reform the judicial system, since this would speed up court proceedings, and encourage businesses to bring more cases to the courts if they receive an initial negative ruling when appealing an award decision.

**Issue 3.7. The law is not harmonized with tendering procedures**

Businesses claim that the law itself is contradictory, since it allows appeals to be made within ten days after the notification of the award, when at the same time, the company that has been awarded the contract signs it and begins performance. Some businesses even believe that the current public procurement practices create a win-win solution for all the parties, i.e. the announced winner of the tender and the appeal party, in case the decision of the reviewing body/court is in its
favor, and the appeal party is then paid remedy. Paragraph 3, Article 119 – Actions in the Courts, states:

“If after conducting such a review, the court finds that an allegation made by the complainant in its earlier complaint before the PRB was validly made, the court may issue an order (i) rescinding or reversing any order or determination issued or made by the PRB, and/or (ii) if the complainant can show that it has been damaged by the concerned act or omission of the concerned contracting authority, requiring such contracting authority to pay adequate compensation to the complainant.”

This, of course, generates additional expenditures of public funds, since remedies have to be paid to the latter parties. In case of negative decisions by reviewing bodies, businesses may initiate legal procedures in court against the institution or organization that, in the opinion of the businesses, has broken the public procurement rules. But not many businesses decide on such a step, since they believe this will prejudice their ability to take part in other tenders of the same institution/organization in the future. Another reason behind this reluctance may be the extraordinary slow legal proceedings in court.

**Recommended action:** In order to avoid situations where the reviewing body or court rules in favor of the appeal party after the contract has been awarded to another company, who has signed the contract and commenced performance, businesses suggest that the contracting signing be delayed until all available appeal remedies have been exhausted. This is already provided for in the existing law on Public Procurement. Paragraph 1 of the Article 112 - Automatic Suspension of Procurement Activity, states “Unless and until the concerned review panel makes another determination in writing, the filing of a complaint shall automatically require the concerned contracting authority to suspend the conduct of the procurement activity to which the complaint relates.”
Manufacturing Issues
4. Manufacturing Issues

The manufacturing sector in Kosovo seems to be the sector that is in the most difficult position, since the issues presented by businesses range from a lack of tax incentives, and a reliable supply of electricity, to issues concerning the implementation of the Central European Free Trade Agreement (CEFTA).

Issue 4.1. Payment of Custom Dues for Imported Raw Materials

The biggest problem that manufacturers in Kosovo face is the payment of custom duties on raw materials, particularly since other countries in the region do not impose such a requirement. This gives the goods produced in those countries a competitive advantage, particularly when they are exported to other member countries of Central European Free Trade Agreement (CEFTA). Thus from the outset Kosovo companies face higher costs, which forces them either to charge more for their finished products or to sacrifice quality. As a result, it is cheaper to purchase finished goods from other CEFTA countries, rather than to produce the same products in Kosovo.

Recommended action:

In order to stimulate the development and growth of manufacturing, Government should consider abolishing the customs duties imposed on imported raw materials. In addition, this would put domestic producers on a more competitive footing with respect to the goods produced and imported from CEFTA member states.
Power Supply Issues
5. Power Supply Issues

General

The manufacturing businesses voiced powerful criticism of the energy utility, Kosovo Energy Corporation (KEK) for its unstable power supply, which undermines the proper functioning of Kosovo businesses and further worsens the already difficult business environment that we have in Kosovo today.

Businesses that are involved in manufacturing suffer most from this unstable power supply since they use machinery that requires an uninterrupted and high-voltage power supply and cannot rely on smaller capacity power generators.

Issue 5.1. Power cuts are hurting manufacturers despite contracts for uninterrupted power supply

Manufacturers say that this situation persists despite the fact that they have signed special contracts for uninterrupted power supply. Violations of these special contracts occur frequently and the energy supplier assumes no responsibility for the damages this causes. The businesses say that there are clearly defined clauses in these contracts that provide for damages in such situations. They believe, however, that since KEK holds a monopoly in the electricity market it can violate the “rules of the game” and take no responsibility for its actions.

Recommended action: It is crucial that the energy utility KEK change its current practice of applying collective power cuts, which discriminates against those who pay their bills on a regular basis, i.e., private companies.

Article 2 of the KEK Supply Contract states that KEK is obliged to provide electricity as foreseen in the contract. KEK should also assume all the legal responsibility contemplated in the power supply contracts that it concludes with businesses, including compensating businesses for damage to equipment caused by interruption in the power supply.

