

**EUROPEAN BANK
FOR RECONSTRUCTION AND DEVELOPMENT**

**SECURITIES MARKETS
LEGISLATION ASSESSMENT PROJECT**

**2005 UPDATE ANALYSIS REPORT ON
THE 2004 ASSESSMENT RESULTS**

JULY 2006

BY

**SALANS
ATTORNEYS AT LAW**

**PARIS, LONDON, NEW YORK, MOSCOW
ALMATY, BAKU, BRATISLAVA, BUCHAREST
KYIV, PRAGUE, ST. PETERSBURG, SHANGHAI, WARSAW**

***THE FUNDING FOR THIS PROJECT HAS BEEN MAINLY PROVIDED BY THE REPUBLIC OF FRANCE.**

TABLE OF CONTENTS

	<u>Page</u>
I	Scope and Methodology1
II	Some Comments and Observations2
A.	Comments2
	Timing of the Assessment.....2
B.	Observations2
III.	General Trends in the Country Groupings and Country-specific Comments.....3
A.	Very Low Compliance Countries: Azerbaijan, Tajikistan, and Turkmenistan.3
B.	Low Compliance Countries: Albania, Belarus, Kyrgyz Republic and Moldova4
C.	Medium Compliance Countries: Armenia, Bosnia & Herzegovina, Georgia, Kazakhstan, Montenegro, Poland, Romania, Russian Federation, Serbia, Ukraine and Uzbekistan.....4
D.	Group Four – High Compliance Countries6
IV.	ANNEX I – Country Rating Map 20059

SECURITIES MARKETS LEGISLATION ASSESSMENT PROJECT

2005 Update Analysis Report on the 2004 Assessment Results

July 2006

I SCOPE AND METHODOLOGY

The European Bank for Reconstruction and Development (“EBRD”) engaged SALANS¹, attorneys-at-law, to conduct the securities markets legislation assessment project (the “SML Assessment” or the “Project”) in 2004. The SML Assessment is meant to measure the current status of the legal framework governing the securities markets in the 27 countries where EBRD operates. Based on the assessment of the 2004 Checklists results, SALANS drafted a report (the “Analysis Report”)² on the extensiveness of the securities laws in each of the jurisdictions, the trends observed and the areas where further legislative improvement is required to make these developing markets functional, accessible and safe for investors. In June 2004, the EBRD published on its website the 27 assessment checklists (the “Checklists”) compiled by local counsels and the Analysis Report. In June 2005, the local counsel were asked to update their 2004 findings in view of any change in the local legislation and SALANS has prepared this update analysis report based on their findings (the “Update Analysis Report”). As for the findings reported in the Analysis Report, the findings of the Update Analysis Report below are not a measure of the degree to which transition countries securities laws are enforced in practice or are effective, but rather, are intended as an initial measure of whether securities laws and regulations in these countries are in place at all and, if so, to what degree when compared to applicable international standards.

SALANS developed a rating system for the Checklist results when it first formulated the questions for local counsel as part of its Assessment Methodology Report to the EBRD in January 2004. The ultimate goal was to assign a rating category to each country which would reflect that country’s general compliance with international norms of securities legislation.

Based on the Checklist responses received from local counsel in each country assessed under this Project, SALANS analyzed the data provided from each jurisdiction and assigned ratings to the results from each category of the Checklist responses. SALANS then added or deducted points from each category score based on weightings assigned to specific sections. The sum of these

¹ Key SALANS attorneys working on this project include Mira Davidovski, Muriel Goldberg-Darmon, Ellen H. Clark, Judith Aron and Alice Réchard.

² <http://www.ebrd.com/country/sector/law/corpgov/sml/report04.pdf>

weighted section scores was averaged to derive a single numerical value for each country. Based on these results, each country was placed into a grouping that indicates its level of adherence to international standards in and for securities markets legislation.³

The general updated results of the Checklist assessment in 2005 are discussed in this report, but the country-specific Checklist assessment reports themselves, containing the raw data and responses from local counsel, are in 27 separate documents.⁴ These documents, together with responses to all the questions can be found on the EBRD website.⁵ The names of the local counsel involved in completing the specific Checklist are listed on the cover page of each Checklist report.

