

Assessment and recommendations

A modern approach to the Commercial Law

Latvia's "Commercial Law" serves as the basis for creating, managing and closing businesses. The business stakeholders consulted for this report expressed general satisfaction with the provisions of this law and its implementation. The stakeholders are also generally satisfied with the services provided by the state bodies involved, namely the Enterprise Registry, the State Land Service and Land Registry offices and the Patent Office. Nonetheless, two issues for improvement were identified. First, courts and public services were at times seen to take an unnecessarily strict approach in applying the Commercial Law. For example, when a matter is not regulated in the Commercial Law, state institutions often assume that it is prohibited rather than providing the parties with the freedom to contract. Second, entrepreneurs identified the need to adapt the Commercial Law to modern forms of business and finance, such as start-ups and crowdfunding.

Formal requirements for doing business in the age of technology

Latvia's Digital Agenda and e-Government Strategy are powerful drivers of administrative simplification. While there are important initiatives to further develop and mainstream information and communication technology in the public administration, many e-government initiatives are managed by different actors targeting various stakeholders, and often appear to be disconnected from each other.

Many stakeholders suggested reducing the formal requirements in their interaction with the Enterprise Registry. Notably, they proposed a reduction or even abolition of many requirements to provide documents in notarised form. Other stakeholders suggested modernising such requirements instead. Taking into account developments in other OECD countries, the reduction of formal requirements and the introduction of electronic solutions may help reduce costs and create benefits for business.

Pace of reform and access to law

Like other countries, Latvia faces the challenge of balancing a timely reaction to reform needs with a need for legal certainty and predictability. Entrepreneurs, public services and courts seem to agree that the Latvian legal system is developing in the right direction. At the same time, all of them find the hectic rhythm of legal reform difficult to follow. Empirical research found in 2016 that the biggest obstacle to business growth was "frequent changes in laws and regulations" (identified by 66% of participants). Similarly, stakeholders felt that the Commercial Law and procedural rules are not always accessible. Foreign investors find that Latvian laws and some relevant websites are not consistently available in an up-to-date English version.

Shaping a business-friendly governance

Latvia is well on its way to establishing organisational and procedural governance that fosters business-friendly state institutions, not least by seeking to match the top world performers in terms of facilitating business and stimulating entrepreneurship. Reformers in the public administration enjoy a high level of credibility and trust with stakeholders. Currently, however, there is no document that sets out the government-wide vision for integrating access to justice and inclusive growth in regulatory policy. Informal agreements between ministries seem to replace more formal co-ordination.

One of the most visible and successful measures of the government's programme to make administration more user-friendly is the "Consult First" project. This project, explicitly based on OECD guidance, advises businesses before sanctioning them. Legal rules that are considered essential, however, may still be enforced without prior advice.

Centring state and dispute resolution services on business needs

During the course of their activities, small, medium-sized and large businesses engage with various public services in numerous ways. They register their existence and activities, apply for licences, file their accounts and tax documentation, try to solve their disputes and so on. Small and medium-sized enterprises sometimes lack capabilities and resources for such activities. The OECD Serving Citizens Framework emphasises that public services, courts and alternative dispute resolution mechanisms should reflect the interests and needs of users, be they businesses or citizens. Consequently, Latvia carried out a survey to establish the needs and experiences of businesses when accessing services under the purview of the Ministry of Justice.

Strategies for reducing administrative burdens

Latvia is continually working to simplify the statutory and administrative framework. Stakeholders and state institutions engage in a sustained dialogue to identify measures for improvement. Representatives of both the private sector and public bodies value this approach. Despite many efforts under way, Latvia has not yet carried out a larger programme to measure the statutory and administrative burdens of existing institutions and regulations, for instance by applying quantitative methodologies such as the Standard Cost Model. Simplification programmes appear to be based on qualitative assessments and perception surveys. This report, for example, applies the Standard Cost Model to three commercial procedures: the registration of an individual merchant, the registration of a limited liability company and the reorganisation of a company through a merger by acquisition.

A continuum of public services for businesses

"One-stop shops" are services that are bundled at one central access point. They are recognised throughout the OECD as efficient and comprehensive entry points to public administration. However, one-stop shops are often a challenge to put into practice. In Latvia, the Public Administration Services Portal (www.latvija.lv), managed by the State Regional Development Agency, provides access to a growing number of e-services. In addition, the Ministry of Economy launched an initiative to create a one-stop-shop website for businesses. Stakeholders have mentioned uncoordinated and multiple requests

for information by public administrative bodies, which can lead to incoherent decisions and unpredictability.

The provision of e-services is necessary to streamline administrative procedures for businesses. Information technology is used both at the front end presented to users and the back end dealing with data management and decision making. The Latvian government is actively engaged in securing the circulation of data among state institutions as well as the provision of e-services to end users. This process seems to be in a transitional stage. Important decisions were made, but further fundamental steps need to be taken. The electronic identification of citizens and businesses remains fragmented and not easily accessible. Stakeholders reported some progress, but noted that they could not fully access electronic services regardless of location. While entrepreneurs are increasingly aware of e-signature services, they are not making full use of them. With regard to the back end, Latvia would benefit from establishing integrated data management covering all public services. A common data protocol and common data standards for all public services are also key to the one-stop-shop approach, although these can be difficult to achieve in practice.

