

# COMMERCIAL LAWS OF ROMANIA

July 2008

## AN ASSESSMENT BY THE EBRD



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**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 Romania (see [www.ebrd.law](http://www.ebrd.law)).*

## 1. Overall Assessment

Romania joined the European Union in 2007, marking the culmination of years of economic and legislative efforts. The business environment has improved, but issues remain with corruption and cronyism. However, these are being addressed with support from the EU and overall Romania remains committed to EU integration.

The country has a developed legal framework for the capital market sector. Based on the EBRD's 2008 assessment of the legislation (laws "on the books"), it is rated as having "high compliance" with the IOSCO Principles. All of the aspects of a developed securities market framework are present and is almost fully compliant with international standards. The main shortcomings currently lie in the regulation of secondary markets.

The concessions legislation introduced in 2006 presents a significant improvement on previously applicable laws and builds on the commitment to promoting public private partnerships previously displayed by the Government. Still, the effectiveness of the legislation has yet to be tested before its strengths and weaknesses can really be assessed.

The 2008 sector assessment found the corporate governance legislation to be in high compliance with the OECD Principles of Corporate Governance – legislation governing board responsibilities, disclosure and transparency and the rights of shareholders requiring further attention – and the effectiveness of the legislation is expected to increase as the courts, prosecutors and market regulator learn from practical experience.

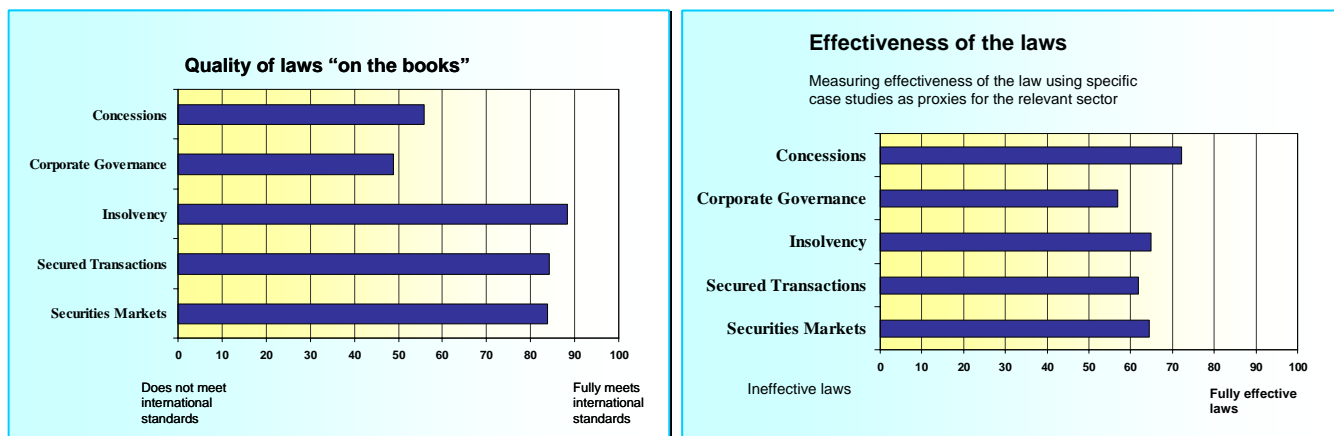
The insolvency regime has been strengthened by the Law on the Insolvency Procedure (2006). It is a forward looking law in high compliance with international standards, however fair implementation will be crucial to its effectiveness.

The secured transactions legal framework is very modern and market-oriented, providing the features required for economic efficiency of the credit market. Deficiencies are present in the institutional framework and obstacles to effective implementation, such as debtor obstruction, exist. Nevertheless, Romania has established one of the most advanced regimes for secured transactions in the EBRD region.

The rules governing the telecommunications sector are in accordance with the current EU framework and it is now largely a case of implementing them and supporting private investment and meaningful competition.

Overall, Romanian legislation is to a significant degree in harmony with EU standards and international best practices and the objective in the short term should be the effective implementation of laws and regulations and improvement of the enforcement process. There remains a noticeable gap between the quality of the laws "on the books" and the practical application (effectiveness) of such laws in some sectors.

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



Source: EBRD legal assessments 2002-2008

## 2. The Legal System

### 2.1. Constitution and courts

Romania adopted a democratic constitution in 1991 (amended in 2003). The Constitution, *inter alia*, declares the separation of powers and establishes human rights and liberties. It also provides for a bicameral Parliament consisting of a Chamber of Deputies and Senate. Members to both are elected by proportional representation and the former also has a number of guaranteed seats for representatives of ethnic minorities. Parliament is elected for a four year term.

The President is the Head of State, who is elected by a universal direct vote for a term of five years and can serve up to a maximum of two successive terms. The Prime Minister is usually the leader of the largest party, or the party leader able to form a coalition when no other, larger alliance exists and his appointment is subject to approval by the President. The Government is empowered to adopt decisions and ordinances with the aim of enabling the execution of laws. It also has the ability to introduce legislation by issuing emergency ordinances. Whilst these are subsequently presented before Parliament for approval, the frequency of application of these powers leads to confusion.

The judiciary of Romania is composed of trial courts, tribunals (county courts), courts of appeal, the High Court of Cassation and Justice and the Constitutional Court. Other than the Constitutional Court, all courts deal with the entire range of disputes (civil, criminal and administrative) and their jurisdiction is determined by territory, importance of the subject matter and instance of review (first instance, appeal, recourse, etc). Romania also has its own International Commerce Arbitration Court, which is operated by the non-governmental Chamber of Commerce and Industry and has co-operation agreements with institutions in a number of countries. Further, there is an independent right of judicial review of administrative action. The Constitution proclaims the independent status of judges and they are appointed, promoted and disciplined by the Superior Council of Magistracy. Important judgements are published and accessible to practitioners.

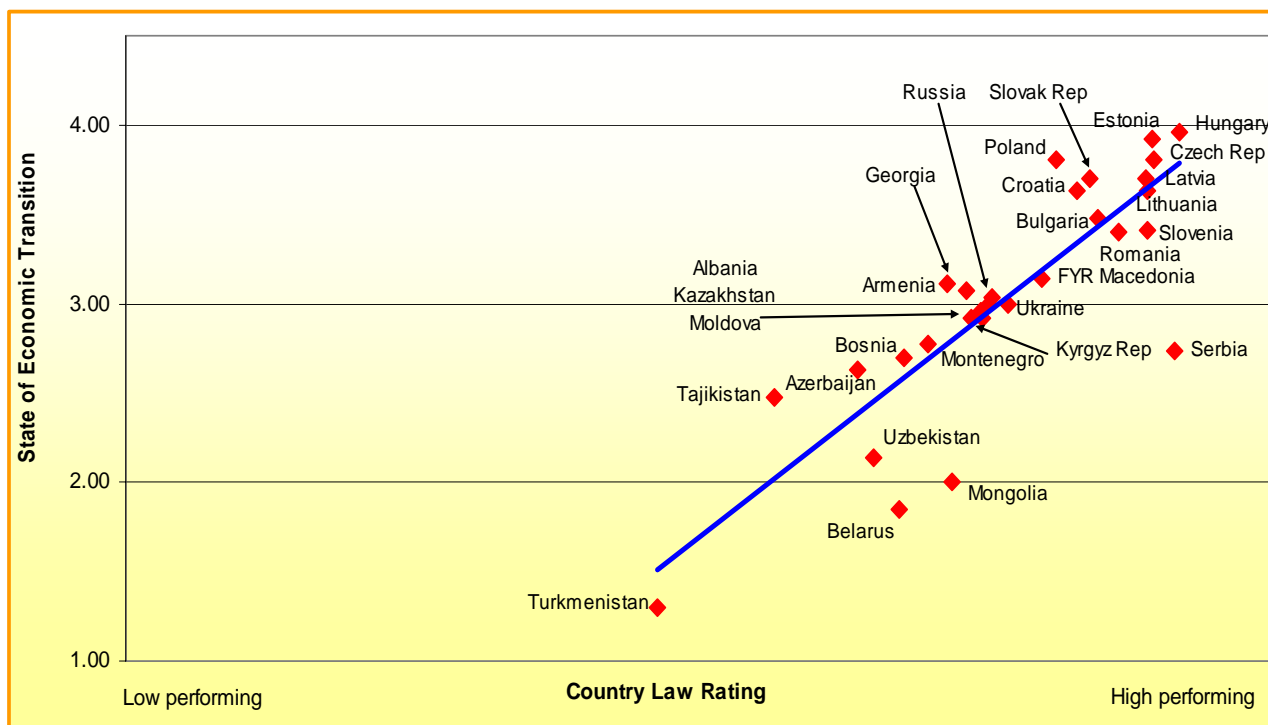
The Constitutional Court of Romania is a specialised court that acts as guarantor of the supremacy of the Constitution. Amongst others, the Court has the power to decide upon the constitutionality of laws and treaties (before or after adoption/ratification), to solve disputes of a constitutional nature between public authorities and to oversee compliance with electoral procedures and referenda criteria.