II SOME COMMENTS AND OBSERVATIONS

As in 2004, the country assessment results and the country ratings should all be read in the context of the following observations, in particular in light of the fact that the SML Assessment is a tally of promulgated laws (“extensiveness”), but not of their successful implementation (“effectiveness”).

A. Comments

Timing of the Assessment

The SML Update Analysis research was conducted during the second quarter of 2005. Any laws that were under review by legislatures in draft form, but not yet adopted by **31 May 2005**, were not included in the survey responses.

B. Observations

The new EU member countries where the EBRD operates (i.e., Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovak Republic, and Slovenia) originally scored in the medium or high compliance category. The Czech Republic, the Slovak Republic, Estonia, Latvia, Lithuania and Slovenia are rated as high compliance among these eight countries (Estonia being close to very high compliance). Further, Bulgaria, a candidate for EU accession in 2007, is rated as high compliance.

³ Please refer to the 2004 Analysis Report for a detailed description of the rating and scoring methodology used by SALANS, which can be found at <http://www.ebrd.com/country/sector/law/corpgov/sml/report04.pdf>

⁴ Although Serbia & Montenegro was recognized as one country at the time of the assessment, local counsel examined the relevant legislation and prepared a separate Checklist for each of Serbia and Montenegro, respectively. Data on Hungary are not available.

⁵ See <http://www.ebrd.com/country/sector/law/corpgov/sml/index.htm>

III. GENERAL TRENDS IN THE COUNTRY GROUPINGS AND COUNTRY-SPECIFIC COMMENTS

In 2005, a fairly large majority of the EBRD countries of operation scored in the medium or high compliance category, including all the countries that joined the European Union on 1 May 2004 and the two 2007 candidates, Bulgaria and Romania. The 2005 results showed that, in most cases, the countries with the most recently adopted legislation had the most highly evolved securities law framework. Compliance levels overall were generally high, but no country had achieved complete development of a sophisticated legislative framework. The table below groups the countries based on their average score in four different categories (no country reached the “Very High” category).

Very High Compliance (No countries)	High Compliance (9 countries)	Medium Compliance (11 countries)	Low Compliance (4 countries)	Very Low Compliance (3 countries)
	Bulgaria Czech Republic Croatia Estonia FYR Macedonia Latvia Lithuania Slovak Republic Slovenia	Armenia Bosnia & Herzegovina Georgia Kazakhstan Montenegro Poland Romania Russian Federation Serbia Ukraine Uzbekistan	Albania Belarus Kyrgyz Republic Moldova	Azerbaijan Tajikistan Turkmenistan

A. Very Low Compliance Countries: Azerbaijan, Tajikistan, and Turkmenistan.

Azerbaijan. Although there has not been any positive change to the monitoring or surveillance powers of the regulator, there is now legislation (including a new law on banking and some more specific regulations) in place addressing money laundering. Also, there is now a specific authority regulating Investment Service Providers, though it is not separate from the agency issuing the licenses to provide such investment services. Sellers and purchasers of shares of stock traded on the market must now use ISPs’ services and some specific texts address the public offering of financial instruments as well as transactions involving financial instruments on and outside the regulated exchange. There are no investment protection measures or prudential requirements. Securities clearance is still not centralized, nor are there regulations regarding confirmation and settlement of trades. Nonetheless, Azerbaijan is now very close to reaching a low compliance rating.

Turkmenistan. There have not been significant changes in the Turkmen legislation in 2005 as compared to 2004.

Tajikistan. There have not been significant changes in the Tajik legislation in 2005 as compared to 2004.

B. Low Compliance Countries: Albania, Belarus, Kyrgyz Republic and Moldova

Albania. Overall, there has not been a significant general improvement in the Albanian legislation: there is still no general requirement, applicable to all companies, to disclose specific information in connection with a change of control. However, there is a new law establishing auditing standards which will enter into force in 2006 and which, inter alia, establishes a new “National Accounting Committee” in charge of establishing accounting standards and which is described as a “professional public independent organism” by local counsel.