Business-related services under the Ministry of Justice

Commercial registries facilitate commercial organisation and transactions. They document rights, act as gatekeepers and provide information. Registries in Latvia include the Enterprise Registry, the State Land Service and Land Registry offices as well as the Patent Office. Stakeholders are generally satisfied with the services offered and trust the Enterprise Registry. Surveyed stakeholders mention the simplification and minimisation of data requirements as a primary issue for improvement. Efforts in this direction are already under way. Stakeholder comments indicate that the number of inactive companies on the register is high, raising legitimacy issues as to their purpose. The Standard Cost Model analysis conducted as part of this project reveals the high importance users give to waiting time for registering entries. Greater use of e-service solutions can speed up procedures. While the use of e-platform services grew from 38% in 2014 to 42% in 2016, further efforts are needed

Stakeholders are generally happy with the services provided by the State Land Service and Land Registry offices, although the separation of the cadastre and register functions into two entities is often seen as limiting efficiency, data consistency and accessibility. Currently, only a few businesses apply online for registration services.

The Patent Office is the central authority of the Latvian industrial property protection system. Most respondents surveyed were satisfied, if not very satisfied, with the service provided. The experience of the Patent Office shows the advantages of e-platform services over e-signature services in terms of cost savings.

A continuum of dispute resolution services

OECD countries are increasingly promoting a wide range of legal and justice services, recognising that disputes can be effectively and efficiently resolved through various pathways. These pathways to justice are part of a continuum of services ranging from alternative dispute resolution (mediation, conciliation, ombudschemes, arbitration) to contentious litigation in court. The inability to solve legal conflicts may have a negative effect on businesses and society. Businesses may suffer financial costs (e.g. loss of income), social costs (e.g. damaged employee relations) and reputational costs (e.g.

damage to business relationships), and – in extreme cases – businesses may cease trading. Indeed 59% and 54% of 37 surveyed businesses stated that the barriers to access to justice for businesses are time and costs, respectively.

Access to a sound court system is an essential element of a good dispute resolution framework. Latvia extensively reformed its court system to establish a clear three-level instance structure. A recent reform also decreased the duration of proceedings: from 9.2 months in 2013 to 7.4 in 2017 for civil cases, from 6.4 months in 2013 to 5.4 in 2017 for criminal cases, and from 13.5 months in 2013 to 7.5 in 2017 for administrative cases. Like several OECD countries, Latvia is integrating e-services, such as electronic case management, into its court system to address the barriers to justice (duration, cost and complexity).

Another relevant issue emphasised by stakeholders concerns specialised court proceedings. Latvia currently makes limited use of specialisation. While there is no comprehensive specialisation policy, some specialised tracks have been introduced. For example, the court at Jelgava hears cases concerning shareholder resolutions. Different degrees of specialisation are possible: specialised courts, specialised chambers or informal specialised tracks. While there are possible drawbacks (for example, compartmentalisation of the knowledge of judges and preferential treatment of repeat users) and cost considerations, the potential advantages of specialisation are efficiency and effectiveness in the resolution of questions of law, enhanced uniformity and predictability as well as improved quality of judicial decision making.

Access to effective alternative dispute resolution (ADR) can be as important as access to courts. The challenge for lawmakers is to design a justice system that supports parties in bringing their dispute to the right forum, depending on its nature and severity. While there is considerable interest in ADR in Latvia, it is not adequately used in practice. Conflict parties do not really consider the full spectrum of dispute resolution mechanisms and there are gaps in the ADR services on offer. Businesses only rarely seem to contemplate arbitration, mediation, conciliation, ombudschemes or online dispute resolution. Like many other countries, Latvia grapples with the low practical relevance of mediation despite its attractive characteristics. In arbitration, the supply of and demand for services are currently not balanced. Conciliation and ombudschemes are much less established than in other OECD countries.

Recommendations

Responding to business needs: A favourable framework for doing business in Latvia

A modern approach to the Commercial Law

Recommendation 1: Legislative amendments could help clarifying the interpretation of the Commercial Law where needed. Courts and public services could also contribute to an enabling culture through a more facilitative interpretation of the Commercial Law.

Recommendation 2: The scope of the Latvian Commercial Law could be expanded to include modern forms of business organisation and their financing. This should not be understood as a call for new hard laws, but rather a systematic regulatory approach taking into account all types of regulation, ranging from soft law and self-regulation to mandatory law.

Formal requirements for doing business in the age of technology

Recommendation 3: A more centralised, integrated approach to adopting technology could help improve efficiency. Making sure that all public services take part in this initiative and are bound by the government agenda will increase the benefits for business.

Recommendation 4: Consider reducing the formal requirements in the Commercial Law along with introducing electronic forms of documents and identification.

Pace of reform and access to law

Recommendation 5: Reform amendments could be enacted as packages in less frequent waves. Reform initiatives could be explained to the public by concentrating on key measures and principles. Websites and other information should be better structured, for example, by structurally reflecting the events in the life of a business (such as creation, paying taxes and liquidation). Laws and relevant websites could also be made available in English.