When Romania entered the EU on 1 January 2007, a Cooperation and Verification Mechanism was set up to help Romania remedy shortcomings in the judiciary, in particular in the fight against corruption. Romania's commitment to countering this problem had previously been exemplified by the introduction of the Anti-Corruption Law (2000) and ratification of the Council of Europe's Civil Law Convention on Corruption in 2002. However, despite an action plan being drawn up and progress monitored, in key areas such as the fight against high-level corruption, convincing results have yet to be demonstrated.

## 2.2 Relationship between legal transition and economic progress.

Experience in the transition countries suggests that the degree of respect for the rule of law and progress in economic transition advance and regress hand in hand. Chart 2 shows Romania to be well placed in the transition process. At the same time, although the legal framework has seen notable developments, improvement of the enforcement process and institutional capacity remain paramount objectives. This is exemplified, for example, by the fact that on average a party can be expected to wait between seven months and two years for a commercial case to be heard by a court in the biggest commercial centres and then between seven months and one year for a final judgement on the payment of a sum of money.

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*

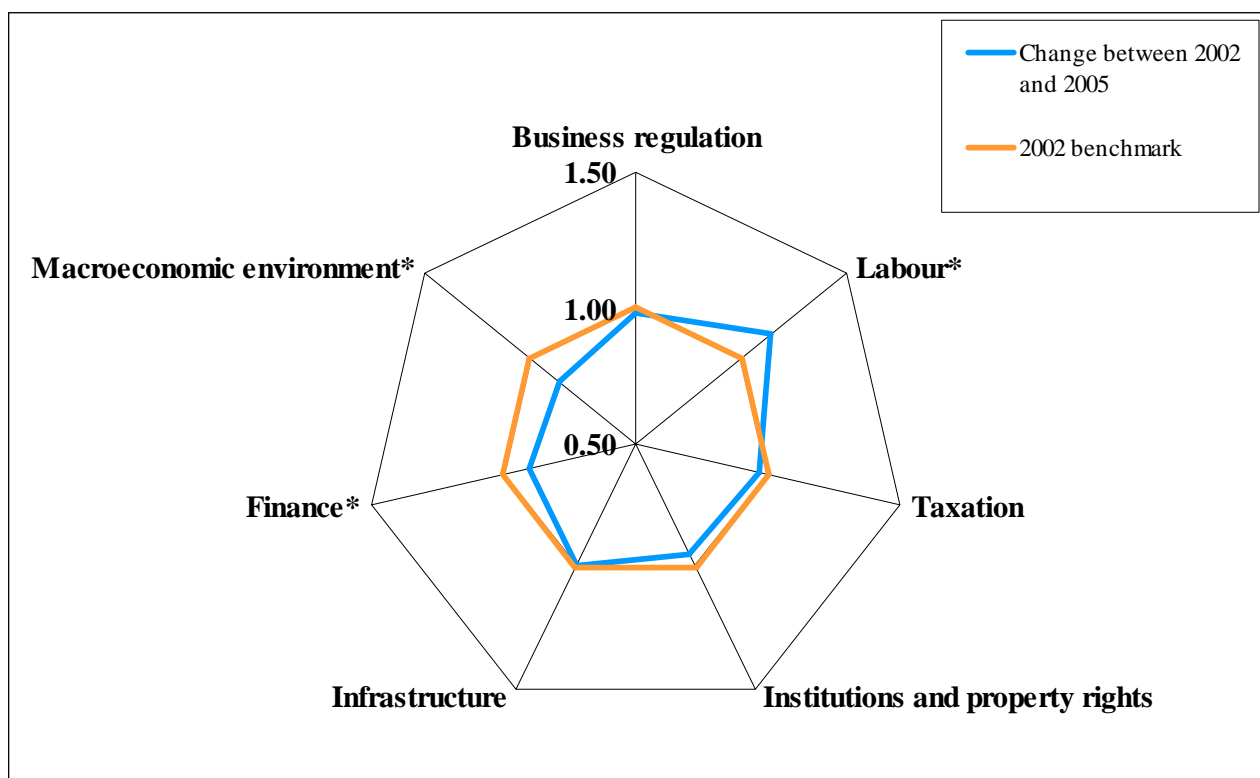
In the World Bank's "Doing Business" Report 2008, which compared 178 countries on the ease of doing business, Romania ranked 48<sup>th</sup> overall and 26<sup>th</sup> on the ease of starting a business. Although the momentum behind reform in important areas of economic policy including labour markets, competition policy, agriculture, business licensing and property registration has slowed since Romania joined the EU, consumption remains strong and GDP growth for 2008 is expected at 6.8%.

The investment climate is attractive for foreign direct investment: the expropriation or nationalisation of investors' assets, except in cases of public interest where appropriate compensation must be provided, is ruled out by the Foreign Investment Law; there are no major restrictions on foreign ownership or participation in joint ventures; it is possible for a foreign company to wholly own a Romanian-registered company; and there are no restrictions on the transfer abroad of after-tax profits or proceeds from the sale of securities or from the winding-up of an investment.

Infrastructure is in need of upgrading to capitalise on Romania's location as a transit route, however EU money is available to assist and together with the relatively well educated and low priced workforce, when compared to the rest of the EU, this makes basing operations in Romania an attractive choice, as demonstrated by the decision of telephone manufacturer Nokia to move its base to the Balkan country due to cost-effectiveness.

Romania's next goal is the adoption of the single currency, which the government has targeted for 2014.

**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 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

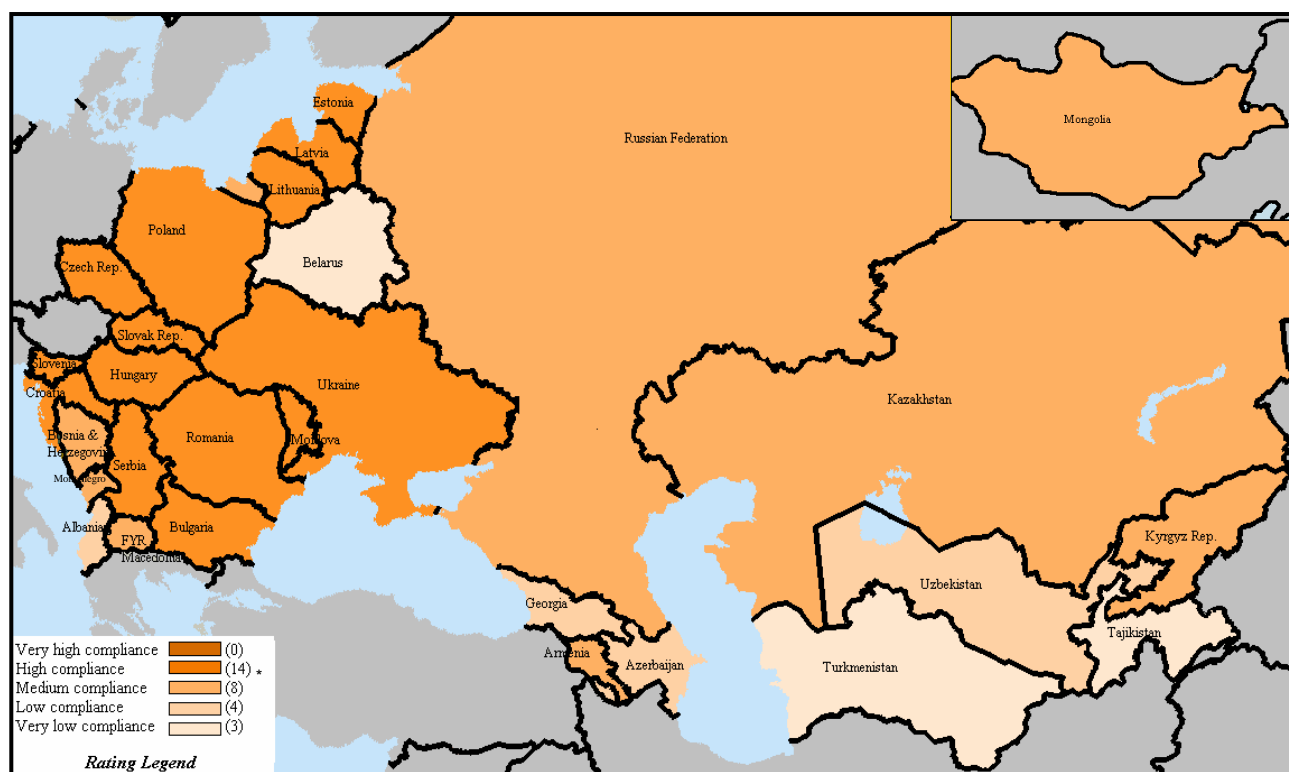
The main legislation concerning securities markets in Romania is Law no. 297/2004 (the "Capital Market Law"), last amended in April 2006. The Capital Market Law unifies prior regulation contained in different acts into a single piece of legislation and transposes the relevant *Acquis Communautaire* in the field of securities market legislation.