Belarus. There has not been any material change in the legislation of Belarus at the time of the 2005 Update. Local counsel added some precision on two issues: Belarus still has no legislation prohibiting market or price manipulation, misleading statements, insider trading, front-running, or other fraudulent or deceptive conduct and market abuses; and the specific authority regulating Investment Services Providers’ (ISPs) services are not separated from the agency issuing the licenses to provide investment services (this authority cannot impose sanctions on ISPs which do not comply with the regulations and there is no available procedure for suspension of ISP activities).

Moldova. There has not been any material change in the legislation of Moldova.

Kyrgyz Republic. There has not been any substantial change in the legislation of the Kyrgyz Republic, probably due to the fact that most of the legislation of the country has been adopted recently.

C. Medium Compliance Countries: Armenia, Bosnia & Herzegovina, Georgia, Kazakhstan, Montenegro, Poland, Romania, Russian Federation, Serbia, Ukraine and Uzbekistan.

The 11 countries in this medium compliance category constituted the largest grouping of countries according to the 2004 assessment results and the situation remains unchanged for 2005.

Armenia. There has not been any material change in the Armenian legislation.

Bosnia & Herzegovina. Overall, there has not been a significant general improvement of the Bosnia & Herzegovina legislation. We have noted a clarification of the inspection powers of the regulator and an improvement of the legal protection of the regulator and its staff. Furthermore, a new Law for Prevention on Money Laundering has been adopted, but it has not resulted in any significant changes in the treatment of the issues raised in the Checklist.

Georgia. There has not been any material change in the Georgian legislation.

Kazakhstan. We note an overall improvement of the legislation, which envisions much more extensive information and disclosure requirements than previously. Two market regulatory authorities have been created in the second half of 2004: the Committee for the Protection of Competition of the Ministry of Industry and Trade and the Anti-Monopoly Agency, each with clearly and objectively defined responsibilities. Although there are specific new provisions in the general law on advertisement restricting, prohibiting the producing, distributing or placing of advertisements on securities, this law does not extend to underwriters or advisors. In the area of Collective Investment Schemes ('CIS'), there has been improvement in the protection of investors: the regulator now has several means at its disposal for protecting investors in conflict-of-interest situations, such as: prohibition of certain transactions, forced disclosure by management companies or verification with the custodian of the composition of assets; moreover, CIS operators are now subject to a general disclosure obligation. System operators of Secondary Markets are now subject to a long list of informational requirements they must provide, and the Anti-Monopoly Agency has the powers to suspend circulation of securities. Although taken together the improvements in the Kazakh legislation do not yet justify an upgrade of the rating category, we note that Kazakhstan is now extremely close to the high compliance category.

Montenegro. We noted that the scope of the money-laundering law has been amended in 2005 and now also aims at fighting and preventing financial terrorism. The 2004 law on investment funds has had a positive impact on the answers in the Investment Services Provider section of the survey: although the law does not contain a definition of the different types of investment or related services, it defines certain permitted investments by the investment funds: securities (domestic and foreign), money deposits, and real property. Also, it contains clear specific conditions applicable to the establishment, structure and management of ISPs and provides for the creation of a specific authority for the regulation of ISPs, which can impose sanctions. It seems, though, that this 2004 law has not had an effect on the answers to the section on Collective Investment Schemes as the local counsel has not updated this section. Therefore, compliance on Collective Investment Schemes is still very low. This authority is the same as the one issuing licenses to ISPs.

Poland. As at 31 May 2005, there have been no really significant changes to the Polish legislation. Local counsel has added and/or amended numerous comments to the questions in the section on Issuers and Information – Disclosure Obligations. As an example, local counsel specified that subject to certain conditions, the Securities Exchange Commission's consent is not required for admission to public trading of securities whose issuer has its registered office in an EU Member State. In the section on Collective Investment Schemes, the new law on investment funds (2004) provided certain clarifications and refinements, but had little impact on the answers (yes/no) to the questions presented. Further obligations are now imposed on Market Intermediaries.