Issue 5.2. Businesses face higher fees because of “Maxigraphs”

The installation of “maxigraphs” by KEK is also forcing businesses to pay more for the electricity they use. The manufacturers believe that just because they use more electricity and pay their energy bills regularly, they should pay at lower, rather than higher, rates.

Recommended action: KEK should review its decision to install “maxigraph” as this issue is not regulated by law, and consider the recommendation of businesses that they pay lower rates for higher energy consumption.
Issue 5.3. Lack of partnership/communication between KEK and businesses

Another troubling issue surrounding the electricity supply is that there is no real partnership or communication between KEK and businesses. The businesses suffer greatly from collective power cuts, particularly if they are located in an area or neighborhood where electricity bills are not paid regularly. The businesses complain that the power cuts, which in some cases last up to 12 hours a day, may force manufacturers into bankruptcy, since they are forced to stop their activity but must continue to pay their workers at full rates.

Recommended action: KEK should increase its accountability and should be open to establishing constructive relations with its customers, particularly businesses, which are the largest users of energy. Article 2 of the KEK Supply Contract states amongst other that KEK is obliged to inform the customer on the reasons of power supply interruption. KEK should inform its customers regarding accidental power interruptions as well, as foreseen in the Article 7 of the Supply Contract. Article 8 again provides for information of customers regarding the planned interruptions.
Municipal Level Issues
6. Municipal Level Issues

Issue 6.1. Municipal permits procedures are costly and lengthy

Municipal permits are another major issue that Kosovo businesses are facing in all municipalities. In addition to their cost, which if combined with the municipal business tax, poses an additional financial burden on Kosovo businesses, the permits entail lengthy bureaucratic procedures that are creating real problems for businesses.

The proper purpose of such permits is to protect public health and safety. Municipalities, however, are using them simply to collect revenue. The municipalities should use taxes to collect revenue instead of such regulatory mechanisms.

Issue 6.2. Submission of documents to receive work permits

In some municipalities, such as Gjakova, businesses are required to submit numerous documents when applying for a new work permit, or renewing an existing one. These documents include proof that the business, or the landlords of the premises that the business is renting, has paid its utility bills, i.e., water, central heating, electricity, etc. As concerns the businesses that are located in neighborhoods that are not connected to the district heating network, one would think that such businesses would be spared from having to submit such a document. Such businesses, however, are required to submit proof that they are not connected to the district heating network. Such situations, where businesses are forced to spend at least two days in submitting all the necessary documents, and in the municipalities of Gracanica, Dragas and Suharkea, which have increased the cost of business taxes and working permits, create additional disincentives for doing business and also discourage foreign investors from investing in Kosovo.

Recommended actions for Issue 6.1. and 6.2.: Taking into account item 1 of the Article 119 of the Constitution of Republic of Kosovo, Chapter IX-Economic Relations, which clearly states that “The Republic of Kosovo shall ensure a favorable legal environment for a market economy, freedom of economic activity and safeguards for private and public property”, businesses recommend cutting the unnecessary and burdensome bureaucracy that obstructs business. They suggest abolishing the work permit or at the very least, simplifying the procedures for obtaining the work permit. The current procedures are extraordinary complex and deter foreign investors in their first few months of planned operations. Abolishing municipal business taxes and work permits would create incentives for new start-ups. In order to maintain the balance of revenue collection, which would be distorted by a unilateral abolition of the municipal permit and license scheme, economic experts suggest that property tax rates be increased. It is important to note, that current property tax rates in Kosovo remain the lowest in the region. Many international financial organizations have also recommended that property tax be increased. It also is a flexible tax that can be adjusted for different categories – residential, commercial, industrial; pensioners, social categories, etc.

Given that businesses are forced to spend a lot of time and effort to provide various documents that show that the business has no financial obligations to any municipal utility, businesses recommend
that municipal staff working at the working permit office perform this task and verify whether a particular business has fulfilled all its obligations or not.

**Issue 6.3. Procedures for obtaining construction permits are very lengthy**

It is not only the work permits that trouble businesses throughout Kosovo. There are other permits as well, such as construction permit. Kosovo is ranked 173 in the World Bank Doing Business Report 2011 in Dealing with Construction Permits. Despite the fact that the relevant law provides that construction permits should be issued within 30 days, business say that this period usually takes from 6 months to a couple of years. The main reason for this is that municipalities have not adopted yet their regulative, urban and spatial plans. Another reason is that many municipalities apparently lack zoning, which is a major obstacle to rational development. However these factors do not justify obstructing the normal operation of businesses.