The National Securities Commission of Romania (*Comisia Națională a Valorilor Mobiliare* or “CNVM”) is the securities market regulator. The CNVM was established in 1994 as an independent regulator, accountable to Parliament, with the authority to impose fines and issue legally binding regulations. CNVM’s revenues are derived from fees/tariffs on various capital markets operations and are not dependent upon the state budget. CNVM performs supervision of the stock exchange and financial intermediaries, provides oversight of takeovers and has the authority to enforce insider trading provisions and disclosure requirements.

The Bucharest Stock Exchange (BSE), which resumed operations in 1995 after 47 years of inactivity, is Romania’s stock exchange. On 8 December 2005, the BSE merged with Rasdaq, the second Romanian exchange founded in 1996 to provide a trading platform for the companies that went through the mass privatisation program and modelled on the American stock market exchange NASDAQ. RASDAQ is now the name of one of the markets operated by Bucharest Stock Exchange. The market capitalisation at the end of 2006 reached 28.2 billion USD with 100 companies listed.

In its 2008 Securities Markets Legislation Assessment, the EBRD benchmarked Romanian Securities Markets legislation against the “Objectives and Principles of Securities Regulation”, published by the International Organization of Securities Commissions (IOSCO). The result demonstrated that Romanian legislation is in “high compliance” with international standards. (Chart 4)

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

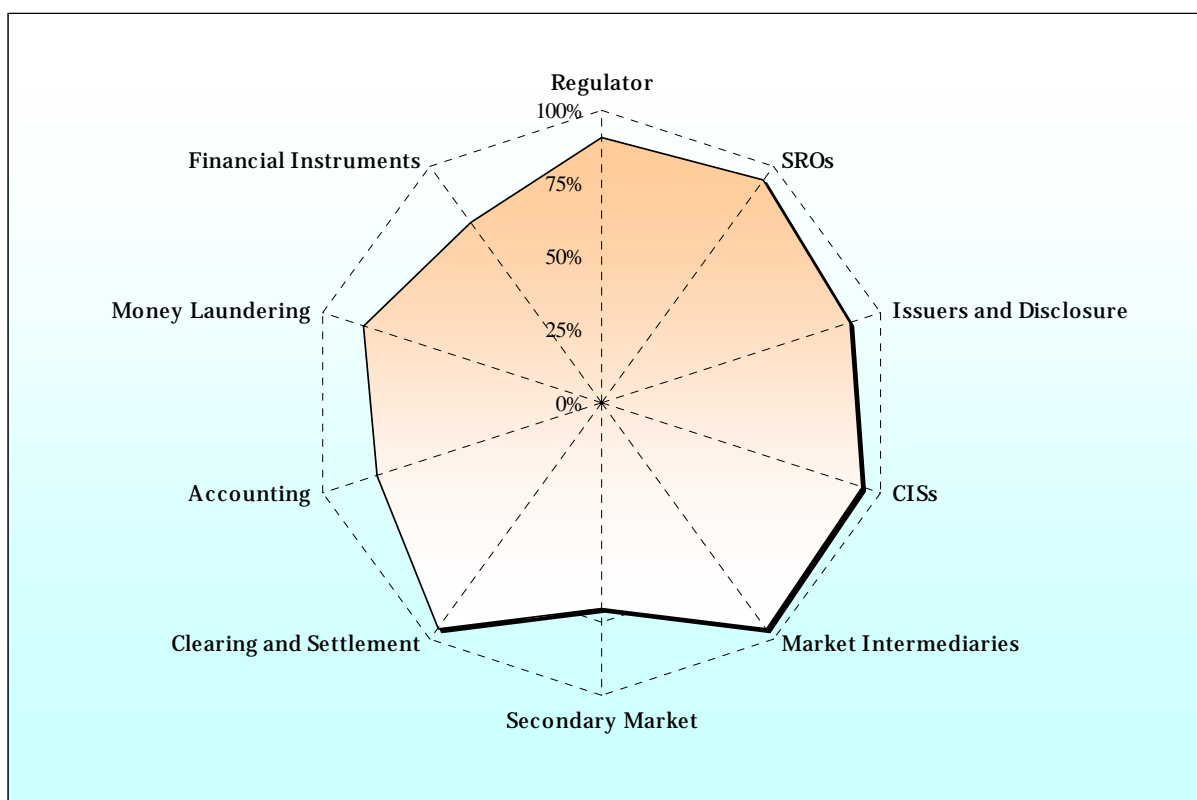


*Source: Securities Markets Legislation Assessment 2008*

*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 IOSCO Principles. The asterisk indicates the category in which Romania ranks.*

Chart 5 shows that there are still some shortcomings, in particular in the legislation on secondary markets. Nevertheless, improvements since the study in 2005 in the legislative framework governing self-regulation and clearing and settlement are observable, and laws on collective investment schemes and market intermediaries have been evaluated as being almost fully compliant with international standards.

**Chart 5 – Quality of securities market legislation in Romania (2008)**

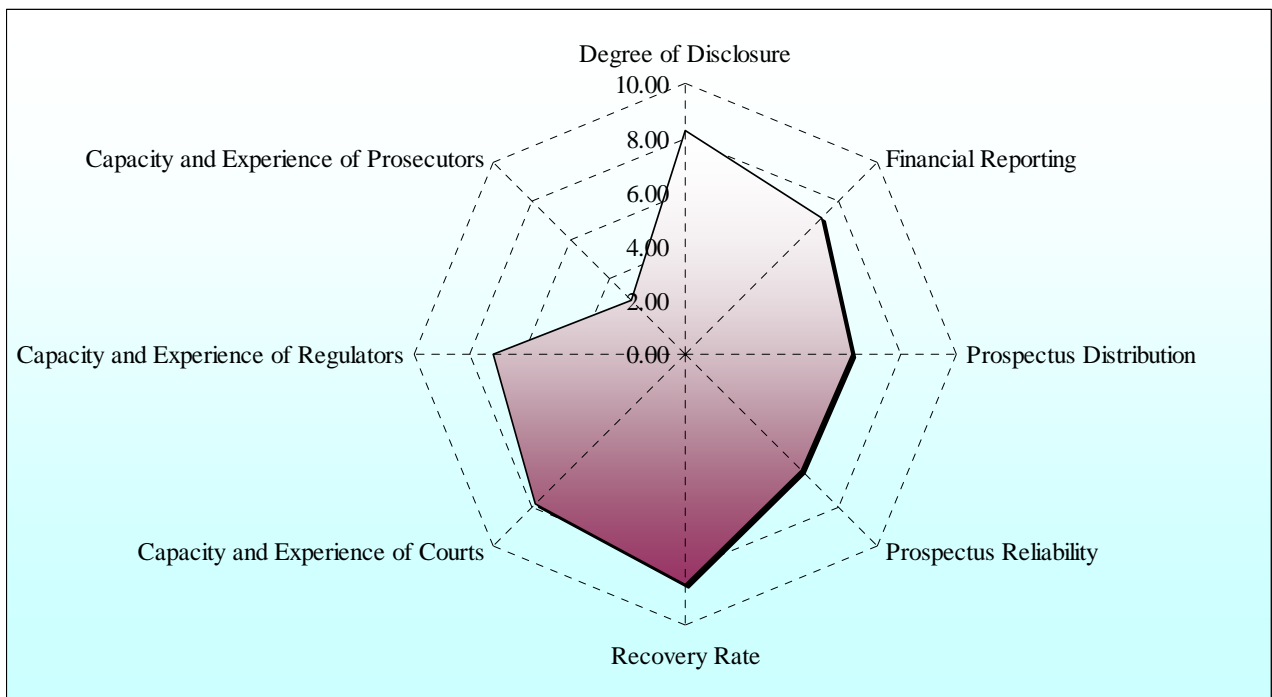


*Source:* EBRD Securities Market Legislation Assessment 2008

**Note:** The extremity of each axis represents an ideal score, i.e. corresponding to the standards set forth in IOSCO’s *Objectives and Principles for Securities Regulations*. The fuller the ‘web’, the more closely Romania’s securities market legislation approximates 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 the 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 good institutional support to their civil actions. Overall the capacity of courts, the regulator and prosecution authority seems to be adequate. (See Chart 6)

**Chart 6 – Effectiveness of securities markets in Romania 2007**



*Source:* EBRD Securities Market Legislation Assessment 2008

The above studies suggest that the securities framework in Romania 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

Until recently Romania had perhaps one of the most complicated and inconsistent concession law frameworks of the new EU member states. In 2006 however the Government adopted an Emergency Ordinance 34/2006 regarding the awarding of public procurements contracts, contracts for the concession of public works and contracts for the concession of public services (Act 34/2006). Act 31/2006 repealed former concession-related acts, including the Public Procurement Law, the Concessions Law and the Public Private Partnership (PPP) Law.

