

# COMMERCIAL LAWS OF HUNGARY

March 2008

## AN ASSESSMENT BY THE EBRD



*This Assessment was last updated during the preparation of the 2008 EBRD Strategy for Hungary and reflects the situation at that time. It does not constitute legal advice. It was prepared by the Office of the General Counsel of the EBRD. For further information please contact [ltt@ebrd.com](mailto:ltt@ebrd.com)*

# CONTENTS

<b>1. OVERALL ASSESSMENT</b> .....	<b>3</b>
<b>2. THE LEGAL SYSTEM</b> .....	<b>4</b>
2.1. CONSTITUTION AND COURTS .....	4
2.2. RELATIONSHIP BETWEEN LEGAL TRANSITION AND ECONOMIC PROGRESS .....	5
2.3. IMPLICATIONS FOR THE INVESTMENT CLIMATE .....	6
<b>3. EVALUATION OF SELECTED COMMERCIAL LAWS</b> .....	<b>7</b>
3.1. CAPITAL MARKETS .....	7
3.2. CONCESSIONS .....	10
3.3. CORPORATE GOVERNANCE.....	13
3.4. INSOLVENCY.....	16
3.5. SECURED TRANSACTIONS .....	19
3.6. TELECOMMUNICATIONS.....	22

**Basis of Assessment:** *This information is based on the experience of the Office of the General Counsel whilst conducting legal assessments on behalf of the Bank. It also draws on EBRD investment and legal reform activities in Hungary (see [www.ebrd.law](http://www.ebrd.law)).*

## 1. Overall Assessment

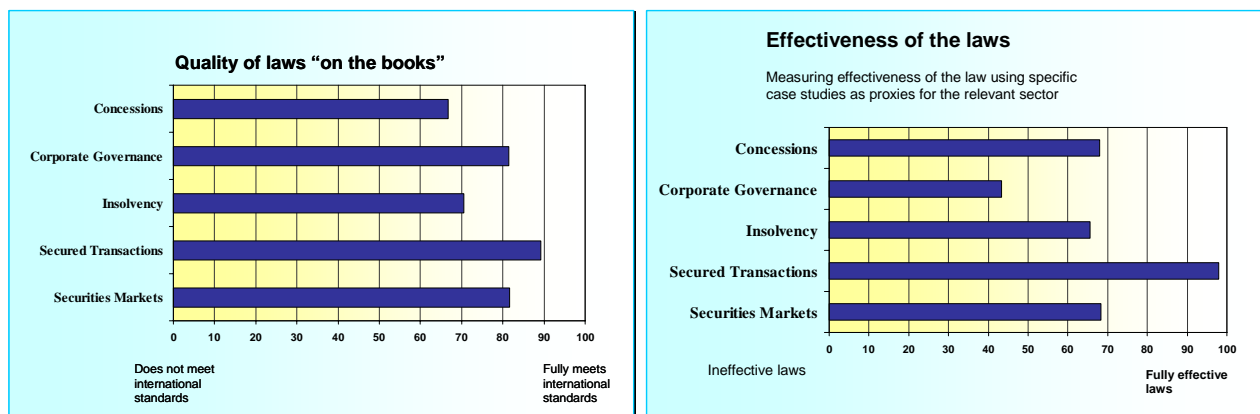
Over the past decade Hungary has introduced notable reforms to its legal environment. The legal framework is to a great extent harmonized with the European Union legislation. Accordingly, the legal system has strongly evolved towards an internationally acceptable level and Hungary is one of the most advanced countries in the region in terms of legal transition.

Hungary's laws are approaching international standards and are supported by properly established institutional mechanisms to implement these laws. In particular, the legal regime for secured transactions is well developed and provides a comprehensive, flexible and modern system. The policy makers and the market should orient their efforts toward more diverse and extensive use of the available instruments. Similarly, there has been significant progress in the communications sector. The capacity of the regulator was reinforced with regard to its ability to supervise the market, register the market participants and frequency management. Despite initial slow implementation progression of the privatization and liberalisation process in the communications sector it appears that the situation has improved significantly in this respect. The capital market and corporate governance frameworks appear as robust and in line with best international practice. On the effectiveness side the securities market framework is relatively effective, whereas in the corporate governance one there are shortcomings. Of particular concern are the areas of enforceability of minority shareholders rights, related party transactions and general timing for redress actions.

However, improvements are still needed in some areas crucial to the business environment and to foreign investment, in particular in the field of insolvency and concessions. In its effort to enhance insolvency laws Hungary improved the framework for secured creditors and commencement of insolvency procedure, but left aside reorganisation process, definition of insolvency and some other areas of concern. The concessions framework remains of superficial quality failing to match the market demand. EBRD has launched a technical assistance project to assist Hungarian government with elaboration of a new concessions act.

In addition, the surveys of legal effectiveness conducted by the EBRD indicate that at times commercial laws may suffer as a result of not always being sufficiently accessible or through inadequate administrative and judicial support. Accordingly, the country needs to continue to strengthen the institutions upon which the smooth functioning of a market-oriented economy depends, i.e. ensure the effectiveness of the laws. Chart 1 gives a brief insight into comparing extensiveness (quality of laws "on the books") and effectiveness of such laws in some sectors.

**Chart 1 – Snapshot of country’s commercial laws**



Source: EBRD legal assessments 2002-2007

## 2. The Legal System

### 2.1. Constitution and courts

In October 1989, following the collapse of the socialist regime in Hungary, a radical revision of the 1949 constitution introduced a multiparty parliamentary system of representative democracy and free elections. The legislative and executive branches of the government were separated, and an independent judicial system was created. The Constitutional Court was established, with its judges being elected by the Parliament. The revised Constitution also established the institution of an ombudsman for the protection of constitutional civil rights (including ombudsman's groups for the protection of national and ethnic minority rights). Minor amendments to the Constitution have been made since 1994.

Supreme legislative power is granted to the 386-member unicameral National Assembly (Parliament), which elects the president of the republic, the Council of Ministers, the president of the Supreme Court, and the chief prosecutor. State administration is headed by the Council of Ministers, which is chaired by the prime minister. The president, who may serve two five-year terms, is commander-in-chief of the armed forces but otherwise has limited authority. The right of the people to propose referendums is guaranteed.

The Constitution provides for an independent judiciary, and the Government respects this provision in practice. The courts are responsible for the administration of justice, with the Supreme Court exercising control over the operations and judicial procedure of all the courts.

With the introduction of the new Regional Courts of Appeal currently in progress, there are now four levels of courts in Hungary: the Supreme Court, the regional courts of appeal, the county courts (including the Municipal Court of Budapest) and the local courts (including labour courts). First instance jurisdiction in most matters rests with the local courts. Appeals of their rulings may be made to the county courts or to the Budapest municipal court, which, however, have also first instance jurisdiction in some matters contingent on the value or importance of the case. The five regional courts of appeal hear the appeals brought against the decisions of the local and county courts. The Supreme Court is the final court of appeal and oversees the uniform application of the law by the courts.

The administration of the courts is attributed to the National Council of Justice, established in 1997. The National Council of Justice appoints and dismisses the presidents and vice-presidents of the

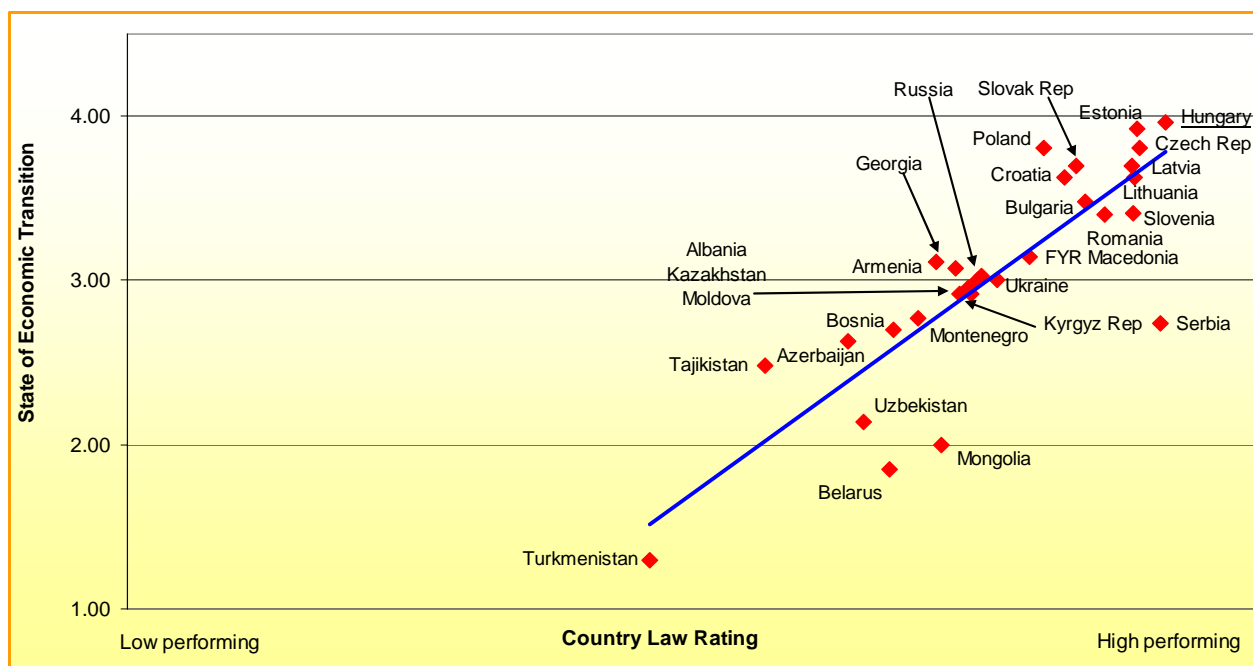
regional courts and county courts, makes recommendations regarding the nomination and discharge of judges to the President of Hungary, provides training for judges and otherwise supervises the administrative matters of the courts.