**Recommended action:** Municipalities should accelerate the procedures for issuing construction permits. Businesses recommend that municipalities adopt as soon as possible their municipal regulative plans and that they establish special offices to review applications for construction permits. Municipal authorities should take the lead in complying with the law. It is not appropriate for them to call on citizens to obey the law when municipal authorities themselves set a negative example.
Late Payment Issues
7. Late payment issue

Issue 7.1. Late payments are causing cash flow problems for private businesses

Many representatives of private companies and business associations raised the issue of late payments, particularly from the Government sector or public institutions. This issue is a major one, since Government agencies are the largest buyers of goods and services provided by Kosovo companies. In most cases, these late payments compromise the businesses' cash flow position and make it harder for them to meet their own obligations. As a consequence they are forced to apply for bank overdrafts or bank loans, which are provided at very high interest rates. AmCham Kosovo’s previous survey on bank loans revealed that 36% of loans are for working capital and very few are for capital investment purposes. Businesses should finance their day to day business as much as possible using their internal cash rather than relying on expensive bank loans. Improving cash flow for small businesses will save them from failure and enable them to grow. At present far too much business management time and money are spent trying to recover late payments, when those resources would be better spent on business development, sales and training.

In 2010, AmCham commissioned a survey to obtain additional data to determine the severity of the payment problem and to compare public sector and private payment. The survey, which was presented in September 2010, showed many businesses simply do not attempt to collect bad debts because of difficulties with the court system. Also, only one of the respondents imposed a market interest rate on debts. The survey also showed that 12% of payments that should be made from public sector to the private sector remain unpaid after 4 months, while the average in EU countries is just g to 4%. Another issue of concern is that the collection of payments after 4 months becomes more difficult; nevertheless, only 25% of the surveyed companies seek to reclaim amounts owed by going to court.

In the EU between 2 and 4% of debt is classified as “bad” and written off, while in Kosovo the figure is between 6 and 12%. The EU Small Business Act, which Kosovo has signed, requires Kosovo not only to enact the EU Late Payment Directive 2000/35, but also to take concrete steps to improve payments to SMEs.

Recommended action: Businesses support the recommendations to include special legal provisions in the Law on Obligations or through a separate law on Late Payments, as in with the European Union which has a special Directive on Late Payments. The key requirements of these legal provisions would increase the minimum interest rate on late payments from 3.5% to 8% above ECB (as foreseen in the aforementioned EU Directive). The provision would also provide for fixed administration charges to cover the creditor’s costs in recovering the debt (EU Directive). In addition, a 30-day payment period should be mandatory (EU Directive) (These two changes can be made in the new draft Law on Obligations). The Treasury Department of the Ministry of Finance should ensure that businesses are paid on time by Government bodies and Municipalities, reduce the payment bureaucracy and change public procurement template contracts (EU requirement). Tax Administration should be more willing to recognize the reality of bad debts in Kosovo by not requiring tax payments on funds not received after 4 months. It is difficult enough for the businesses that do not receive amounts owed, but then to have to pay VAT and corporation tax such amounts is
simply unreasonable. The provisions in the new Corporate Tax Law are good but the policy of the Tax Administration needs to change.
Labor Law Issues
8. Labor Law issues

Issue 8.1. Business cannot fulfill the legal provision on maternity leave

There are many issues that were raised by businesses concerning the Labor Law, with the main ones related to the maternity leave. Being unable to fulfill the legal provisions regulating maternity leave, many businesses said that this is forcing them to consider reducing their numbers of female employees. This would support the arguments that businesses and business associations advanced to oppose the inclusion of the current maternity leave provisions in the new Labor Law, i.e., that it would only decrease the already small percentage of female representation in all the sectors of employment. Businesses claim that many large private employers have begun doing this by providing short-term contracts to female employees. A business representative said that he is providing only one-month contracts to his female employees, which are not renewed in the following month if the employee has gotten pregnant.