Reflecting relevant EU Directives, Act 34/2006 refers to a concession contract for public works or services through a public procurement contract, where the consideration for works or services exercised by the concessionaire consists either solely of the right to exploit the construction or services, or in that right, together with payment by the concession grantor.

Any legal entity, including a public one, an individual or a consortium, may become a concessionaire. A concession may be granted by a public body or a public institution on a central, regional or local level.

According to Act 34/2006 the following competitive procedures may be used to award a concession: an open auction; a restricted auction; competitive dialogue with a final offer; negotiated procedure; invitation to bid; or a solutions tender. Where the estimated value of works or services is less than €5,000 direct contracting is provided for.

In addition to Act 34/2006 covering concessions on public works and services, Governmental Emergency Ordinance 54/2006 (Act 54/2006) governs concession of public assets.

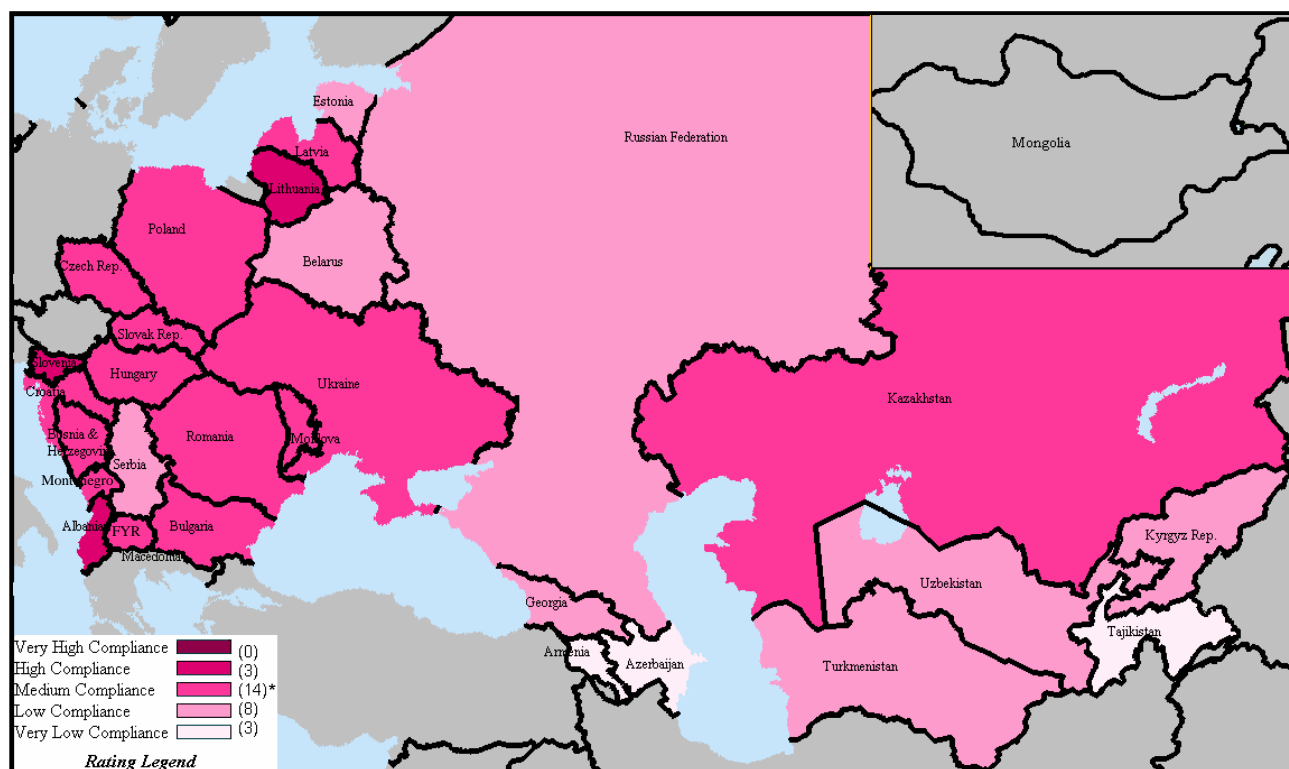
One deficiency or peculiarity of Act 54/2006 that may affect the potential “bankability” of financing projects is that unless the concessionaire is a publicly owned company, the transfer of concession is restricted. The maximum term for concessions is 49 years.

As a follow on to Act 34/2006, Governmental Regulation 925 was adopted, also in 2006 (the “Regulations”). The Regulations contain implementation rules for Act 34/2006 regarding the requirements for qualification, selection, participation and award, the publication of the announcements of intention, participation and award, as well as the application of the award procedures, the framework agreement, the assessment of bids, etc.

The Regulations contain various templates and specify rules for procedures, rules for the application of the framework agreement and rules for setting up the bid and performance bonds.

Romania has had a fairly solid history of awarding concessions although its concession legislation could not, until recently, be considered as even approximating to the ideal. There is still room for improvement, however, as in the EBRD’s recent assessment of Concessions Laws to evaluate the extensiveness of concession regimes throughout the 29 countries of operations (the laws on the books rather than how they work in practice), Romanian laws were found to be in “medium compliance” with internationally accepted standards (See Chart 6 below).