The Constitutional Court issues binding decisions on the constitutionality of legislation and may annul the contravening laws or contravening parts of such laws. Anyone can directly address the Constitutional Court in regard to unconstitutional omissions or acts. The Constitutional Court is also empowered to interpret the Constitution, provide normative standards and supervision over the constitutionality of laws, and reconcile the differences between international and domestic laws. The Court’s decisions cannot be contested.

*2.2. Relationship between legal transition and economic progress.*

The conventional wisdom is that economic development and legal transition progress or regress hand in hand. Accordingly, it is fair to say that Hungary’s future economic prosperity is dependent in part on the country’s ability to foster rule of law observance and sound implementation of the good quality legal framework that they have. Chart 2 below shows the relative position of the country on the two axes of legal and economic development. (See Chart 2)]

**Chart 2 – Rule of law and progress in transition in the EBRD countries of operations**



Source: EBRD Transition Report 2007, Table 1.1; EBRD Composite Country Law Index, Nov 2007

Note: The horizontal axis measures the performance of commercial and financial law. The vertical axis displays the EBRD transition index as an average of transition indicators between 1997 and 2003, with 1 referring to very early transition stages, and 4 referring to an advanced transition level.

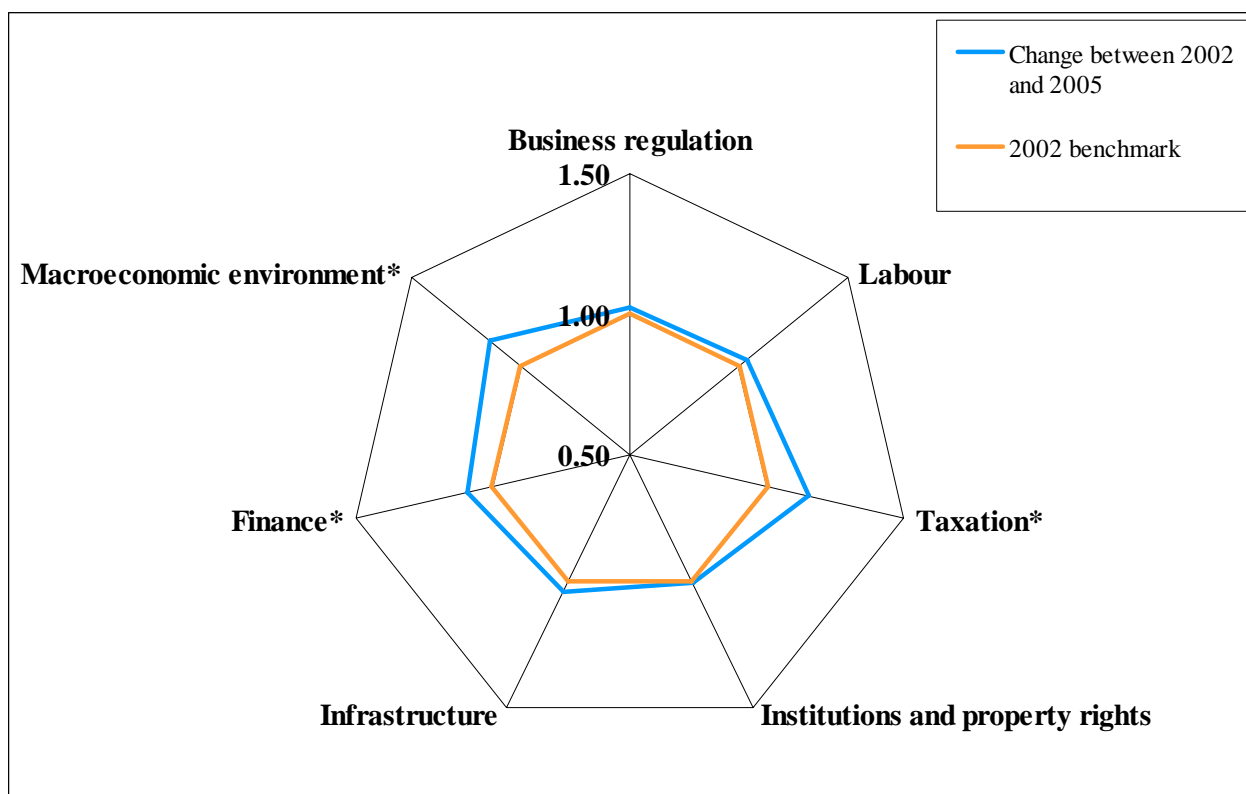
### 2.3 Implications for the investment climate

Hungary was among the first former socialist countries to pursue market reform and proceed with the transition process. Throughout the transition period Hungary was getting and still receives a large amount of foreign direct investments. In May 2004 Hungary joined the EU, underlying its success in embracing the market economy and increasing expectations of local and foreign investors and businesses, as well as raising its investment climate profile. Hungary is among countries for which graduation from EBRD countries of operation is imminent in view of completing transition to market economy.

Despite a relative economic slowdown in 2006 and 2007, Hungary continues to be a transition success story. Major problems affecting the economy appear to be weak corporate investment, particularly in the sectors serving the domestic market. The government would need to put more effort towards more careful public expenditures policy that ultimately affects the financial markets. However, attitudes towards foreign investments are very positive, the taxation system is favourable and infrastructure is relatively good. There are some concerns over excessive bureaucracy and low level occasional corruption. Investment in infrastructure and energy and energy efficiency, as well as health care system, will prove beneficial.

Chart 3 shows the results of the EBRD/World Bank Business Environment and Enterprise Performance Survey (BEEPS) in 2002 and 2005, comparing the situation in 2002 to the one in 2005 and rating the achievements in certain sectors.

Chart 3 – Changes in the business environment in transition countries, 2002-05



Sources: BEEPS 2002 and 2005

**Notes:** The spider charts show changes in seven aspect of the business environment between 2002 and 2005. The 2002 data represent a benchmark of no change. Where the line falls inside the benchmark, this represents an improvement in that aspect of the business environment. Where the line falls outside of the benchmark, this represents a deterioration in the business environment. Wherever the changes are statistically significant, the relevant categories are marked with an asterisk. The business environment was assessed on a scale from 1 (no obstacle) to 4 (major obstacle).

### 3. Evaluation of selected commercial laws

The EBRD has developed and regularly updates a series of assessments of legal transition in its countries of operations, with a focus on selected areas relevant to investment activities: capital markets, concessions, corporate governance, insolvency, secured transactions and telecommunications. The existing tools assess both the quality of the laws "on the books" (also referred to as "extensiveness") and the actual implementation of laws (also referred to as "effectiveness").

All available results of these assessments can be found at [www.ebrd.com/law](http://www.ebrd.com/law).

#### 3.1. *Capital markets*

The basic legislation on the securities market is comprised by Act CXX of 2001 on the Capital Market and Act CXXIV of 1996 on Government Control of Financial Institutions (both last amended in July 2007).

The 2001 Act was adopted to ensure transparency and to improve regulations on actors of capital markets, investors protection and the efficiency of market supervision. The 1996 Act regulates the legal status and powers and authorizations of the Hungarian Financial Supervisory Authority ("HFSA"), the securities market regulator.

The securities market legal framework is still expected to substantially change after the adoption and implementation of the EU Markets in Financial Instruments Directive ("MiFID"). According to the Ministry of Finance, a new law implementing MiFID should enter into force at the beginning of 2008.

The HFSA is in charge for the supervision of credit institutions and financial enterprises, insurance institutions, voluntary mutual insurance funds, venture capital enterprises, venture capital funds and individual specialised credit institutions.

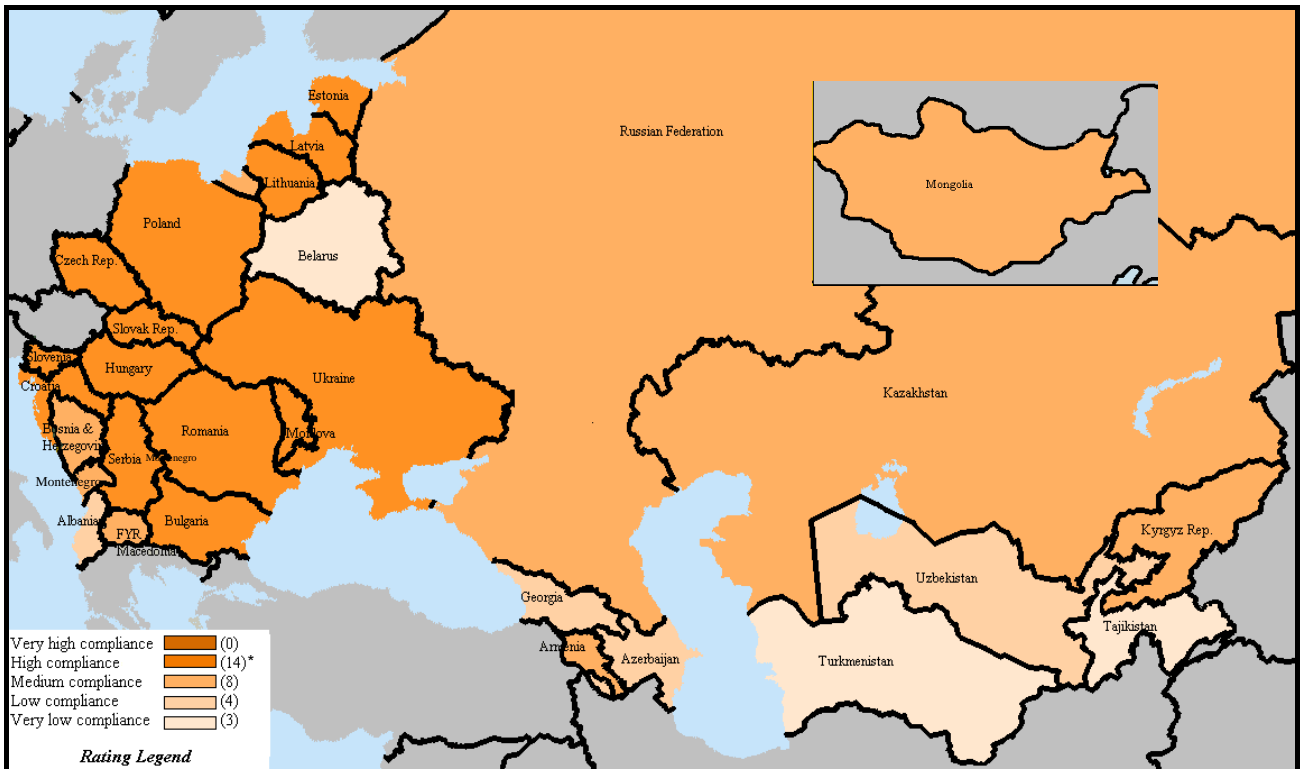
There is only one stock exchange in Hungary, the Budapest Stock Exchange ("BSE") and there is a well developed OTC Market. The range of products available at the BSE is divided into three clearly separable categories.