Romania. In 2004-2005, Romania has continued the trend of significant legislative improvement which had been commented upon in the Analysis Report last year: there is a new law on capital markets and some regulations are to be promulgated on or around 1 July 2005. However, Romania's overall 2005 score did not move into the high compliance category because

in several important areas implementing regulation is still not in place. Numerous areas where Romania gained points were the sections on (1) Issuers' Disclosure Obligations (better definition of the conditions in which issuers of securities are permitted to delay the disclosure of confidential information, better protection of minority shareholders), (2) Collective Investment Schemes (e.g. CIS operators are now required to maintain a register of holders of shares in the scheme as well as to keep all books and records in relation with transactions involving CIS assets), (3) Market Intermediaries (clarification of the meaning of Intermediary, licensing, professional qualifications, sanctions which may be imposed by the regulator, certain information on management to be made public, etc.), and (4) Clearing and Settlement (requirement of "delivery versus payment", centralized securities deposit and share re-registration facility). The scope of the Regulator's surveillance powers has not evolved from last year.

Serbia. There has not been any material change to the Serbian legislation, but the protection of minority shareholders has been slightly strengthened.

The Russian Federation. We had mentioned in the Analysis Report that there had been major changes in 2004 to the Russian legislation on securities regulation, especially the creation of two federal regulators, the Federal Service for Financial Markets (FSFM) and the Federal Antimonopoly Service. Since the time of these re-defining events, there has been little change in the updated answers to the Checklist. Most changes relate to the licensing of Market Intermediaries where we note that the powers (including sanctioning) of the FSFM have been strengthened.

Ukraine. There has not been any change to the legislation of the Ukraine but we note that the Code on Professional Conduct of Auditors has been abrogated.

Uzbekistan. There has not been any change to the Uzbek legislation, which, as in 2004, is very close to high compliance.

D. Group Four – High Compliance Countries

The SML Assessment results in 2004 found **Croatia, Estonia, FYR Macedonia, Latvia, Lithuania, and Slovenia** ranked in this high compliance category. In 2005, **Bulgaria, the Czech Republic** and the **Slovak Republic** have joined this top category.

Bulgaria. As expected since Bulgaria is scheduled to join the EU in 2007, most Bulgarian laws and decrees have been amended between 2004 and 2005. Local counsel has indicated that the changes in Bulgarian securities legislation for the past year are mainly refinements and also changes related to implementing the EU harmonization program in the context of Bulgaria's EU accession process. The definition of Investment Services Provider has been clarified. As a result of implementation of EU legislation, cooperation between auditors and regulator (as described in article 55 of Directive 2004/39/EC) has been strengthened as auditors of Collective Investment Schemes are now required to report to the regulator any irregularities or non-compliance, and the full report must be submitted to the regulator.

The Czech Republic. The Czech Republic is a country that had scored so highly within the medium compliance group in 2004, that we considered it a borderline “High Compliance” country. There have been important changes to the legislation, including new laws on Collective Investments, Bonds, and Undertakings on the Capital Markets, some of which we discuss below. As a result, local counsel has upgraded the Czech Republic from “Medium” to “High Compliance”. In the Prospectus area, we note that foreign issuers are now allowed to use a prospectus which has been approved by a foreign regulator, that there are different disclosure requirements according to the types of securities offered or the circumstances of the offering, and that an issuer bears specific responsibility for the content of the prospectus. The 2004 law on Collective Investments contains many improvements such as the criteria for assessment of qualifications of key individuals employed by CIS managers or the obligation that a CIS offering document included information on the procedure for purchase, redemption and pricing of units. Unexpectedly, the law on Collective Investments removed the obligation that a CIS offering document included information on pending material legal proceedings, relevant financial information, information on the custodian, *inter alia* and the obligation to notify the regulator of changes to the information contained in a CIS offering document. Local counsel has commented that pursuant to Czech securities law, the CIS operator issues two basic documents to its investors: its statutes and an offering document. Counsel has indicated that there has been a certain shift as to the level of control connected with offering documents which focuses more on the statutes rather than on the offering documents. There is now a procedure for the regulator to re-examine or withdraw a trading system or an initial trading authorization or to order action to be taken if trading of the Secondary Markets is determined not to be in full compliance with the condition of the initial trading authorization. Also, the regulator has, in relation with Clearing and Settlement, the power to issue rules mandating specific standards and to approve changes to clearing and settlement rules and procedure of an organization. Although there have been changes in 2004 to the law on Money Laundering, this did not affect the answers provided in 2004. We also note that there has not been any legislative or regulatory improvement in the rights of minority shareholders.