**Chart 6 – Quality of Concessions legislation in the EBRD countries of operation**

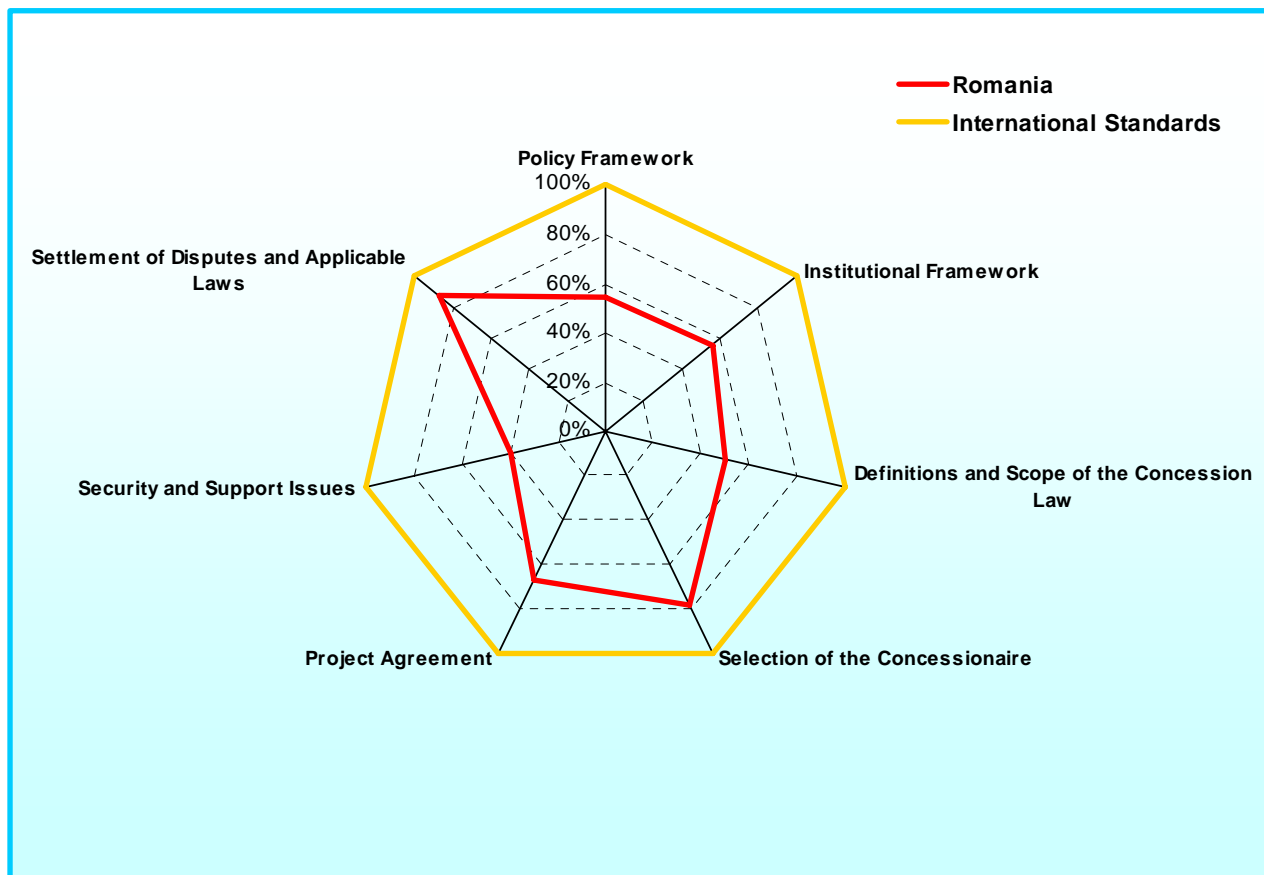


Source: EBRD Concessions Sector Assessment 2007

**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 the category in which Romania ranks.

Whilst the new law has brought improvements on the legislative side, it has yet to be tested in practice in order for its strengths and weaknesses to be detected.

**Chart 7 - Quality of Concessions legislation – Romania 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.*

### 3.3. Corporate Governance

The principal laws dealing with corporate governance are Law No. 31/1990 (the “Companies Law”), last amended in December 2006, and the Capital Market Law – see Section 3.1 above.

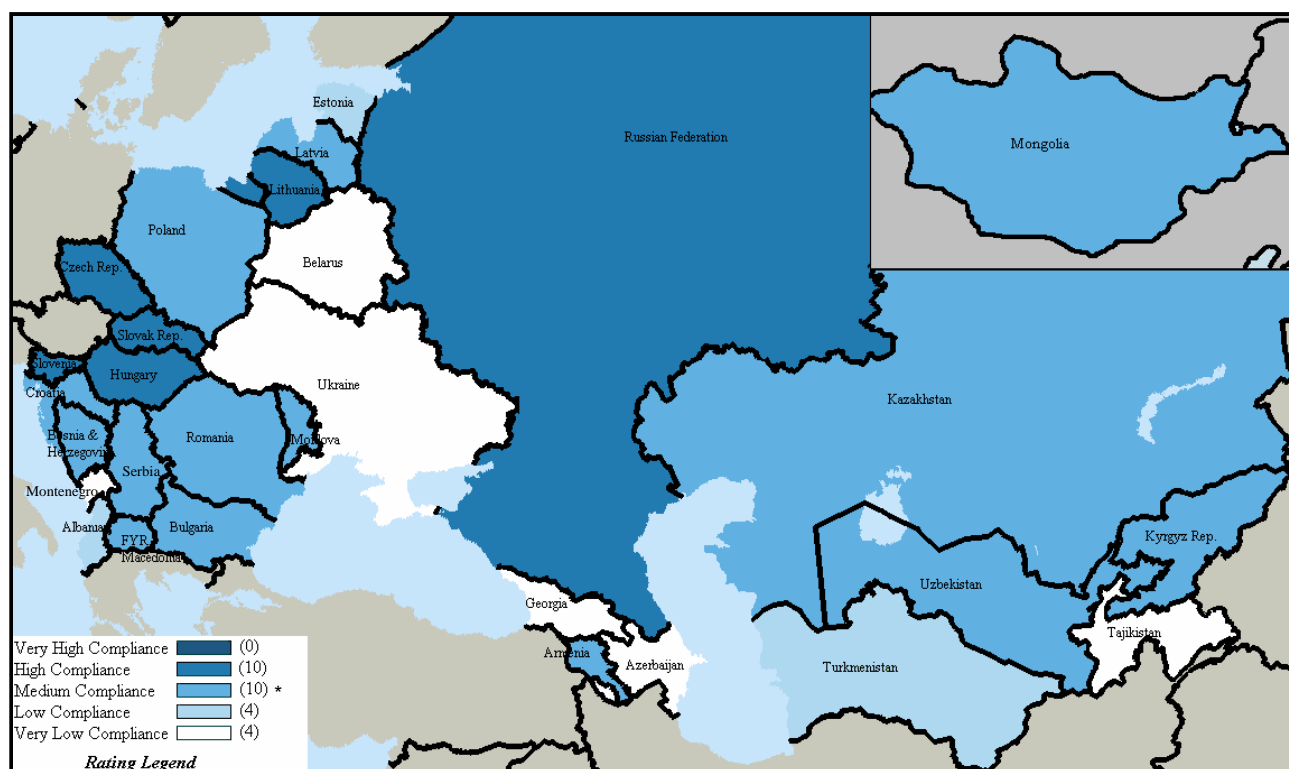
The latest amendments to the Companies Law introduced a number of legal principles coming from the *Acquis Communautaire* and focused mainly on joint stock companies. These amendments introduced a new general shareholders’ meeting convocation quorum, convocation procedures and timeline; new rules on employment contracts with the company’s managers; a new compulsory directors’ insurance against personal liability for losses; new rules on shareholders’ agreements and the choice between the one-tier and two-tier governance systems for joint stock companies. Under the one-tier system, the company’s management is carried out by the board of administration, which can delegate some of its competencies to executive officers. The board members are appointed and replaced by the general meeting of shareholders, while the executive officers are appointed and replaced by the board. Under the two-tier system, the company is run by a management board and a supervisory council. The supervisory council members are appointed by the shareholders, while the members of the management board are appointed and replaced by the supervisory council. The

supervisory council may create consultative committees (such as audit and compensation committees) formed by at least two council members, one of whom must be independent.

In June 2000 a voluntary Corporate Governance Code was adopted by the University of Bucharest, the Business Associations and the Bucharest Stock Exchange for voluntary application by listed companies.

In 2008 the EBRD Corporate Governance Sector Assessment found that corporate governance legislation in Romania had reached “high compliance” with international standards as set out in the OECD Principles of Corporate Governance (Chart 8).