- 1) The equities section has been operating since the very beginning of the BSE. Aside from equities, this section also includes the trading of investment fund units and compensation notes.
- 2) The debt securities section is dominated by government bonds, however mortgage bonds and corporate bonds alike enjoy an increasing popularity.
- 3) The derivatives section is the youngest and most dynamically developing section of the BSE.

In July 2007, the capitalisation of the market was close to EUR 19.68 billion, with 40 listed companies.

The 2007 EBRD Securities Markets Legislation Assessment, found Hungary in "high compliance" with the Objectives and Principles of Securities Regulation published by the International Organization of Securities Commissions (IOSCO) showing only minor weaknesses in the legislation on the regulator. (See Charts 4 and 5)

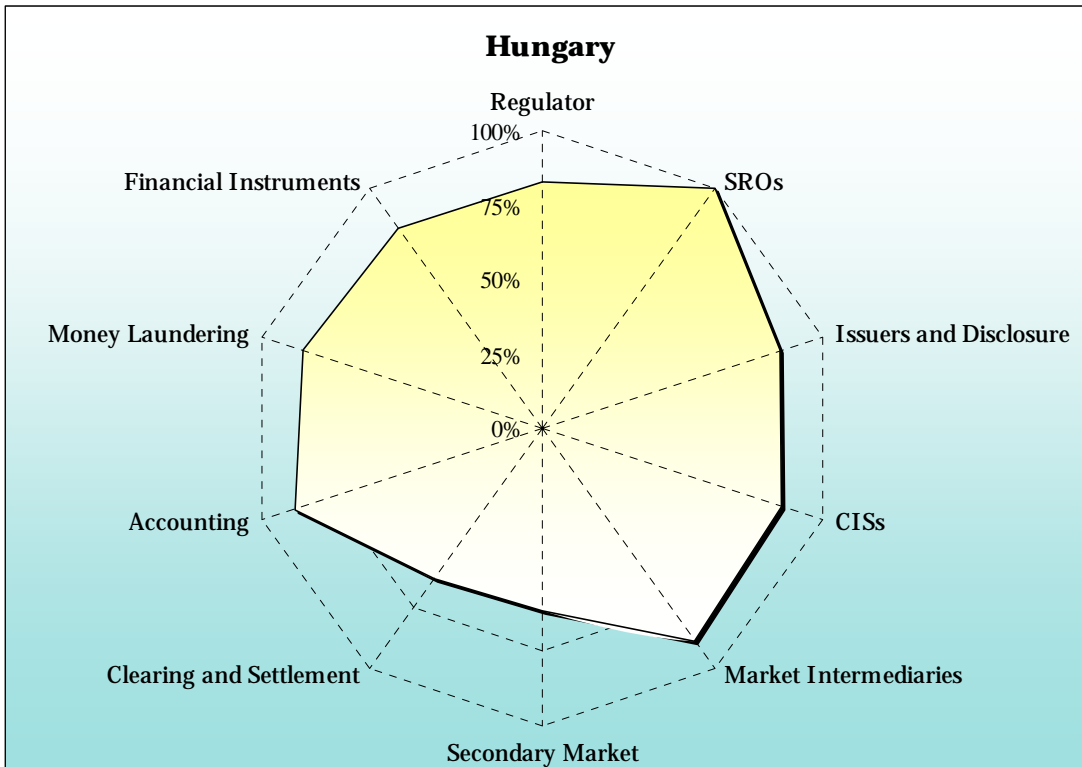
**Chart 4 – Quality of securities market legislation in the EBRD Countries of operation**



*Source: Securities Markets Legislation Assessment 2005*

**Note:** The various categories represent the level of compliance of a given country’s legislation (the “laws on the books”) with international standards such as the IOSCO Principles. The asterisk indicates in which category Hungary ranks.

**Chart 5 - Quality of securities market legislation – Hungary, 2007**

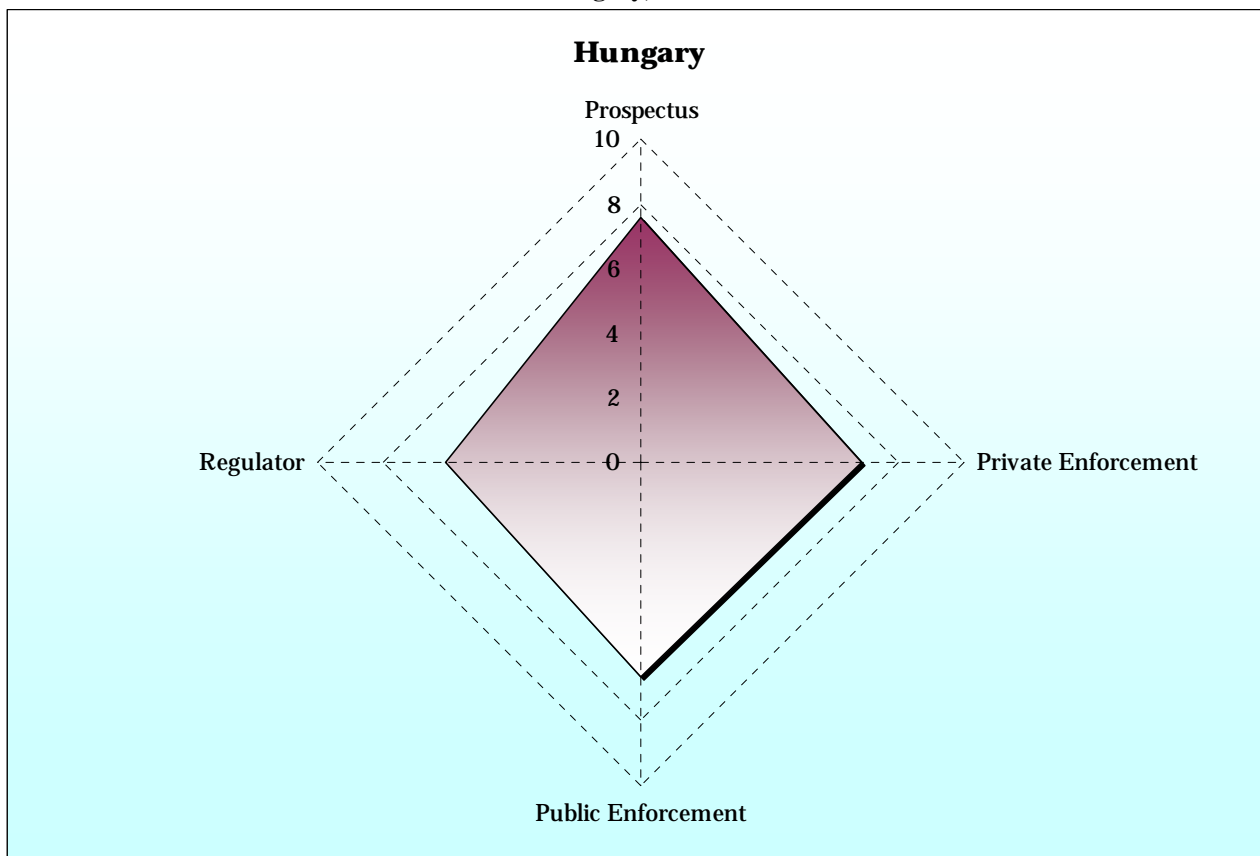


*Source: EBRD Securities Market Legislation Assessment 2007*

*Note: The extremity of each axis represents an ideal score in line with international standards such as the IOSCO Principles. The fuller the 'web,' the more closely the country's capital markets laws approximate these standards.*

In order to understand how securities market legislation works in practice, the EBRD recently concluded the 2007 Legal Indicator Survey. Respondents from leading law firms in the region were asked to comment on a hypothetical case study, advising an investor who lost his savings after buying shares through a bank, misled by erroneous information in the prospectus. In particular, respondents were asked to advise on effectiveness of prospectus disclosure requirements, private and public enforcement mechanisms and authority of the market regulator. The findings show a relatively effective framework. Disclosure and financial reporting practices are sound and investors can count on a good institutional support to their civil actions. Overall the capacity of courts, regulator and prosecution authority seems to be adequate. (See Chart 6)

**Chart 6 – Effectiveness of securities markets in Hungary, 2007**



The above studies suggest that the securities framework in Hungary is sound both under the perspective of the quality of the law and its effectiveness. The country needs to continue its effort to improve the quality of the law and strengthen the authority of the relevant institutions in line with EU requirements and challenges.

### 3.2 Concessions

Concessions legislation in Hungary is multiple: arrangements are governed by a combination of a general concessions law and sector specific legislation. There exists a government policy framework for improving the legal environment and promoting the concept of the Public Private Partnership (“PPP”) pursuant to which a PPP task force was set up by the Ministry of Economy and Transport in 2003.