Croatia. There have been no changes in Croatian securities market legislation since 2004 (the main texts date from 2002-2003). In particular, the expected improvements pointed out in the Analysis Report in the following areas have not yet been carried out: financial instruments, accounting and auditing of financial reports, appraisal right or mandatory cash buy-out upon take-overs, take-over disclosure, directors and senior management’s compensation and personal benefits disclosure, CIS schemes, and the shift from “T+4” to “T+3” settlement.

Estonia. Estonia is a country that had scored extremely highly within the high compliance category. It had almost reached the very high compliance category in 2004. The following new laws have been adopted in 2004: the Investment Funds Act and the Funded Pensions Act. The rights of the investors are better protected by a regulator now empowered to enforce listing document disclosure requirements by delaying or refusing a listing. The offeror (if different than the issuer) may be held liable for the content of the listing documents, and the issuer is required to disclose the ownership and identity of the majority shareholders. The answers to the section on Collective Investment Schemes also reflect an improvement in the protection of the investors. Settlement of automatic transactions is now “T+3” but remains at “T+1” to “T+6” for non-automatic transactions. We note the unexpected change that the

seller/purchaser is no longer required to use an Investment Service Provider for shares traded on the market.

FYR Macedonia. We mentioned in the Analysis Report that Macedonia had room for improvement in the protection of minority shareholders; to some extent this has been addressed by the new law on trade companies (2004) which provides for cash out rights, amendments of agreed agendas of shareholders meetings and rights of inspection of the company's records.

Latvia. There has not been any significant change to the Latvian legislation.

Lithuania. The following issues have been addressed: listing documents, identity of major shareholders, mandatory disclosure after certain thresholds are reached, information rights of minority shareholders, and financial instruments. Settlement of automatic transactions is now "T+3" and at "T+1" to "T+6" for non-automatic transactions. It was reported that the law on securities markets is expected to be amended by 1 July 2005 in order to be consistent with Directive 2003/71, but these changes will arrive too late to be reflected in the section on Issuers and Disclosure Obligations.

Slovak Republic. There have been several improvements to the Slovak legislation (especially in the sections on Issuers' Disclosure Obligations, Market Intermediaries and Secondary Markets). As a result of the accession of the Slovak Republic to the European Union, foreign issuers will now be allowed to use prospectuses which have already been approved (by their respective regulator) to issue securities in the Slovak Republic. In the Secondary Markets section, we note that the regulator's means for monitoring, surveillance and supervision of the trading system, the system of exchange and the conduct of its participants have been expanded. We also note an unexpected shift of the market regulatory functions of the Office for Financial Markets to the National Bank of Slovakia as of 1 January 2006. As a result, the Slovak Republic has joined the high compliance category in 2005.

Slovenia. There has been an overall evolution towards more regulatory requirements. There is now closer scrutiny of the fitness and propriety of key individuals employed, heavier fines (section on Collective Investment Schemes), qualifications and experience of individuals, a conflicts of interest section (Market Intermediaries), new grounds for refusal of a license, and required disclosure concerning the market intermediary to be provided. Several amendments to the Rules of the Ljubljana Stock Exchanges are being prepared. We also note significant improvements in connection with clearance and settlement. In particular, the regulator now has the power to license clearing and settlement organizations and to approve the changes to their rules and procedures. In addition, trades between direct market participants must now be confirmed as soon as possible after trade execution and settled within "T+2".

* * *

IV. ANNEX I – COUNTRY RATING MAP 2005