**Chart 8 – Quality of Corporate Governance legislation in the EBRD countries of operation**

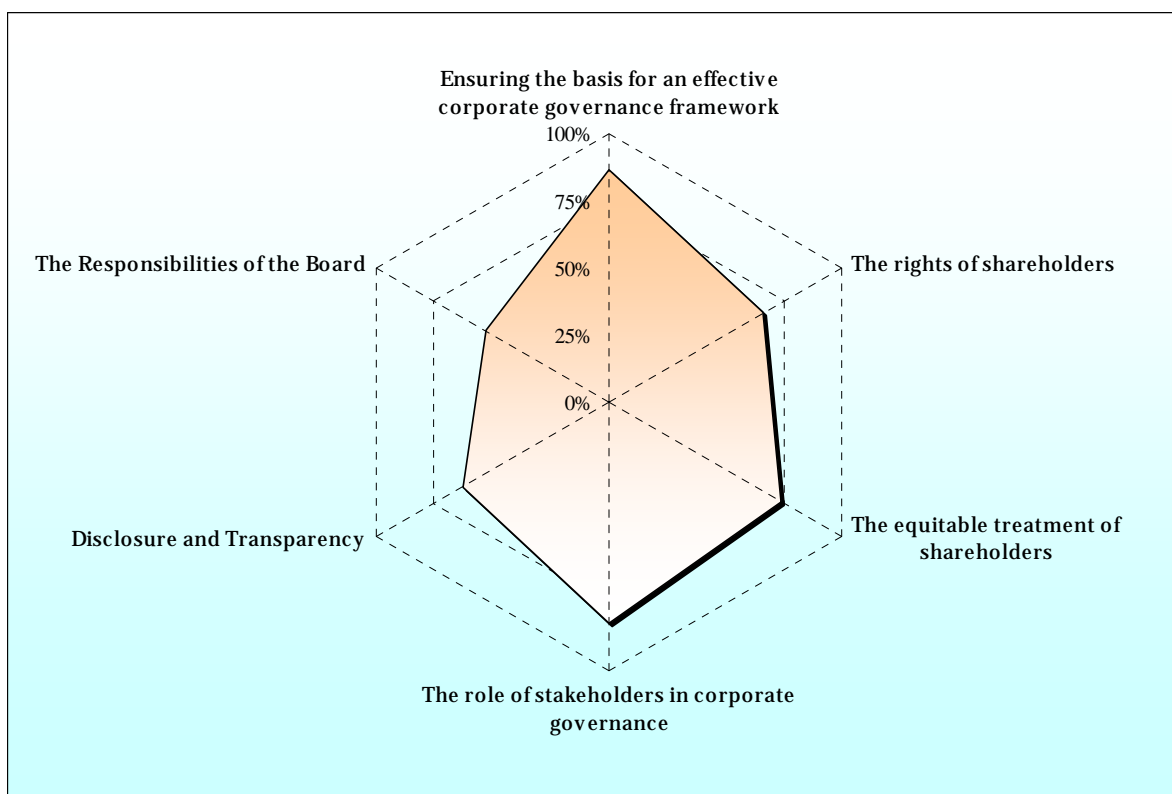


*Source: EBRD Corporate Governance Sector Assessment 2008*

**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. The asterisk indicates the category in which Romania ranks.

Since the previous assessment was conducted in 2004 a number of amendments have been enacted, which have improved the quality of the legislation across the board. Little change was seen in the legislation regulating the rights of shareholders; however, on the whole, the basis for an effective corporate governance framework is apparent. This is depicted in Chart 9.

**Chart 9 – Quality of Corporate Governance legislation - Romania 2008**



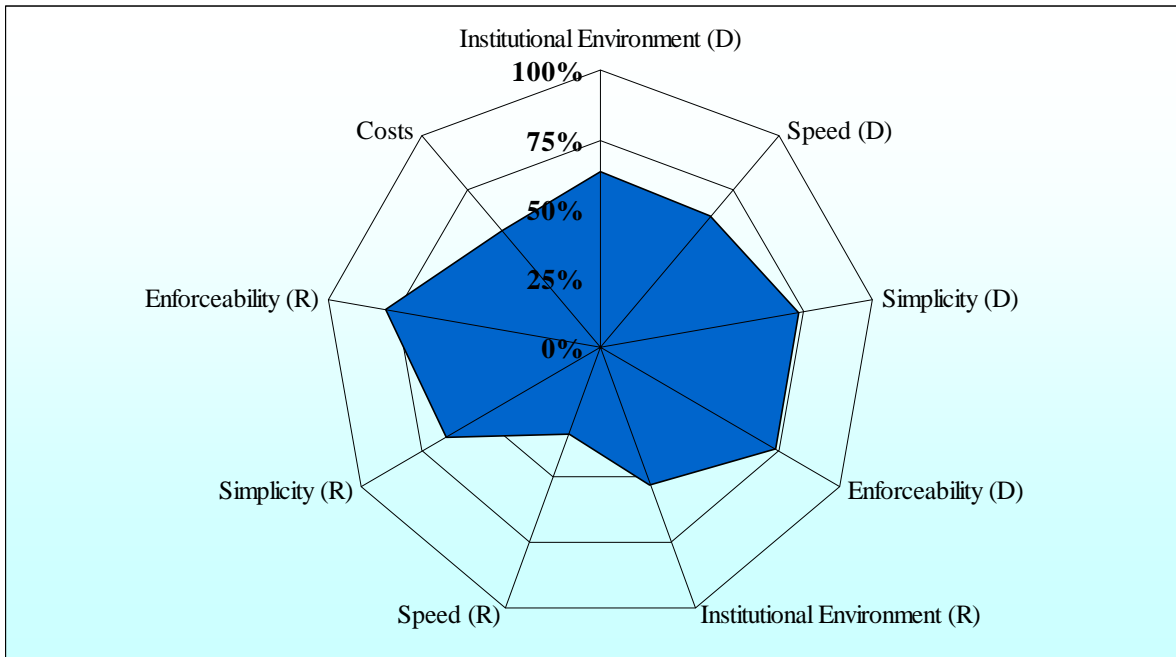
*Source: EBRD Corporate Governance Sector Assessment 2008*

*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 Romania’s corporate governance laws approximate these standards.*

In order to understand how corporate governance legislation works in practice, in 2005 the EBRD designed two case studies dealing with related-party transactions in a listed and unlisted company.

The case studies investigated the position of a minority shareholder seeking to access corporate information in order to understand if a related-party transaction was indeed entered into by the company and how it was possible to obtain compensation in a case where damage was suffered. The effectiveness of the legislation was then measured according to four principal variables: institutional environment, enforceability, complexity and speed. The survey revealed that minority shareholders have limited avenues open to them to obtain disclosure and only a request to the court for the appointment of an independent auditor can realistically provide effective results. The framework for obtaining redress offers several avenues, but the procedure can be lengthy. Actions are generally clearly provided for in legislation and the enforceability of judgements is improving, but can still prove to be a problematic issue. The overall effectiveness is shown in Chart 10 below.

**Chart 10 - Effectiveness of corporate governance in Romania**

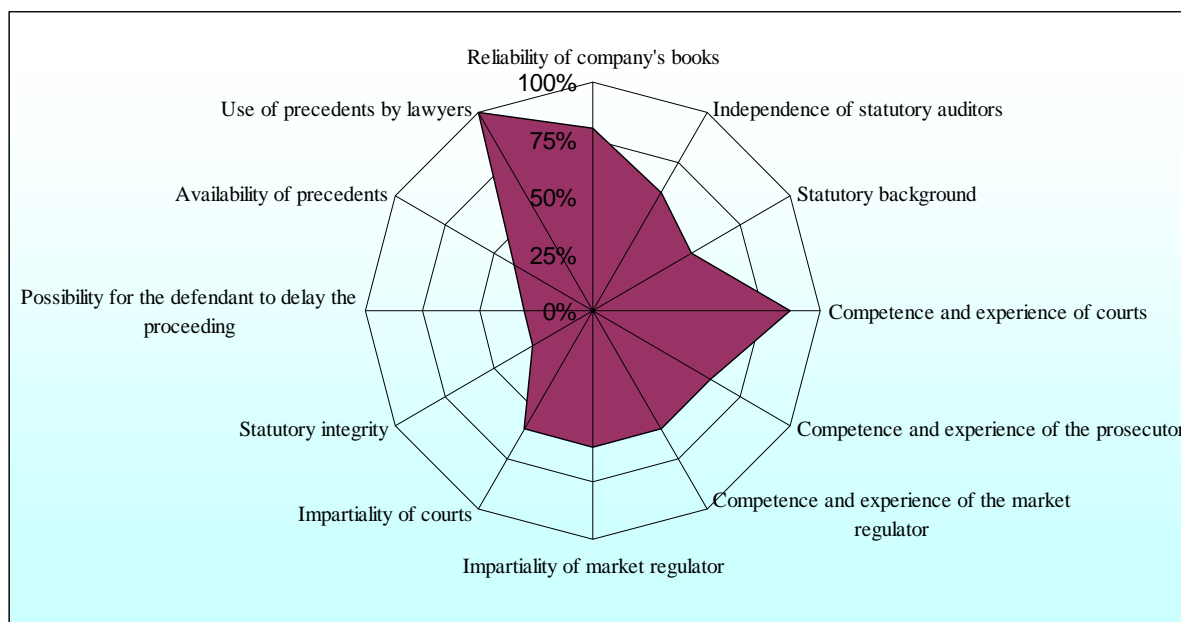


*Source: EBRD 2005 Legal Indicator Survey on Corporate Governance*

*Note: The graphs show disclosure, redress and the institutional environment in Romania. 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.*

When conducting an analysis of the institutional framework, the survey revealed that the competence and experience of courts, prosecutors and the market regulator need to be improved. Judicial proceedings are slow, providing the defendant with numerous possibilities for obstruction. Case law collections are difficult to find and corruption and partiality of judgements are still reported as problems. These findings are depicted in Chart 11 below.