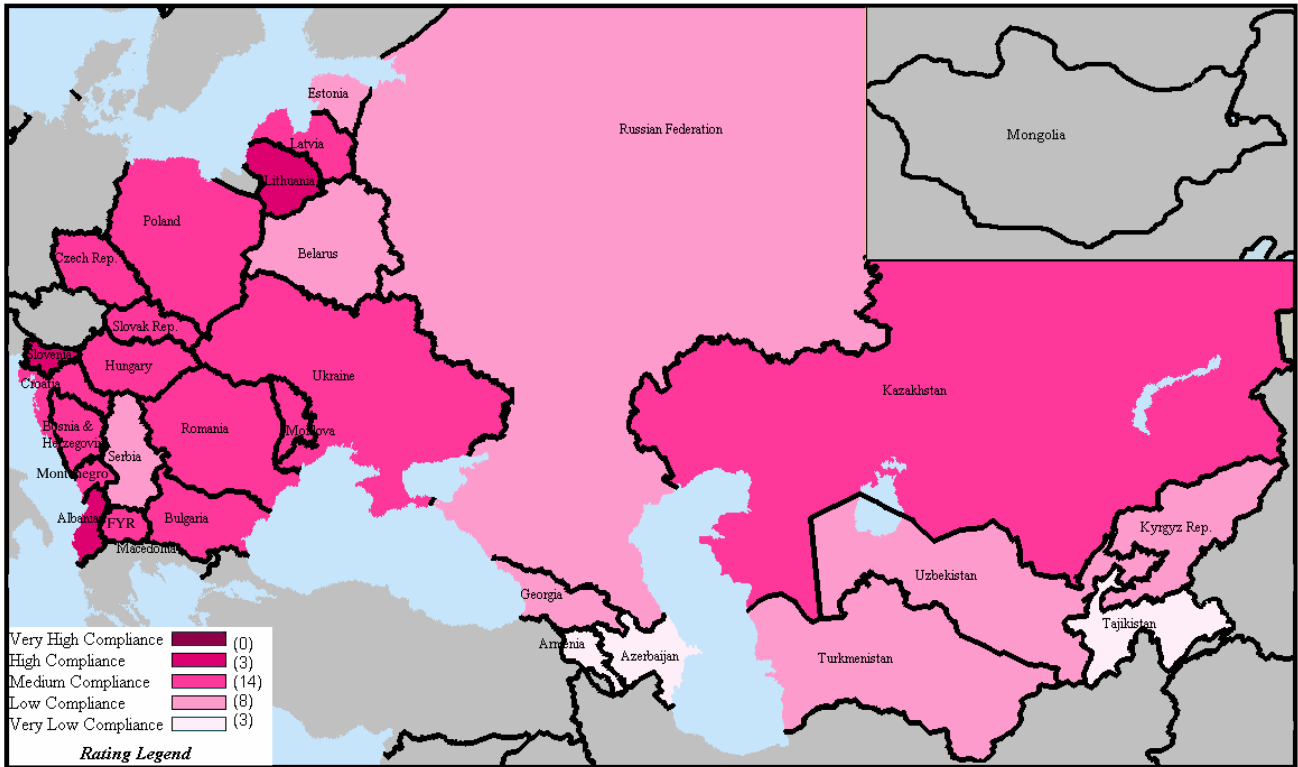
The 1991 Concessions Act, as amended (the “Concessions Act”) is a general framework law and contains references to various sector-specific legislation. The Concessions Act provides an apparently exhaustive list of the activities/sectors where concessions arrangements are applicable. Sector specific concessions legislation further defines concessions arrangements applicable to particular sectors and contains cross references to the Concessions Act.

The Concessions Act contains rules on contracting arrangements, concession granting procedures and provides for the possibility of international arbitration for dispute settlement. It regulates the tendering process and also refers to a special tender law and to the relevant provisions of the Civil Code that are also applicable to a concession contract.

The Concessions Act appears somewhat superficial and inflexible. (See Chart 8) For example, assignment of concession rights to a third party is restricted. Other deficiencies include the absence of a stability clause, the lack of clarity of the concession definition and the application of a fair

compensation mechanism. It contains very few provisions regarding project agreements (in particular, insufficient termination/compensation provisions). The Concessions Act needs serious improvement especially in the areas of concessionaire selection, government support and the availability of financial instruments and security assignability, in particular, the introduction of a pre-qualification procedure, a detailed procedure for requesting proposals and the regulation of unsolicited proposals.

**Chart 7 – Quality of Concessions legislation in the EBRD Countries of operation**

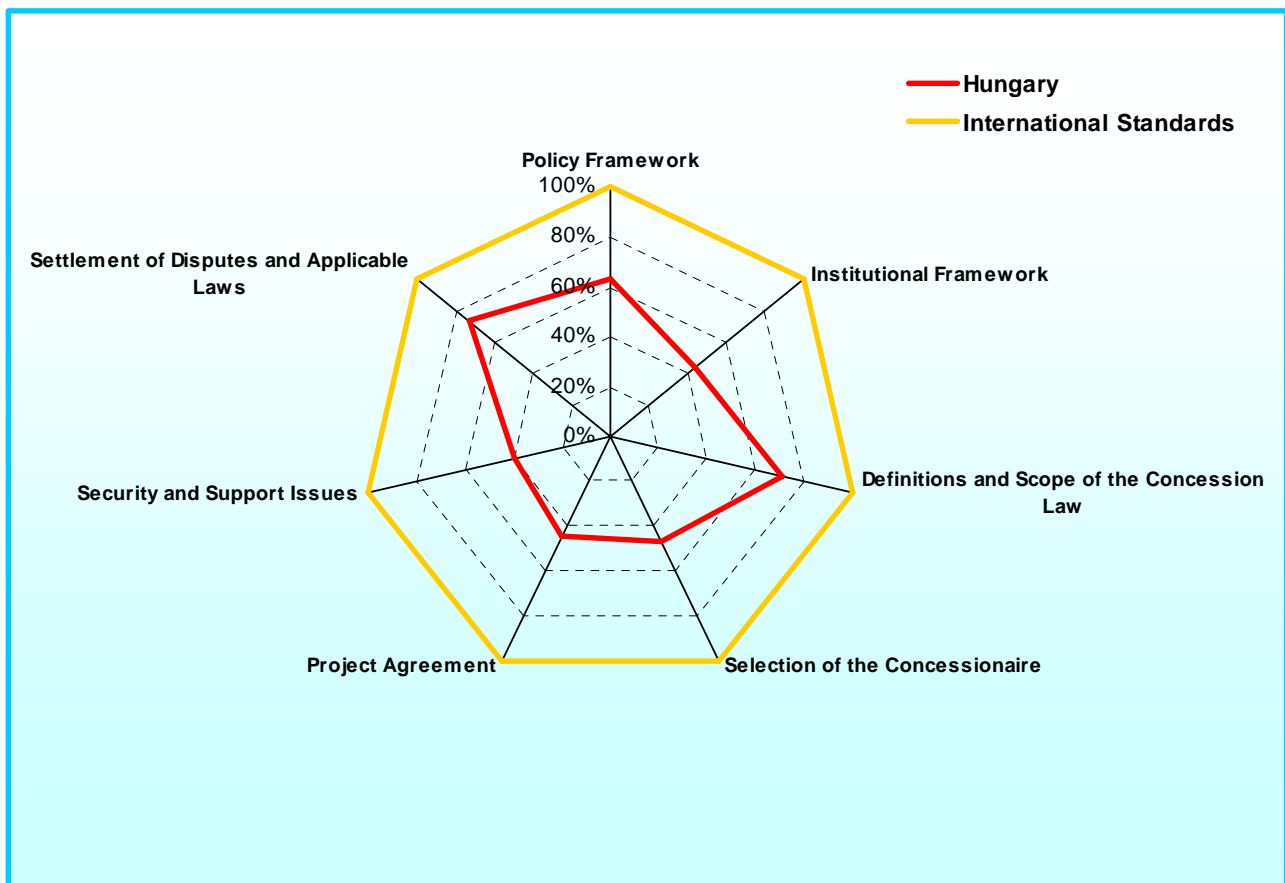


Source: EBRD Concessions Sector Assessment 2008

**Note:** The various categories represent the level of compliance of a given country’s legislation (“the laws on the books”) with international standards such as the UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects. The asterisk indicates in which category Hungary ranks.

The EBRD’s 2008 Assessment of Concessions Laws undertaken to evaluate applicable regimes throughout the EBRD’s 29 countries of operations (the laws on the books only rather than how they work in practice), revealed that Hungarian concessions laws had “medium compliance” with internationally accepted standards in this sector. As can be seen from the below spider graph (see Chart 8), while concession related rules generally as well as rules covering settlement of disputes, for instance, are regulated fairly extensively, most other areas, as discussed earlier, need to be dramatically improved in order to meet the requirements of a modern legal framework facilitating private sector participation. The new law, sponsored by EBRD, aims to take into account the above in order to improve the concessions legal framework.

**Chart 8 - Quality of Concessions legislation – Hungary, 2008**



*Source: EBRD Concessions Sector Assessment 2008*

**Note:** The extremity of each axis represents an ideal score in line with international standards such as the UNCITRAL Legislative Guide for Privately Financed Infrastructure Projects. The fuller the ‘web,’ the more closely the country’s concessions laws approximate these standards.

A certain number of positive elements are worth noting: a possibility for the sector-specific act to apply subject to the Concessions Act, requirements to publish concession award notices and maintain records accessible to public.

Thus, even though Hungary does have concessions on its records, the actual Concessions Act appears to be somewhat outdated and unclear in many respects. The multiple nature of legislation is not ideal either and the government’s plans to reform the regime are welcome. In the context of EU accession and legal harmonisation and the adoption of the new Public Procurement Law in 2004, a new PPP enabling law, based on modern internationally accepted standards, would contribute to the development of PPP in Hungary.