Recommended action: A possible solution to the aforementioned issues would be to amend the maternity leave provisions in the labor law to bring them closer to the practices of Western countries. In addition, the law should be amended to make clear that it is permissible to terminate employees for non-performance. Furthermore, some of the glitches in the law should be corrected, e.g. eliminating the employer’s the obligation to pay an employee for a full notice period who has stolen or broken other rules! The law should be amended to provide that the maternity and parental leave provisions apply only to companies of over a certain number of employees. Businesses suggest changing Paragraph 3 of the Article 49 on Law on Labor, which currently reads “First six (6) months of maternity leave, the payment shall be done by the employer with the compensation of seventy percent (70%) of basic salary.” In this regard the businesses suggest that the “period of six months” in the paragraph 3 above, should be changed to the “period of three months”.

Issue 8.1. Business ask for discretion in setting the working hours

Businesses warned that the existing Labor Law would only discourage potential foreign investors from investing in Kosovo because of the strict provisions regulating the working hours.

Information was also reported that labor inspectors have imposed high penalties for alleged violations of working hours, primarily on distribution companies, without taking into consideration the traffic jams that could a result because of the road repairs underway throughout Kosovo. In one instance, a distribution company received a hefty fine because the driver could not return the vehicle in headquarters of the company by the time his working hours finished because of a traffic jam.