Shaping a business-friendly governance

Recommendation 6: Consider developing a single, formal, whole-of-government document setting out the regulatory policy of the government. It might also be worth considering developing systematic *ex post* reviews of existing regulations as part of a development planning system and fostering public sector skills to use analytical tools.

Recommendation 7: A formal, comprehensive policy co-ordinating the activities of all ministries in the realm of businesses would make the Latvian better regulation agenda more effective. This policy should also assign responsibilities and milestones to be achieved to ensure accountability within the government and to the public.

Recommendation 8: As part of the “Consult First” initiative, it would be important to clarify which rules are essential and which are not. Stakeholders also suggested establishing the “Consult First” initiative as a right for businesses as opposed to a discretionary solution for the relevant state agency.

Strategies for reducing administrative burdens

Recommendation 9: Establishing inter-institutional working groups to review existing laws and public services is good practice. A further emphasis on evidence-based and

quantitative research methodologies will help to avoid the pitfalls of using anecdotal evidence as a basis for legal reform. The Standard Cost Model, as applied in this report, provides an idea of the utility of empirical and quantitative methods for law making.

Centring state and dispute resolution services on business needs

A continuum of public services for businesses

Recommendation 10: Latvia should consider developing a model of legal and justice services to capture the legal needs of businesses and other users, and to understand their pathways and experience as well as the gaps in the provision of services. Consider two interrelated approaches: institution-generated or “administrative” data and legal needs surveys.

Recommendation 11: Latvian public services that could be part of a one-stop-shop approach include the Enterprise Registry, the State Land Service, Land Registry offices, the Patent Office, the Tax Authority and relevant licencing authorities. These could also include legal assistance services and referrals to various dispute resolution mechanisms. Ideally, businesses should not have to differentiate between the competences of state agencies or have to identify with the relevant legal provisions. In addition, users should only be required to provide a certain piece of information once.

Recommendation 12: Latvia could consider creating a service delivery model that includes the intersection between the digital and physical realms (e.g. using video communication) as well as ensure broad coverage of fast optical fibre cable based internet across the territory.

Recommendation 13: The user-centred one-stop-shop approach should establish common data management covering all public services, including common data protocol and common data standards and interfaces. One way to improve the communication between users and agencies is the publication of easy-to-use and easy-to-access best practice guidelines. Such guidelines can create a common ground between agencies and users and will improve the acceptance of procedures and results.

Recommendation 14: The government could consider steps to increase the uptake of e-services through a mandatory e-signature. An e-residency approach might be helpful, in particular to improve investment opportunities for foreigners. Ultimately, e-platform solutions offer more attractive cost-benefit outcomes than mere e-signature solutions. Central data management would be a first and important step towards a more coherent decision making process. Establishing an institutional and procedural framework that ensures full participation of all service providers is key.

Business-related services under the Ministry of Justice

Recommendation 15: The Enterprise Registry and other public services under the Ministry of Justice should provide more and better online information. Optimising the data exchange among business services and integrating licencing services would foster business development in Latvia. This approach, coupled with e-service solutions, would further decrease waiting time. A combination of mixed measures (filing duties, penalties and the threat to strike entities off the register) could be used to distinguish legitimate inactive companies from illegitimate ones.

Recommendation 16: Evaluate the challenges and solutions with regard to the separation of cadastre and land register functions into two administrative entities. Some

countries group both services in one institution, others use technology to solve efficiency, data consistency and user accessibility problems. Implementing e-services and encouraging stakeholders to use electronic registration in land transactions could lead to cost savings and pave the way for a one-stop-shop service structure.

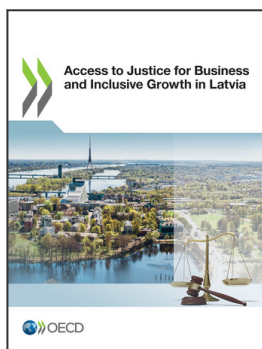
A continuum of dispute resolution services

Recommendation 17: Latvia may benefit from adopting a more user-centric approach and develop a policy for a continuum of dispute resolution services including their integration into one-stop-shops. This would go hand-in-hand with increasing the use of information technology in the court system.

Recommendation 18: Develop and implement a comprehensive strategy for alternative dispute resolution (ADR). This concerns all facets of ADR, for example mediation, conciliation, ombudschemes and arbitration. Raising business awareness about mediation should be coupled with strengthening the capacity of service providers. An evaluation could reveal whether further action on mediation is needed by the legislature or other standard-setting bodies. Thought should be given to make ombudschemes and conciliation more relevant to business stakeholders.

Recommendation 19: Continue to reduce the time and cost of services in relation to capacity needs including at the prevention stage e.g. providing information. Better assess the financial burden of court services for business' opportunity costs (e.g. time off work or transportation due to geographic isolation).

Recommendation 20: Develop a comprehensive strategy towards specialisation including updating the training needs of judges and staff. Like other countries, Latvia might also consider introducing English as an optional language for certain types of court proceedings.



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