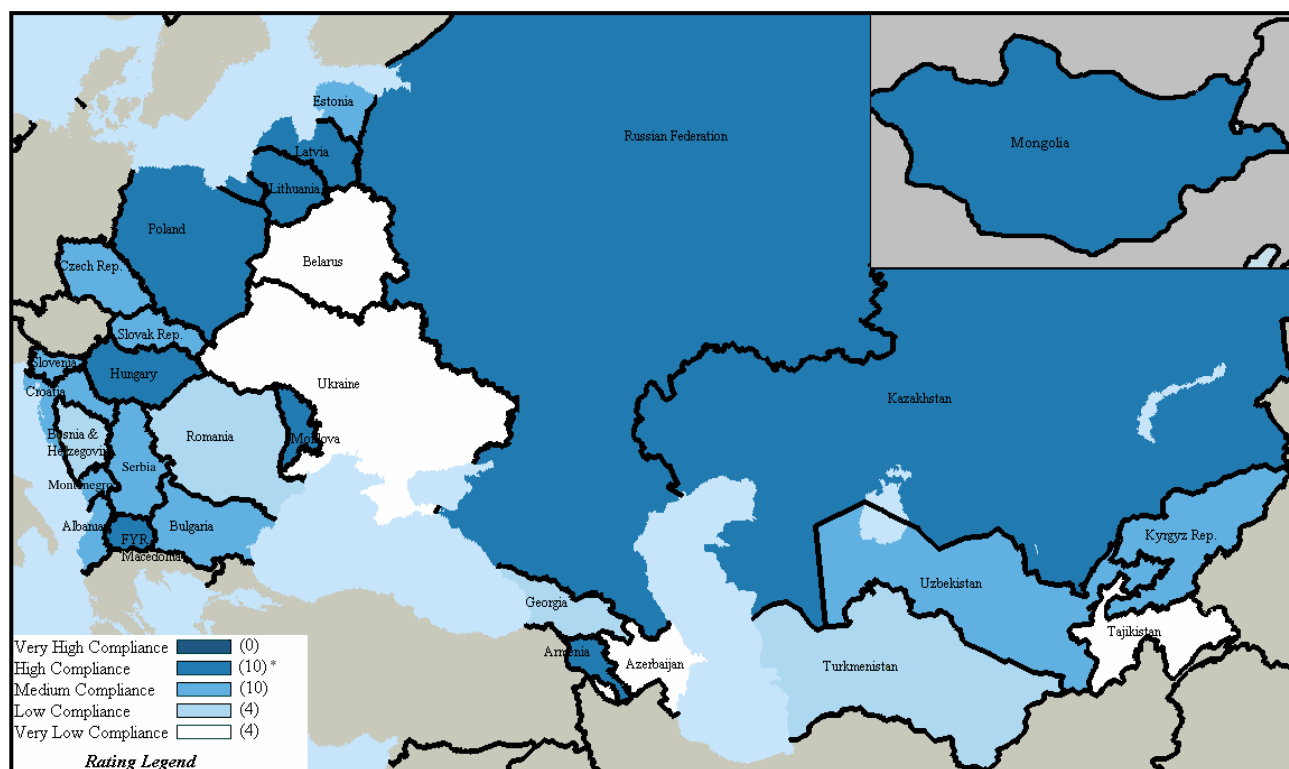
In 2006 the EBRD launched a technical assistance project to help the Government with the drafting of a new Concessions Law and with the preparation of a clear and detailed PPP Policy paper.

### 3.3. Corporate Governance

The primary legislation dealing with corporate governance is contained in Act CXLIV of 1997 on Companies (the “Companies Act”). The Companies Act provides the basic regulation concerning limited liability companies and joint stock companies, which are the two most widely used corporate forms in Hungary. In addition to the Act, the Budapest Stock Exchange published in 2004 voluntary (non-binding) corporate-governance guidelines for listed companies, which provide guidance and recommendations on the role of the board of directors, supervisory board and other executive management, and the need to introduce better internal controls. They also address the rights of minority shareholders. In addition the BSE has required since 2005 large firms listed in the 'A' category of the BSE to publish an annual corporate-governance report, and since 2006 smaller firms in the 'B' category.

Generally speaking, Hungarian law is in line with the OECD Principles of Corporate Governance. (See Charts 9 and 10)

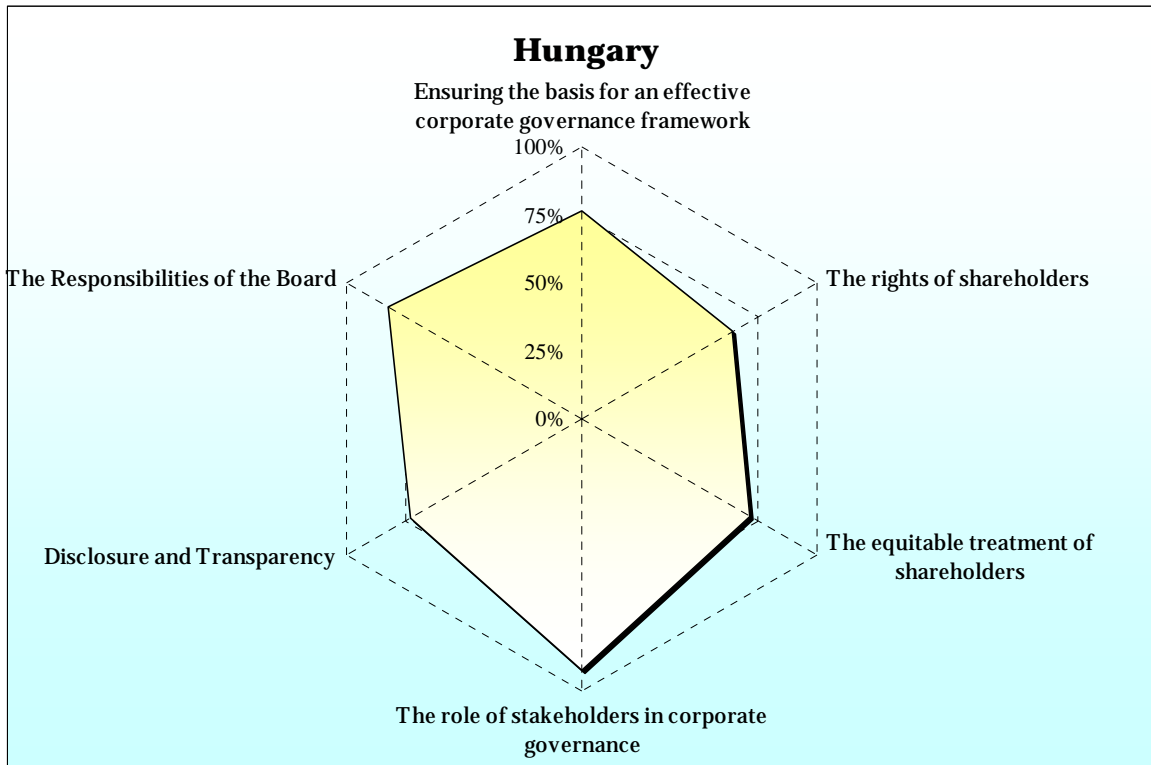
**Chart 9 – Quality of Corporate Governance legislation in the EBRD Countries of operation**



*Source: EBRD Corporate Governance Sector Assessment 2004*

**Note:** The various categories represent the level of compliance of a country’s legislation (the “laws on the books”) with international standards as set out in the OECD Principles of Corporate Governance.

**Chart 10 – Quality of Corporate Governance legislation – Hungary, 2007**

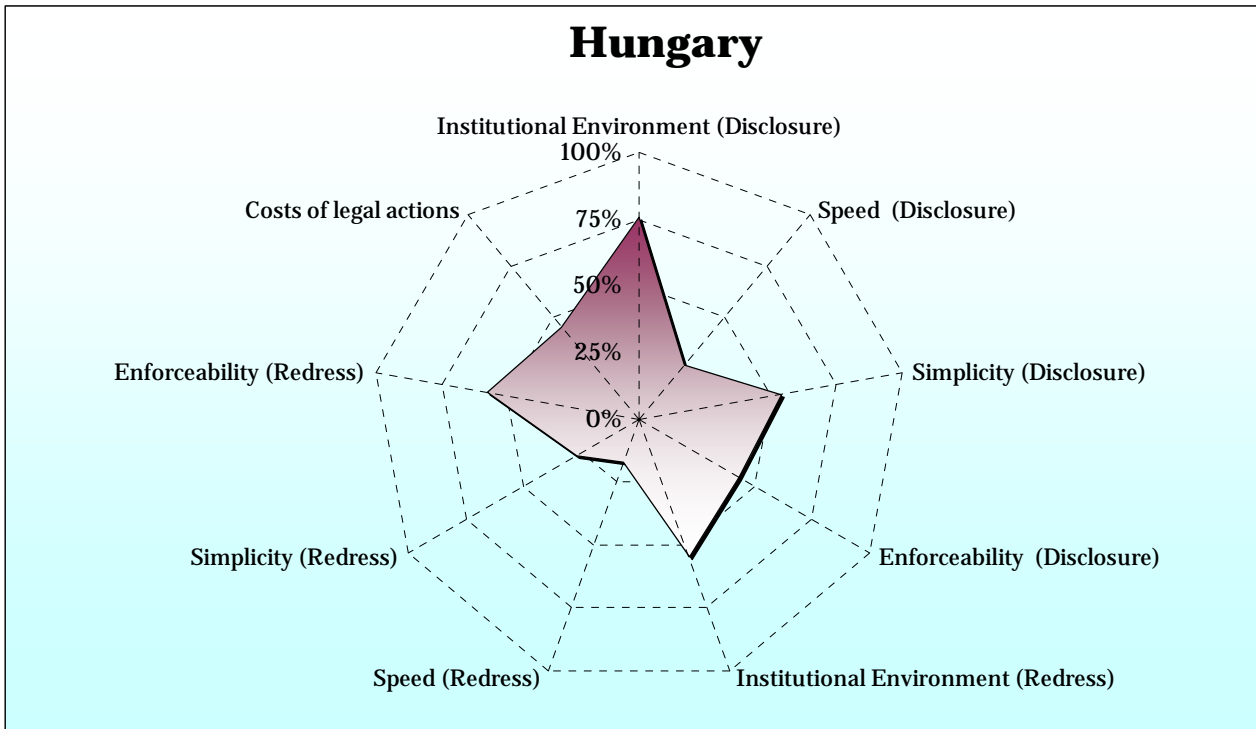


*Source: EBRD Corporate Governance Sector Assessment 2007*

*Note: The extremity of each axis represents an ideal score in line with international standards such as the OECD Principles of Corporate Governance. The fuller the ‘web,’ the more closely the country’s corporate governance laws approximate these standards.*

However, when tested on its practical robustness, it appears that minority shareholders would have difficulties bringing a legal action to obtain disclosure and redress from companies, as procedures can be long and complex. (See Chart 11)