**Chart 11 – Institutional Environment in Romania (2005)**



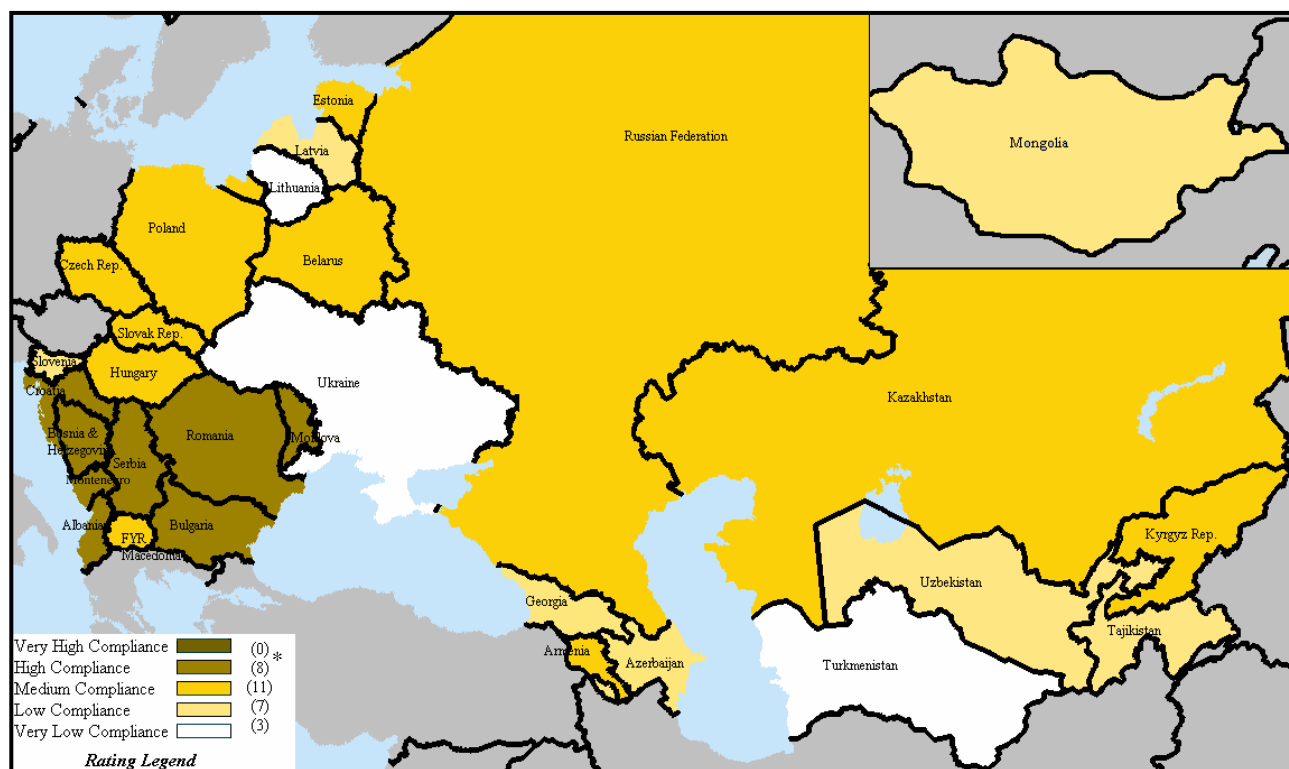
*Source: EBRD 2005 Legal Indicator Survey on Corporate Governance*

**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 are governed primarily by the Law on the Insolvency Procedure ("Insolvency law"), which came into force on 21 July 2006. The law replaced the earlier Law Regarding the Procedure of Judicial Reorganisation and Bankruptcy ("the previous law"), which had been rated as one of the leading laws in the EBRD's countries of operations. The Insolvency Law came into effect after the completion of the EBRD's 2006 Insolvency Sector Assessment and thus has not yet been analysed by the EBRD. It should be noted, however, that the previous law was rated as having "high compliance" with international standards, as can be seen from Chart 10. The new law, which is a significant improvement to its predecessor in a number of areas, was specifically designed to bring the country into compliance with European Commission directives.

**Chart 12 - 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 asterisk indicates the category in which Romania ranks.

One major improvement is the process of opening an insolvency procedure, which took up to six months under the previous law. Under the Insolvency Law the applicant knows immediately whether a bankruptcy procedure or a general procedure (which can lead to a declaration of bankruptcy or restructuring) will be initiated or whether the application will be dismissed.

The Insolvency Law has several provisions designed to improve the rights of creditors. Creditors now have far more say over the selection of insolvency administrators. While the court continues to have the authority to appoint a temporary administrator, creditors, through the Creditors' Assembly, have the right to nominate administrators and to replace court appointed administrators. Further, petitioning creditors have the right to suggest a specific administrator to the court for appointment to the case. The Creditors' Assembly is given full access to the reports of the administrator or liquidator and it has the right to challenge decisions and actions taken by the administrator or liquidator, including decisions relating to the approval of claims and the distribution of assets.

The Insolvency Law also improves the situation for debtors by allowing them to remain in possession of the company's assets and in control of management. Debtors are also allowed to prepare reorganisation plans, a change which should help to facilitate reorganisations, although the lack of provisions relating to debtors in possession financing is a significant problem.

The country has also significantly improved the way in which it regulates insolvency administrators. The National Association of Practitioners in Insolvency, a self-regulating organisation, was established and given authority to oversee the insolvency practice. The

Association sets licensing exams, conducts training and disciplinary investigations. Membership in the organisation is mandatory for all practitioners.

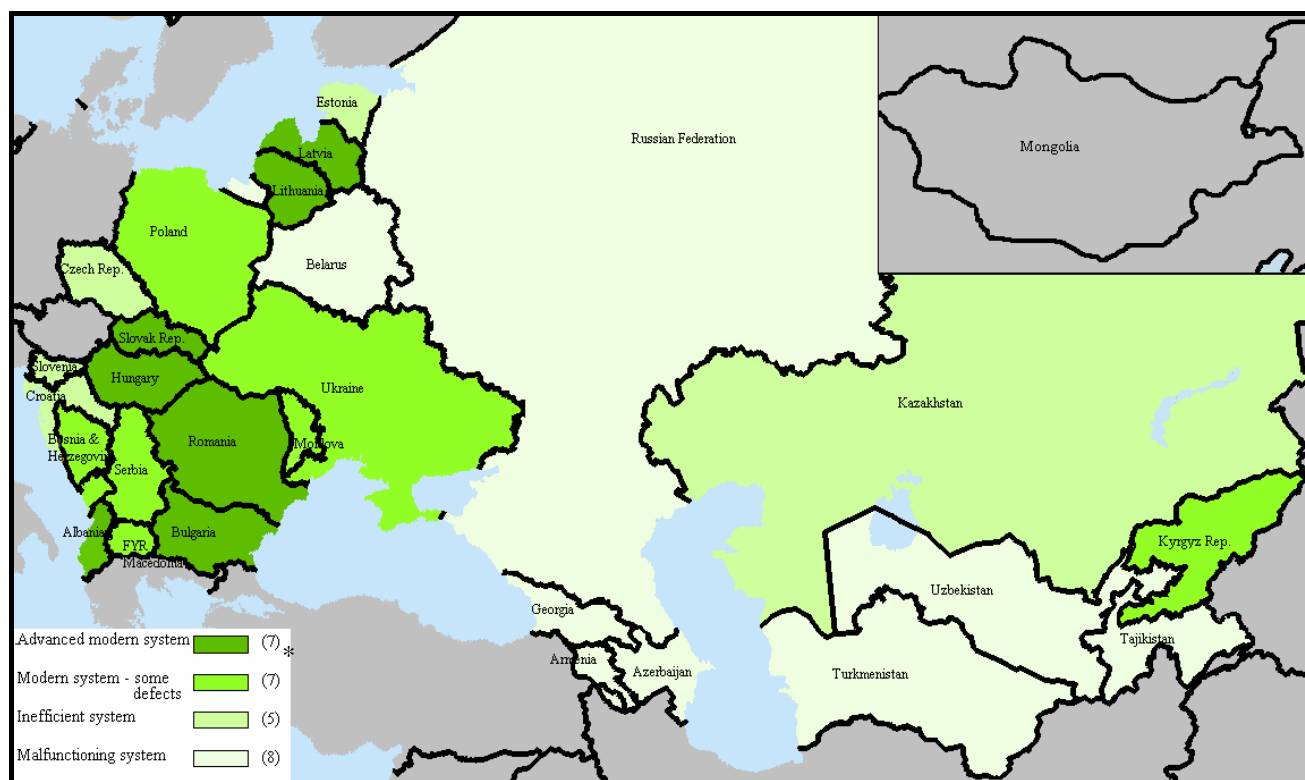
The Association has also been given responsibility for running a fund paid for by the government, which pays the fees of insolvency administrators when the assets constituting the debtor’s estate are insufficient. Romania remains one of the few countries to have such a fund.

The Insolvency law is a positive move for the country. It is a forward looking law, which meets many of the requirements expected of a modern insolvency law. The task will now be for the law to be implemented in a fair, transparent and efficient manner.

### 3.5. Secured Transactions

Overall Romania has established one of the most advanced regimes for secured transactions in the EBRD region. According to the Regional Survey of Secured Transactions Legislation carried out in 2005, Romania has an “advanced modern system” (Chart 13).