Regarding the issue of working hours, one of the companies said that its working hours are from 8-17, which includes an unpaid lunch hour and two paid 15-minute coffee breaks. The labor inspectors, who, according to this company, are very abusive and aggressive, are pressuring the company to limit its working hours to 8 hours, since they consider that this practice constitutes a 9-hour day.
**Recommended action:** Businesses believe strongly that they should have discretion in setting their own working hours, as long as they do this with the agreement of their employees. This discretion is supported by the fact that there is no clear provision in the law regarding working hours and breaks during working hours. For example, item 2 of Article 20 of the Law on Labor reads that “Full time working hours shall be forty (40) hours per week”, without providing a definition of what does “working hours” really mean – does it mean the active time the employee spends in completing his duties and responsibilities, or the time he spends at the working premises? Paragraph 1 of the Article 28 of the aforementioned Law provides that “An employee working full-time working hours is entitled to a break, during the days, of at least thirty (30) minutes, which cannot be taken at the beginning or at the end of working hours”. And finally, Paragraph 2 of the Article 28 reads that “An employee working longer than four (4) hours and less than six (6) hours a day, is entitled to a daily break of fifteen (15) minutes.” At the same time, paragraph 4 of the same Article explains that “Break times under paragraph 1 and 2 of this Article shall be considered as work.” There is, however, no legal provision in the law that prohibits other breaks outside working hours, which would be regulated through an agreement between the employer and employee. As concerns the company that was being pressured by the labor inspectors, inspectors should be more flexible in accepting the reasoning that a 15-minute coffee break in the first half of the day and another one in the second half of the day is necessary for an employee’s productivity.
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<th>Issues</th>
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<th>Reference to Law/Regulation</th>
<th>Responsible institutions</th>
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<tbody>
<tr>
<td>Customs officers do not accept the invoice values of imported goods as submitted</td>
<td>Businesses claim that Customs should accept the value as submitted by the companies for purposes of assessing customs duties</td>
<td>The law gives undue discretion to Customs officials to rule on such questions as he/she sees fit, without any limits or guidelines</td>
<td>Customs and Excise Code of Kosovo</td>
<td>Kosovo Customs</td>
<td>January 2012</td>
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<td></td>
<td>Customs may initiate procedures for checking the authenticity of the submitted invoices</td>
<td>The law does not address this question</td>
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<tr>
<td>Appeal procedures are lengthy and time-consuming</td>
<td>Customs should improve their current practices and comply with the legal deadline for reviewing appeals</td>
<td>The law addresses this issue adequately, but it is being ignored or applied incorrectly</td>
<td>Customs and Excise Code of Kosovo / Item 4 / Article 291</td>
<td>Kosovo Customs</td>
<td>January 2012</td>
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<tr>
<td>Customs decisions are not consistent</td>
<td>Customs should apply a consistent approach to similar cases and avoid issuing contradictory decisions</td>
<td>The law does not address this question</td>
<td>Customs and Excise Code of Kosovo</td>
<td>Kosovo Customs</td>
<td>January 2012</td>
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<tr>
<td>Discounted purchases are not recognized by the Customs</td>
<td>The verification of prices in the case of discounts or promotional purchases should be conducted in a more timely fashion by the customs with the vendor or with the country of origin of imported goods. The practice of referring only to TARIK should be changed, because it does not contemplate discounts or promotional purchases.</td>
<td>The law does not address this question</td>
<td>Customs and Excise Code of Kosovo / Integrated Tariffs of Kosovo (TARIK)</td>
<td>Kosovo Customs</td>
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Note, Column "Responsible Institutions" stands for those institutions where Business Association can initiate lobbying process and support changes on current legislation.
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<tr>
<td>Lack of clear description of goods in Customs Code and Regulations</td>
<td>The description of goods in TARIK should be reviewed and clarified, in order to eliminate ambiguity. The categorization of goods should be consistent and accurate, in order to avoid cases such those involving tea and pharmaceutical products.</td>
<td>The law is drafted in an overly narrow or restrictive fashion</td>
<td>Integrated Tariffs of Kosovo (TARIK)</td>
<td>Kosovo Customs</td>
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<td><strong>VAT reimbursement is burdensome to businesses</strong></td>
<td>The VAT reimbursement claim is in many cases followed by a tax audit, and this wastes the human resources and time of businesses. Businesses claim that such tax audits are conducting with the aim of discouraging the businesses from submitting claims for VAT reimbursement, because in many cases the result of the audit is that businesses are required to pay additional taxes to TAK.</td>
<td>The regulation does not address this issue at all</td>
<td>Law on Value Added Tax / Administrative Instruction no.10/2010 for implementation of the Law on Value Added Tax</td>
<td>Tax Administration of Kosovo</td>
<td>January 2012</td>
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<tr>
<td><strong>Registration/inspection of stock are carried out during regular working hours</strong></td>
<td>Tax inspections/registration should schedule the registration of goods at a time which would not force businesses to close their business.</td>
<td>Problem arises because the regulation reflects a different policy than what businesses feel is appropriate.</td>
<td>Law on Tax Administration and Procedures</td>
<td>Tax Administration of Kosovo</td>
<td>January 2012</td>
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<tr>
<td><strong>Lengthy procedures in processing tax statements</strong></td>
<td>Tax Administration should increase the speed of processing tax statements.</td>
<td>The issue is not addressed at all in the relevant law</td>
<td>NA</td>
<td>Tax Administration of Kosovo</td>
<td>January 2012</td>
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<tr>
<td><strong>Deduction of VAT for specific items/ Luxurious cars</strong></td>
<td>Tax Administration should allow for deduction of VAT for luxurious (passenger and transportation) cars just as for other transportation vehicles that are used for business needs. Business suggest deletion of the paragraph 6, of the Article 19 - The Right to Deduct VAT, of the Administrative Instruction no.10/2010 for implementation of the Law on Value Added Tax which provides: “Pursuant to Article 36 paragraph 5.2 the purchase costs and current expenditures as regards cars used for both private and business purposes, the right to deduct input VAT is only</td>
<td>Problem arises because the regulation reflects a different policy than what businesses feel is appropriate.</td>
<td>Law on Value Added Tax / Administrative Instruction no.10/2010 for implementation of the Law on Value Added Tax</td>
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<td>Problems emerging from the application of fiscal cash registers</td>
<td>Tax Administration of Kosovo should as quickly as possible functionalize this system as it would largely help fighting fiscal evasion and informality</td>
<td>NA</td>
<td>NA</td>
<td>Tax Administration of Kosovo</td>
<td>January 2012</td>
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</table>
| Lack of information                                                   | TAK to provide faster and accurate responses in written form to any inquires from businesses  
A solution would be establishment of business information centers in every municipality, or publication of guides or manuals on tax or overall business doing requirements | NA              | NA                         | Tax Administration of Kosovo | January 2012 |
### Public Procurement issues