**Chart 11 – Effectiveness of corporate governance in Hungary (2007)**

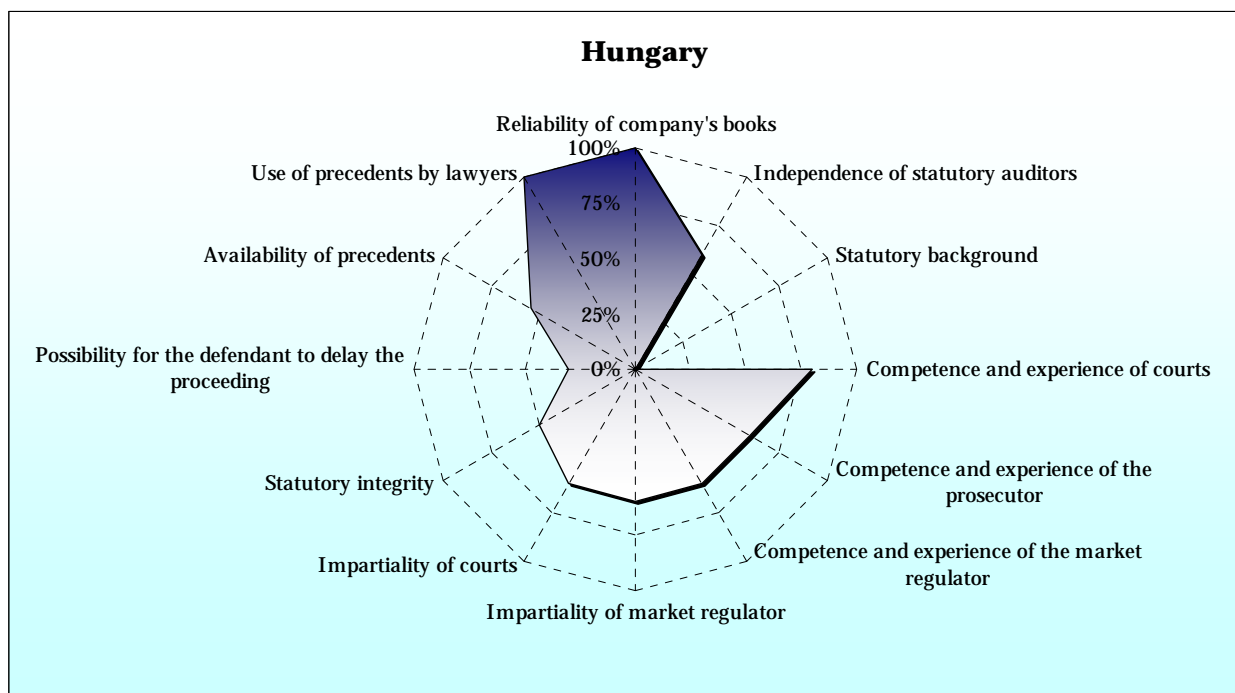


*Source: EBRD Corporate Governance Sector Assessment 2007*

*Note: The graphs show disclosure, redress and the institutional environment in Montenegro. The average results from the case study scenarios are shown. Disclosure refers to a minority shareholder’s ability to obtain information about their company. Redress refers to the remedies available to a minority shareholder whose rights have been breached. Institutional environment refers to the capacity of a country’s legal framework to effectively implement and enforce corporate governance legislation. Costs refer to the expenses a minority shareholder must pay to take legal action. The extremity of each axis represents an ideal score: the fuller the ‘web’, the better the corporate governance framework.*

The institutional environment is deemed sound but the legal framework on related party transactions is weak and is reported to be easy for the defendant to delay the action. Enforceability is generally good but can vary substantially depending on the type of action pursued. (See Chart 12)

**Chart 12 – Institutional Environment in Hungary (2007)**



Source: EBRD Corporate Governance Sector Assessment 2007

*Note: Institutional environment refers to the capacity of a country's legal framework to effectively implement and enforce corporate governance legislation. Statutory background relates to how comprehensive, clear and well structured a country's definition of related-party, self-interested, self-dealing, or conflict of interest transactions is. In particular, whether this definition covers transactions in which the director or the dominant shareholder has an indirect interest (for example, the party to the transaction is a dominant shareholder's subsidiary). Statutory integrity refers to the level of corruption within a transition country, as determined by Transparency International's Corruption Perception Index 2005. This index is measured on a scale from 1 to 10, with 1 being the most and 10 the least corrupt environment. The extremity of each axis on the graph represents an ideal score: the fuller the 'web', the better the institutional environment*

### 3.4. Insolvency

Bankruptcy and insolvency in Hungary are governed by the Bankruptcy Proceedings, Liquidation Proceedings and Member's Voluntary Dissolution Act (as amended) (the "Bankruptcy Act"). This law was amended in 2006 with amendments coming into force between 1 July 2006 and 1 January 2007. The government has reportedly been working on a more comprehensive series of amendments; however these have not yet been introduced.

The recent amendments are too recent to have been fully analysed and their impact is, as yet, undetermined.

The Bankruptcy Act was most recently assessed during the 2006 Insolvency Sector Assessment which examined the extensiveness of the law's compliance with international standards. (See Chart 13)

Chart 13 – Quality of Insolvency legislation in the EBRD Countries of operation

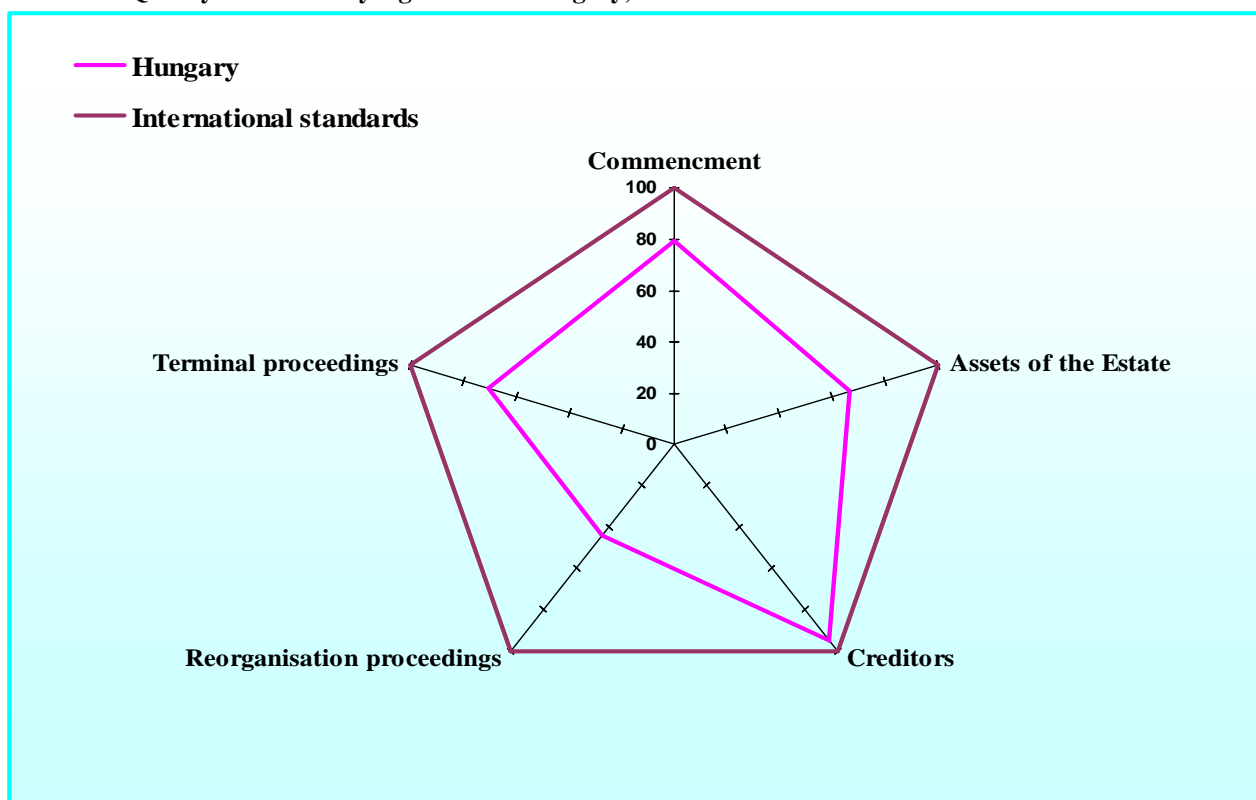


Source: EBRD Insolvency Sector Assessment 2006

*Note:* The various categories indicate the level of compliance of each country’s legislation (the “laws on the books”) with international standards, such as the World Bank’s Principles and Guidelines for Effective Insolvency and Creditor Rights Systems, the UNCITRAL Working Group on Legislative Guidelines for Insolvency Law, and others.

The 2004 assessment had revealed a number of problems with that version of the law. Key amongst these were an unclear definition of ‘insolvency’, a commencement procedure which allowed the court up to 60 days to hear an initial insolvency application, and treatment of secured creditors in a manner inconsistent with international standards, since only half of the proceeds of the sale of a secured asset minus the cost of administration could be used to settle the secured claim. It was further noted that the reorganisation process was weak with no provision for ‘DIP’ financing and a requirement for an unrealistically high level of creditor support to approve a restructuring plan. (See Chart 14)

Chart 14 – Quality of Insolvency legislation – Hungary, 2006



Source: EBRD Insolvency Sector Assessment 2006

*Note:* The extremity of each axis represents an ideal score in line with international standards, such as the World Bank's Principles and Guidelines for Effective Insolvency and Creditor Rights Systems, the UNCITRAL Working Group on Legislative Guidelines for Insolvency Law, and others. The fuller the 'web,' the more closely the country's insolvency laws approximate these standards.