**Chart 13 – Quality of secured transactions legislation in the EBRD countries of operation**



*Source: EBRD Regional Survey of Secured Transactions Legislation 2005*

**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.’ The asterisk indicates the category in which Romania ranks.

Taking security on movable assets is governed by the law titled ‘Legal Treatment of Security Interests in Personal Property’ (Title VI of Law No. 99/1999, hereafter “Law on Security Interests”), published in the *Official Gazette* of 27 May 1999. The Law on Security Interests came into force when the 'Electronic Archive of Security Interests in Personal Property' was established in late December 2000.

The Law on Security Interests allows for the creation of possessory and non-possessory charges, subject to registration in an electronic registry (the Archive). The Law is generally very modern and market oriented, providing a number of features required for economic efficiency of the credit market (such as the possibility to describe generally the charged assets and to cover the whole of the enterprise). There is also an indication that practitioners are growing comfortable with these. The Archive is centrally managed by the Ministry of Justice and various organisations (e.g. Chamber of Notaries, Chamber of Commerce) serve as licensed registrars.

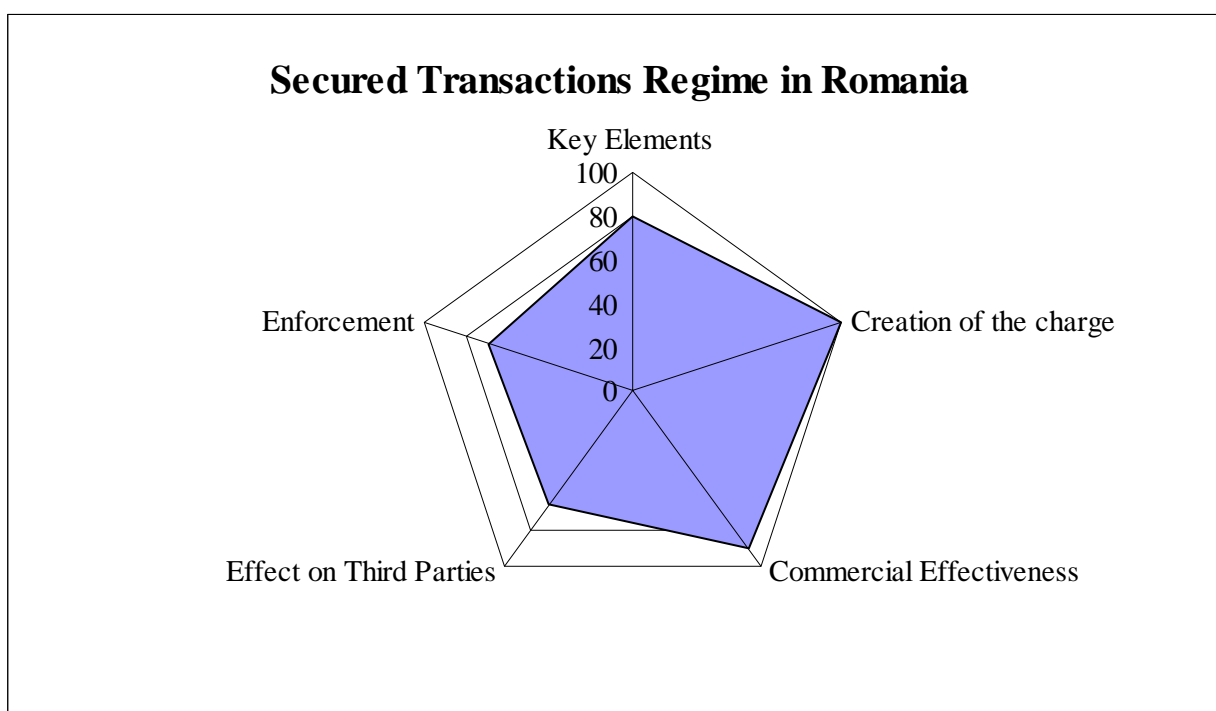
The Law on Security Interests also offers out-of-court, creditor driven, modes of enforcement. However, enforcement can be hampered by the deficient institutional framework and debtor obstruction. Furthermore, the position of the secured creditor in bankruptcy is not clear and certain claims such as tax claims may supersede those of a registered chargeholder. Overall, Romania has nonetheless established one of the most advanced regimes for secured transactions over movables in the EBRD region.

Taking security over immovable property (mortgage) is governed by the Civil Code and the 1999 Mortgage Lending Law (subsequently amended), which regulates loans granted for financing of real estate acquisitions. Here again Romania has achieved a well-functioning legal regime, which serves quite well the needs of the economy: mortgage agreements must be notarised before being registered in the Land Register and the Register itself is kept by the National Agency for Cadastre and Land Registration, which has 177 offices across the country. The database is paper-based and not centralised, but efforts are underway to fully computerise the system.

In case of default by the borrower, the mortgage can be enforced only with the involvement of a court by public auction carried out by an executor or an authorised banks' enforcement officer. The creditor must obtain a court enforcement stamp on the mortgage agreement and authorisation to realise the property. Enforcement is reported to take 6-9 months and the sale proceeds obtained are often below the property's market price. Difficulties may arise when enforcement is contested by the debtor, however this is not reported to be a frequent problem.

These observations are summarised in Chart 14 below. When compared with the results of the 2004 Survey, improvements, in particular in the creation and registration of the security and effect of the security on third parties and priority ranking, are visible.

Chart 14 – Quality of secured transactions legislation – Romania (2005)



Source: EBRD Regional Survey of Secured Transactions Legislation 2005

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.

A secondary mortgage market has also been developed; three new laws (Mortgage Banks Law no. 33/2006, Mortgage Bond Law no. 32/2006, and Securitisation Law no. 31/2006) and amendments to the Mortgage Lending Law no. 190/1999 were adopted in March 2006. Stakeholders were unanimously supportive of the new legislative package and noted its importance in the continued development of the Romanian mortgage market. However, to date no mortgage securities have been issued and some time and effort will still be required until this area is fully functioning.

### 3.6. Telecommunications

The communications sector in Romania is currently regulated by the National Regulatory Authority for Communications and Information Technology (ANRCTI) and governed by a legislative framework comprising Emergency Government Ordinance No. 79/2002, Government Ordinance No. 591/2002 and Law 239/2005, as amended and supplemented. This primary framework is also supplemented by numerous regulations governing, *inter alia*, access and interconnection, data protection, numbering and significant market power designation and obligations. Much of the current European Union (EU) regulatory framework was transposed to domestic legislation prior to Romania's 2007 accession to the EU. The Ministry of Communications and Information Technology (MCIT) maintains responsibility for sector policy.

ANRCTI was established as an independent sector authority in 2002 and has responsibility for day-to-day market supervision, ensuring compliance and the practical implementation of the legal and regulatory framework. ANRCTI is also responsible for the management of numbering resources and for the issuing of licences.

The market was formally fully liberalised at the beginning of 2003 with the abolition of RomTelecom's (the incumbent former monopolist operator) exclusive rights. Although since then a large number of alternative operators have been granted licences to provide services, RomTelecom still dominates the fixed-line market. Because of the lack of investment during the communist era, fixed-line teledensity has not risen above 20% (less than half EU average), and as a result a number of rural areas still have no fixed-line service. This lack of fixed-line infrastructure has led in turn to a high level of fixed-to-mobile substitution within the country.

RomTelecom is 54.01% owned by Greece's OTE, with the Romanian government holding the remaining 45.99% stake. While the government has been working to privatise its remaining stake for some time, these efforts are currently suspended until further notice following difficulties encountered with international privatisation advisors in December 2006.

In the mobile sector penetration rates stood at 80% at the end of 2006, having overtaken the fixed line in 2002. Five mobile operators compete in Romania: France Telecom's Orange Romania, Vodafone Romania (formerly MobiFon) Zapp, CosmOTE Romania and Digitel (3G). While the two leading mobile operators, Orange and Vodafone hold the lion's share of the market, Zapp and the relaunched CosmOTE are gathering market share.

Earlier European Commission criticism of Romania's communications sector framework prompted the authorities to take steps to formally harmonise with the current framework significantly before the country's recent accession to the Union. With the rules of the current EU framework largely in place the focus is now upon completing that process and ensuring that the practical implementation of the framework is advanced with robust intervention, where necessary by ANRCTI. Given the need for private investment in the fixed network, ANRCTI should ensure all unnecessary barriers to entry are eliminated and all regulatory measures needed to support meaningful competition are fully deployed.