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| Compilation of tender requirements or technical specifications | Procuring bodies/agencies should write the tender requirements or technical specifications in a clear manner  
A possible solution would be if the tender requirements are written by experts  
Paragraph 2 of the Article 28 of the Law on Public Procurement, provides:  
“A contracting authority shall establish technical specifications in a manner that is both consistent with the purpose of the procurement and directed at providing the greatest possible access to all potentially interested economic operators and tenderers. A contracting authority is specifically prohibited from establishing a technical specification that favors or disfavors one or more economic operators.”  
This provision should be revised by including the following sentence:  
“In case the contracting authority lacks the necessary expertise in drafting the technical specifications, it should hire an expert who would assist the contracting authority in drafting the technical specifications.” | The law is drafted in an overly narrow of restrictive fashion | Law on Public Procurement in Republic of Kosovo | Ministry of Finance / Public Procurement Regulatory Committee / Public Procurement Agency | January 2012 |
| Arbitrary cancellation of tendering process       | Avoiding arbitrary cancelations of tenders since companies spent time and money in preparing the application packages  
The contracting authorities should also make all the necessary arrangements and financial and procedural clearances (particularly with other agencies or organizations) before | Problem arises because the regulation reflects a different policy than what businesses feel is appropriate | Law on Public Procurement | Public Procurement Regulatory Committee / Public Procurement Agency / Other procuring | January 2012 |
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<tr>
<td>Publishing a contract notice in order to predict possible objective events that might be beyond contracting authority's control</td>
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<td>bodies/agencies</td>
<td></td>
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<tr>
<td>Responses for tender clarifications not provided on time</td>
<td>Delays in response to companies’ inquiries should be eliminated and information should be made available to applicants on time, in order for them to be able to make fully informed decisions</td>
<td>The law addresses the problem adequately, but the problem arises because the law is being applied incorrectly</td>
<td>Law on Public Procurement</td>
<td>Public Procurement Regulatory Committee / Public Procurement Agency / Other procuring bodies/agencies</td>
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</tr>
<tr>
<td>The overdependence on the lowest price criterion is awarding tenders to low quality companies</td>
<td>Procuring bodies / tender evaluation committees should shift from the lowest price criterion (item 1.1, paragraph 1, Article 60) to other tender evaluation criteria as well (e.g. previous experience, references etc.) The item 1.2, paragraph 1, of the Article 60 – Contract Award Criteria provides for awarding the contracts to the tenderers submitting the most economically advantageous responsive tender</td>
<td>Law addresses the problem adequately, but the problem arises because the procuring bodies do not implement all the provisions of the law</td>
<td>Law on Public Procurement</td>
<td>Public Procurement Regulatory Committee / Public Procurement Agency / Other procuring bodies/agencies</td>
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</tr>
<tr>
<td>Electronic public procurement platform</td>
<td>Businesses recommend conducting procurement by electronic means, which would create more transparency and consistency. This would also introduce rigor in adherence to the time periods stipulated for performance.</td>
<td>The problem arises because the law reflects a different policy than what the businesses feel is appropriate</td>
<td>Law on Public Procurement</td>
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<tr>
<td>Procurement-related complaints/disputes are not handled properly</td>
<td>Contracting authorities should suspend actions surrounding a procurement if and when a complaint has been filed, as clearly provided in paragraph 1, Article 112 of the Law on Public Procurement. Businesses say that currently this Article of the Law is not being implemented. Kosovo institutions should increase their adherence to the rule of law and reform the judicial system, since this would speed up court proceedings, and encourage businesses to bring more cases to the courts if they receive an initial negative ruling when appealing an award decision.</td>
<td>Law addresses the problem adequately, but the problem arises from the law is being implemented incorrectly</td>
<td>Law on Public Procurement</td>
<td>Public Procurement Regulatory Committee / Public Procurement Agency / Ministry of Justice / Kosovo Judicial Council / Kosovo courts</td>
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## Manufacturing and Power Supply Issues

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<th>Responsible Institutions</th>
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<tr>
<td>Payment of Custom Duties for Imported Raw Materials</td>
<td>To stimulate the development and growth of manufacturing industry, Government should analyze possibility of abolishing the customs duties on imported raw materials. Other countries of the region do not apply this kind of requirement</td>
<td>The problem arises because the regulation reflects a different policy than what the businesses feel is appropriate</td>
<td>Customs and Excise Code of Kosovo / Integrated Tariffs of Kosovo (TARIK)</td>
<td>Ministry of Finance / Kosovo Customs</td>
<td>January 2012</td>
</tr>
</tbody>
</table>
| Power cuts are damaging production companies despite contracts for uninterrupted power supply | KEK should not apply collective power cuts, particularly for regular business payers and businesses that have signed special prepaid agreements for power supply  
Article 2 of the KEK Supply Contract states that KEK is obliged to provide electricity as foreseen in the contract | Violation of contract agreement | Kosovo Energy Corporation Supply Contract | Ministry of Economic Development / Kosovo Energy Corporation | January 2012 |
| Businesses face higher fees because of “Maxigraphs”                   | KEK should review its decision for installation of “maxigraph” devices            | The law does not regulate this issue                                             | Law on Electricity                                                                        | Ministry of Economic Development / Kosovo Energy Corporation | January 2012 |
| Lack of partnership/communication between KEK and businesses           | KEK should increase its accountability and should be open to establishing constructive relations with its customers, particularly businesses, which are the largest users of energy  
Article 2 of the KEK Supply Contract states amongst other that KEK is obliged to inform the customer on the reasons of power supply interruption  
KEK should inform its customers regarding accidental power interruptions as well, as foreseen in the Article 7 of the Supply Contract  
Article 8 again provides for information of customers regarding the planned interruptions | Violation of contract agreement | Kosovo Energy Corporation Supply Contract | Kosovo Energy Corporation | January 2012 |
### Municipal Level Issues