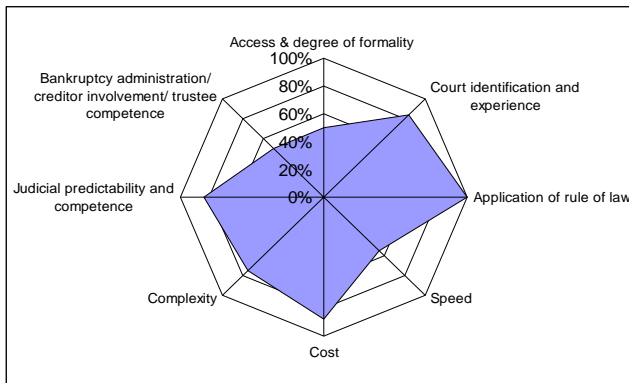
The recent amendments appear to address only one of these problems, the treatment of secured creditors. According to the new law, all of the proceeds of the sale less the cost of administering the assets will be used to satisfy the secured claim, and the amount which can be recovered by the liquidator for administering the asset has been capped at 50% of the sale price. This improvement should enable secured creditors to recover a higher percentage of the value of their claims.

The recent amendments make it easier for creditors to commence bankruptcy proceedings against debtors by allowing proceedings to be opened 15 days after the submission of an invoice which the debtor does not dispute but has failed to pay.

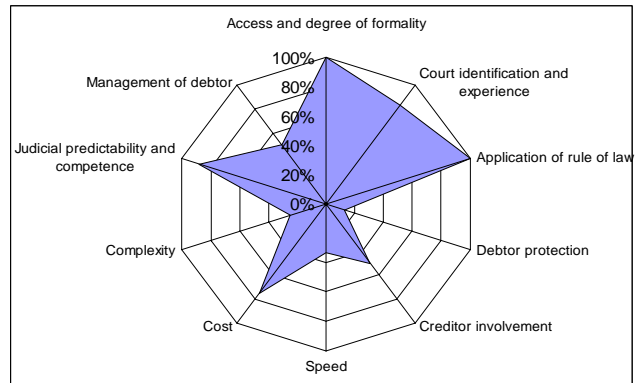
It is not yet clear how the new reform will impact the effectiveness of the system, but it remains clear that major problems continue to exist within the insolvency law and implementation regime. (See Chart 15) The government is encouraged to bring forward proposals for more comprehensive amendments including: a more rapid process for the commencement of proceedings; a new reorganisation procedure; provisions for financing during a restructuring; additional management powers for creditors including the ability to replace management and the ability to sell parts of a business as going concerns; and rules on bankruptcy proceedings for company-groups. It is also recommended that Hungary adopt the provisions of the UNCITRAL Model Law on Cross Border Insolvency which would work in parallel with the Council Regulation (EC) 1346/2000 on Insolvency Proceedings, providing clearer rules on cross-border insolvencies involving countries outside of the European Union.

Chart 15 – Effectiveness of Hungary insolvency regime

### Creditor-Initiated Insolvency



### Debtor-Initiated Insolvency



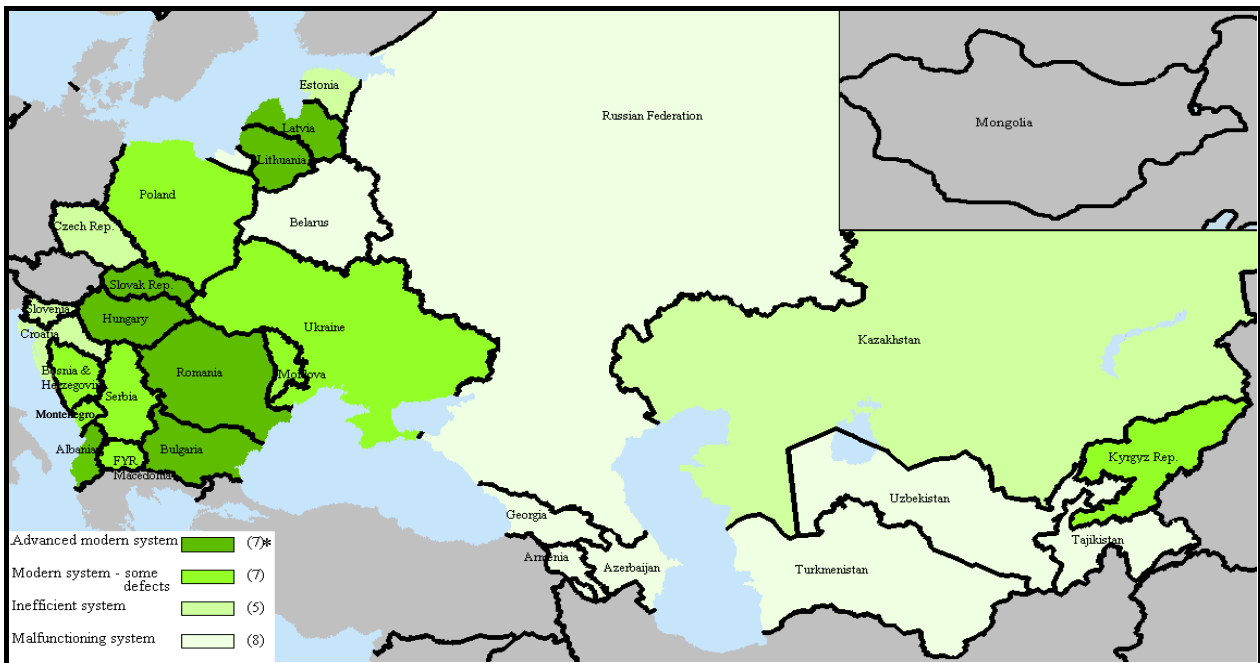
Source: EBRD 2004 Legal Indicator Survey on Insolvency

Note: The results have been derived from stakeholder responses to questions about the practical functioning of the insolvency regime. The fuller the “web,” the more effective the country’s insolvency regime is.

### 3.5. Secured Transactions

As already stated in previous strategies, and clear from the graph below, Hungarian law provides a comprehensive, flexible and modern system for charging all kinds of assets. (See Charts 16, 17)

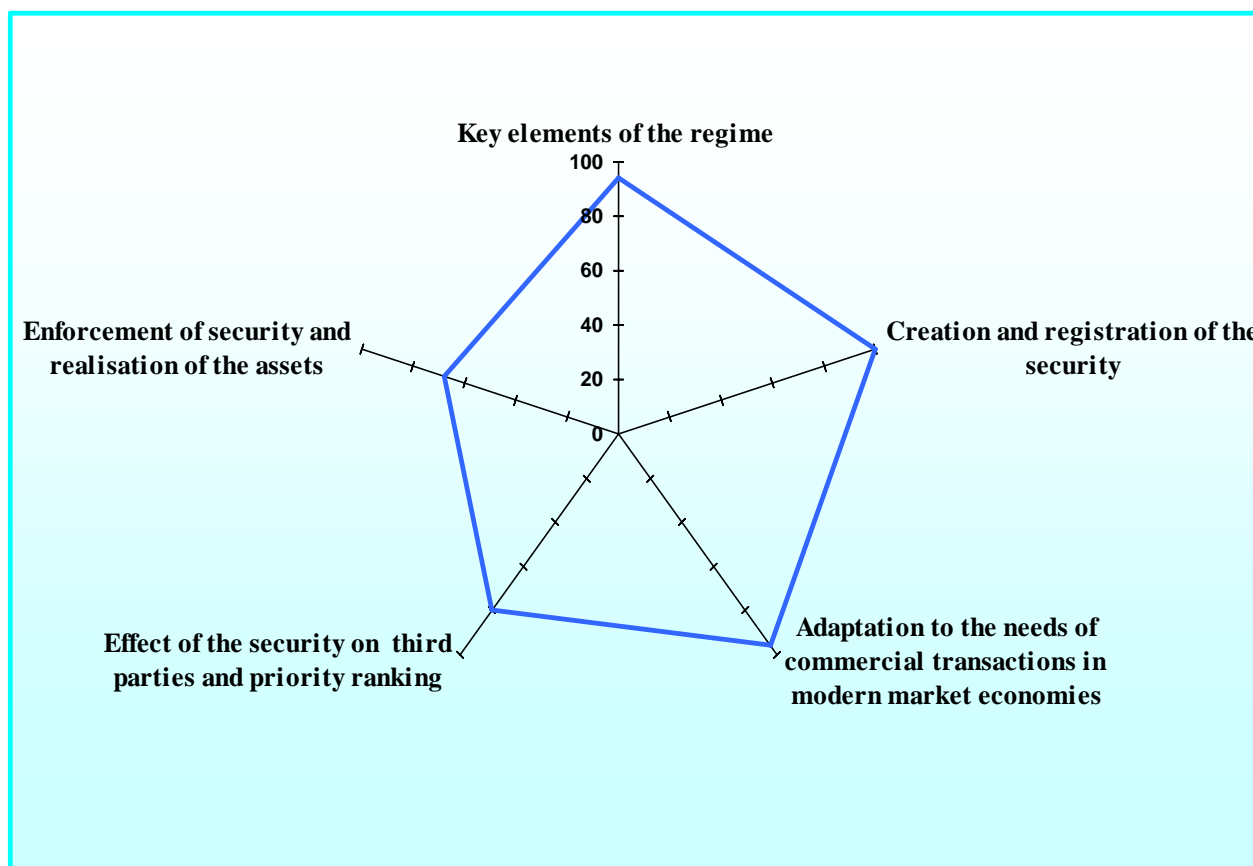
Chart 16 – Quality of secured transactions legislation in the EBRD Countries of operation



Source: EBRD Regional Survey of Secured Transactions Legislation 2004

Note: The level of reform referred to in the legend above is assessed in relation to the EBRD’s Model Law on Secured Transactions and the ‘ten core principles of secured transactions law.’

Chart 17 – Quality of secured transactions legislation – Hungary, 2004

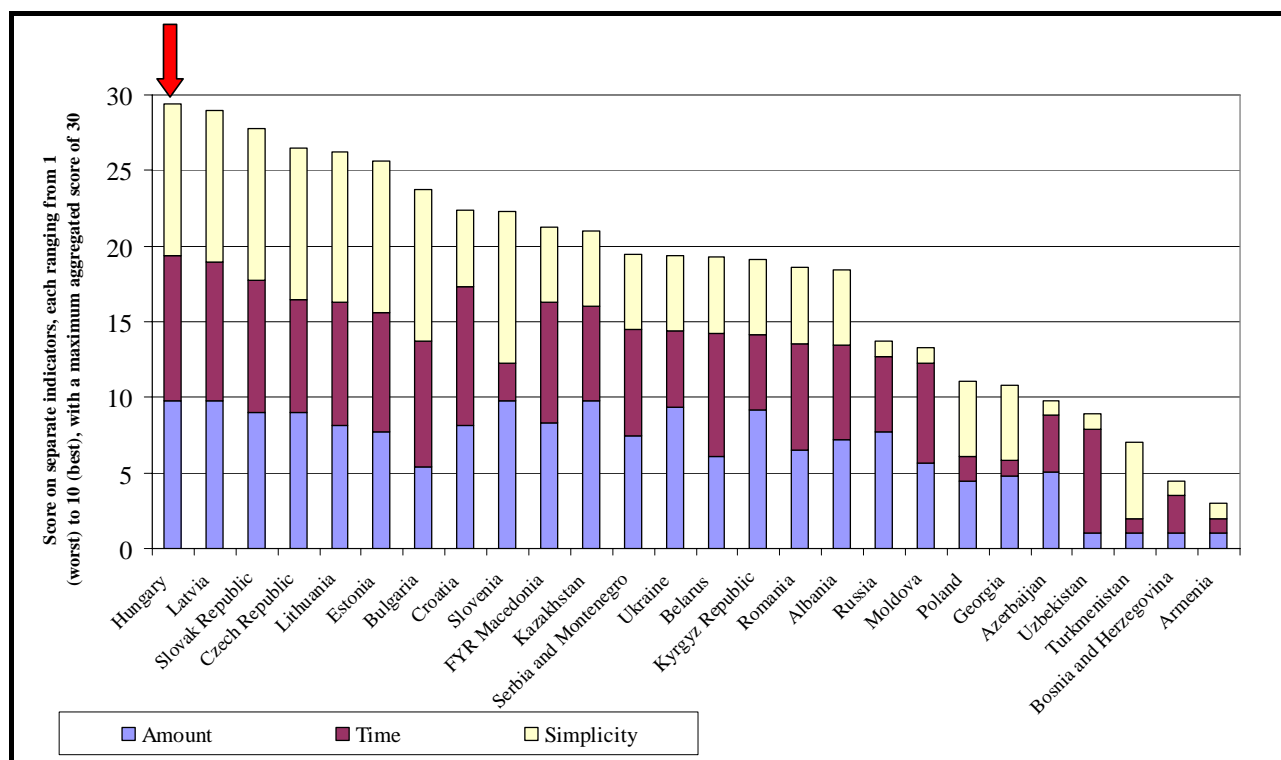


Source: EBRD Regional Survey of Secured Transactions Legislation 2004

Note: Scoring is done on a scale of 1 to 100, with 100 representing the most advanced legal regime. The fuller the 'web,' the more advanced the country's secured transactions legal system is.

Registered charges over movable (tangible) assets are registered in the centralised electronic Charges Registry, which has been operated since May 1997 by the Hungarian National Chamber of Public Notaries. In recent years, substantial improvements have been brought to the law. The range of collateral that can be taken has increased; charges over pools of fluctuating assets are now possible. Foreclosure rules have been substantially simplified, and out-of-court enforcement (for example by the creditor selling directly the collateral to get repaid) is now possible and is reported to work well. Finally, the treatment of secured creditors in the case of the debtor's insolvency has been significantly improved (see Chart 18).

**Chart 18 – Effectiveness of the Charge Enforcement Process – Hungary (2003)**



Source: EBRD New Legal Indicator Survey 2003

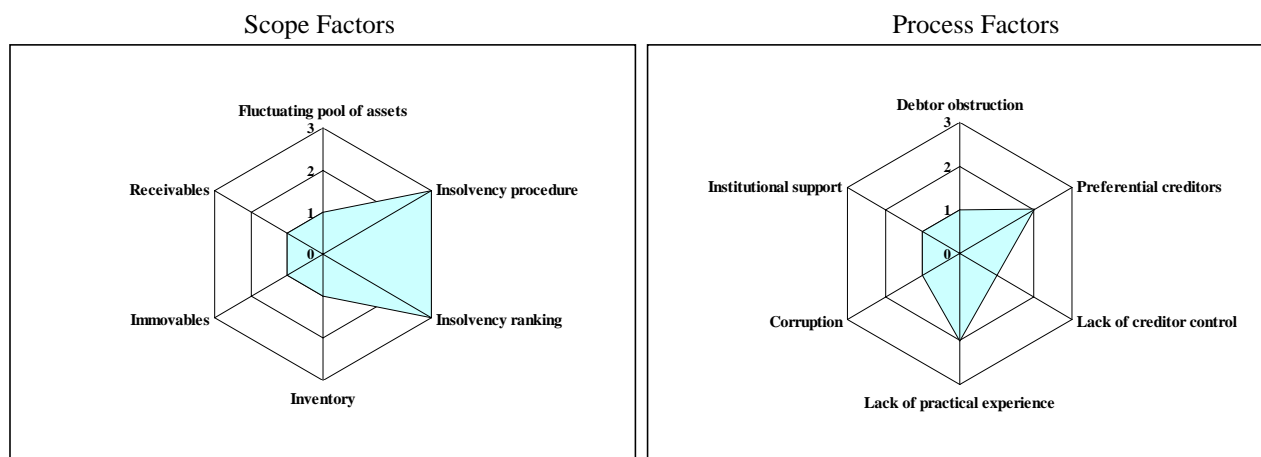
**Note:** The chart shows how much a secured creditor can expect to recover (amount), how quickly (time), and how simply (simplicity). The higher the bar, the more efficient and creditor-friendly the system is.

The need in Hungary now is for an economic and market analysis of how more use could be made of charges and greater benefit derived from the regime that exists. Such a 'fine-tuning' exercise would deal with practical problems and aim at increasing efficiency for secured credit operations, and would undoubtedly indicate some specific amendments that might be made. However, the ongoing reform of the Civil Code has led to the creation of a working group led by the Ministry of Justice, which has undertaken a complete review of secured transactions provisions. We believe that such rewrite of the law is not necessary – on the contrary, it may cause confusion, introduce complexity and reduce public confidence in the secured credit sector.

Charges over immovable property (mortgages) are also working efficiently but there are serious bottlenecks to the system, in particular:

- the time required to register a mortgage, which is unduly long
  - the costs associated with the creation of a mortgage, again comparatively high for the region
- the inefficiency of the enforcement process, due to the enforcement costs (again, very high) and the fact that the property is rarely sold at market value. (See Chart 19)

**Chart 19 - Obstacles to Charge Enforcement Process – Hungary (2003)**



Source: EBRD Legal Indicator Survey 2003

**Note:** “Process” factors measure the impact that specific obstacles would have on the enforcement proceedings. “Scope” factors give an indication of how effective enforcement would be when conducted on various types of collateral and in the context of debtor insolvency. The fuller the coloured area, the more serious the problems are.

### 3.6. Telecommunications

The communications sector (the “Sector”) in the Hungary is currently regulated by the Nemzeti Hírközlési Hatóság (NHH, the National Communications Authority) and is governed by the Electronic Communications Law 2003 (the ‘2003 Communications Law’) and related regulations. The 2003 Communications Law and the subsequent secondary legislation finalised Hungary’s transposition of the European Union (EU) 2002 regulatory framework in accordance with the country’s formal obligations as a an EU member state. The Ministry for Economy and Transport took over as the Sector policymaker in 2006 following the dissolution of the Ministry of informatics and Communication in a government restructuring.

In addition to the transposition of the 2002 EU regulatory framework, the 2003 Communications Law sought to provide a framework for market analysis and re-structured the National Regulatory Authority. The 2003 Communications Law replaced the existing regulator, Hungarian Telecommunications Authority (HIF) with the NHH, enhancing the status and independence of the regulator. NHH’s executive powers were further reinforced in 2006 in an effort to address a perceived deficiency in its ability to enforce decisions and impose fines against errant operators. NHH’s role includes registration of service providers, market supervision, market surveillance and frequency management. In addition, NHH approves of reference offers, accounting separation models and provides dispute resolution services.

Hungary is widely regarded as having been one of the more advanced of the transition economies in aligning its communications legislation with the EU framework, with national policies being heavily influenced early on by the EU strategy for liberalising markets. The regulation of the communications sector has been relatively clear and consistent from the outset and Hungary was early to liberalise the Sector beginning in 1992 and continuing over the following decade. The 1998 EU liberalisation framework and full market liberalisation was formally introduced in 2001-2002. Similarly, Hungary was one of the earliest of the central European countries to embrace Sector privatisation, beginning in 1993. All operators are now understood to be privately owned, though the state retains a golden share in former incumbent.

While incumbent, Matav, still dominates the fixed sector, competition is being invigorated by renewed challenge from the recent merge of a number of the larger alternative operators. The rise of competition in the fixed market has also been aided by sustained implementation of local loop unbundling and a robust stance from NHH in the implementation of the regulatory framework. NHH recently completed their second round of market analysis, largely confirming the results of the first analysis, but providing additional regulatory support for competitive roll-out in the broadband market.

Like peer markets in central and western Europe, the Hungarian mobile market is showing signs of saturation and accompanying slowdown of teledensity - in June 2007 the formal figure stood at just over 100%. There is vigorous competition within the sub-sector, with the GSM network operator market being shared (at June 2007) by Pannon (c. 35%), Vodafone (c. 21%) and T-Mobile (c. 44%). All three operators are also licensed to provide 3G services, with T-Mobile being the first to launch services in that market (in 2005). A fourth 3G licence is expected to be re-offered by NHH soon, following the failure of earlier attempts to licence a new entrant to the 3G market.

Hungary has made significant progress in development of the Sector in recent times. Though the country was an early adopter of Sector liberalisation and privatisation there had been some concerns over the speed of implementation of the necessary EU regulatory framework. The authorities, in particular NHH, appear to have dispelled many of these concerns, advancing well through the required market analyses. With the formal framework now well entrenched, the most immediate challenges are to ensure full implementation of the framework is sustained.