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<th>Proposed changes</th>
<th>Nature of Issue</th>
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<th>Responsible institutions</th>
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<tbody>
<tr>
<td>Municipal permits procedures are costly, lengthy and bureaucratic</td>
<td>Businesses recommend the facilitation of the doing business procedures by removing the working permit scheme Paragraph 38.3 of the Article 38 of the Law on Internal Trade states “The competent municipal authority will issue licenses”</td>
<td>The problem arises because the law reflects a different policy than what businesses feel is appropriate</td>
<td>Law on Internal Trade / Municipal regulations on issuing municipal permits</td>
<td>Ministry of Trade and Industry / Ministry of Local Self-Administration / Association of Municipalities / Kosovo municipalities</td>
<td>January 2012</td>
</tr>
<tr>
<td>Procedures for obtaining construction permits are very lengthy</td>
<td>Municipalities should accelerate the procedures for issuing construction permits. Municipalities that lack urban and spatial planning should adopt them as soon as possible so that this does not interfere the normal business operations</td>
<td>Law addresses the problem adequately, but the problem arises from the law is being implemented incorrectly</td>
<td>Law on Internal Trade / Municipal regulations on issuing municipal permits</td>
<td>Ministry of Local Self-Administration / Association of Municipalities / Kosovo municipalities</td>
<td>January 2012</td>
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### The Issue of Late Payments to Businesses

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<tr>
<td>Late payments are causing cash flow problems to private businesses</td>
<td>Inclusion of a legal provision under the Law on Obligations Increase of the default minimum interest rate on late payments from 3.5% to 8% above ECB Treasury Department of the Ministry of Economy and Finance should ensure businesses are paid on time by central or local institutions</td>
<td>There is no law/regulation to regulate this issue</td>
<td>Law on Obligations / Improvement of practices</td>
<td>Ministry of Justice / Kosovo Judicial Council / Ministry of Finance / Ministry of Finance / Treasury Department</td>
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<td>Business cannot fulfill the legal provision on maternity leave</td>
<td>Amendment of the current mandatory maternity leave from 6 to 3 months that should be paid by employers at a percentage of 70% of basic salary to 3 months. The paragraph 1 of the Article 49 of the Law on Labor provides &quot;An employed woman is entitled to twelve (12) months of maternity leave&quot; This should be amended to: &quot;1. An employed woman is entitled to nine (9) months of maternity leave&quot; The paragraph 3 of the Article 49 provides &quot;First six (6) months of maternity leave, the payment shall be done by the employer with the compensation of seventy percent (70%) of basic salary.&quot; This paragraph should be changed to: &quot;First three (3) months of maternity leave, the payment shall be done by the employer with the compensation of seventy percent (70%) of basic salary.&quot;</td>
<td>The problem arises because the law reflects a different policy than what businesses feel is appropriate</td>
<td>Law on Labor / Article 49 / Paragraph 3</td>
<td>Ministry of Labor and Social Welfare</td>
<td>January 2012</td>
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<td>Business ask for discretion in arranging the special break hours with their employees</td>
<td>Businesses believe strongly that they have the discretion of setting their own working hours, as long as they do this in accordance with their employees</td>
<td>The law may be drafted in an overly narrow or restrictive fashion</td>
<td>Law on Labor / Labor inspectors to make a more flexible interpretation of the Law on Labor</td>
<td>Ministry of Labor and Social Welfare / Labor inspectorate</td>
<td>January 2012</td>
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</tbody>
</table>
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