

**EUROPEAN BANK
FOR RECONSTRUCTION AND DEVELOPMENT**

**CORPORATE GOVERNANCE
SECTOR ASSESSMENT PROJECT**

**REPORT ON
THE 2002 ASSESSMENT RESULTS**

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BY

**HSIANMIN CHEN
COUNSEL, EBRD**

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Corporate Governance Sector Assessment Project

The corporate governance sector assessment project (the "CG Assessment") is part of the EBRD's efforts to promote good corporate governance in the Bank's countries of operations. As an international institution with a mandate to assist countries whose economies are in transition, the EBRD views the promotion of good corporate governance as essential to its work. For a fuller description of the Bank's activities that foster good corporate governance, please refer to "The role of the EBRD in promoting sound corporate governance", *Law in Transition*, Autumn 1999, for details. The CG Assessment is an important initiative under the Legal Transition Programme of the EBRD aimed at better understanding the legal environment and developments in the countries where it operates. Through the CG Assessment, the EBRD is hoping to encourage, influence and provide guidance to governments, policy makers and all those in charge of promoting new legislation for the existing and future development of corporate governance related legal reform in the region.

I. PROJECT OVERVIEW

The CG Assessment gauges the status of corporate governance related laws and regulations in the EBRD's countries of operations. The scope of the CG Assessment is comprehensive and it is intended to be an objective assessment of the existing laws and regulations relative to international standards relating to corporate governance, in particular, the *Principles of Corporate Governance* issued by the Organisation for Economic Co-operation and Development ("OECD"). Therefore, the focus of the assessment is on the respective legal frameworks (i.e., the law "on the books" or "extensiveness" of the law) of the countries rather than the practices of individual companies or the actual implementation of the law (i.e., "effectiveness" of the law as promulgated). The main work of the CG Assessment is to evaluate these laws and to identify those aspects that require further development when compared to the OECD *Principles of Corporate Governance*. While the relevant legislation pertaining to corporate governance issues varies from country to country, the kinds of laws and, where applicable, regulations reviewed under the CG Assessment include mainly company laws and relevant securities market legislation.

II. EBRD CORPORATE GOVERNANCE CHECKLIST

In order to analyse the corporate governance related legislation of each country, in 2000 the EBRD devised a list of questions (the "Checklist") based upon the OECD *Principles of Corporate Governance*. In carrying out the CG Assessment, the EBRD engaged a consortium of external legal consultants, Lovells CIS and Ernst & Young (the "Consultants"), who assisted the EBRD in refining the Checklist (into a revised one for carrying out country-specific assessment) and led a group of local law firms to conduct individual assessments in each of the EBRD's countries of operations.

The OECD *Principles of Corporate Governance* that are used to develop the original Checklist are organised under five headings: (1) rights of shareholders; (2) equitable treatment of shareholders; (3) role of stakeholders in corporate governance; (4) disclosure and

transparency; and (5) responsibilities of the board. The principles enumerated under each heading are intended to represent guidelines for investigating the relationships between a company's management, its board, its shareholders and other stakeholders. In the Checklist, a corporate governance principle is set out first, followed by a question or set of questions that relate to that particular principle. Therefore, when completing the Checklist, the user is given guidance in understanding the rationale for the questions being asked. Questions in the Checklist are designed to be clear and simple, using commonly recognisable concepts and terminology. The responses to the questions and the information provided have been kept as concise and specific as possible, in order to support the assessment and evaluation process.

The corporate governance checklist originally developed by EBRD can be accessed from the EBRD's website¹.

III. 2002 ASSESSMENT RESULTS – *INDIVIDUAL COUNTRY REPORTS*

The CG Assessment results of 2002 (the "2002 CG Assessment Results") for a specific country can be accessed from the EBRD's website². The individual firm or consultant responsible for completing the respective country report is acknowledged on the cover page of the relevant report. The relevant assessment work was funded the Government of United Kingdom.

It should be noted that the 2002 CG Assessment Results were finalised in November 2002, with majority of the assessment work being carried out during the first half of 2002. While subsequent revisions or updates may be incorporated in the future as appropriate at the EBRD's discretion, a major update to the assessment for each country is expected to be carried out on an annual basis, taking into account relevant corporate governance reforms in the interim.

IV. 2002 ASSESSMENT RESULTS – *COUNTRY RATINGS*

IV.1. Rating Methodology

Based upon the assessment results of individual countries carried out in 2002, a rating system has been developed to show how each country assessed has progressed in the corporate governance area. Each of the questions in Sections II-VI in the revised Checklist carries equal weight, except for certain questions which are considered more important (which score more highly) or the answers of which are for information only (which do not carry a score). Based upon the answers in Section II-VI, each country receives a preliminary score which is then finalised according to the assessment of the information obtained in Section I of the revised Checklist by taking into consideration country's overall efforts in improving the corporate governance related legal environment, in promoting good corporate governance understanding and practice, other ongoing corporate governance related reform initiatives, etc. The final scores of countries are categorised as A, B, C, D and E, as follows:

¹ At <http://www.ebrd.com/country/sector/law/corpgov/assess/main.htm>.

² *Id.*

"A" represents a "Very High Compliance" level of corporate governance systems when measured against OECD *Principles of Corporate Governance* by using the revised Checklist;

"B" represents a "High Compliance" level of corporate governance systems;

"C" represents a "Medium Compliance" level of corporate governance systems;

"D" represents a "Low Compliance" level of corporate governance systems; and

"E" represents a "Very Low Compliance" level of corporate governance systems.

IV.2. Rating Results 2002

A (VERY HIGH COMPLIANCE)	B (HIGH COMPLIANCE)	C (MEDIUM COMPLIANCE)	D (LOW COMPLIANCE)	E (VERY LOW COMPLIANCE)
	Armenia Hungary Kazakhstan Latvia FYR Macedonia Moldova Poland Russia	Albania Bulgaria Croatia Czech Republic Estonia Lithuania Slovak Republic Slovenia Uzbekistan	Bosnia & Herzegovina Kyrgyz Republic Romania Serbia & Montenegro Turkmenistan	Azerbaijan Belarus Georgia Tajikistan Ukraine

A country rating map is attached as an Annex to this Report.

V. COMMENTS AND OBSERVATIONS

V.1. About the CG Assessment and the 2002 CG Assessment Results

As part of the EBRD's efforts to promote good corporate governance in the countries where it operates, the CG Assessment represents an important initiative of the EBRD to better understand legal environment and developments in those countries. However, users of the findings of this Assessment are advised that all country reports and ratings should be read in the context of the observations below.

First, the CG Assessment is intended to be an objective review of the existing corporate governance related laws and regulations in the EBRD's countries of operations and to show how each of those countries stands on issues highlighted by the OECD *Principles of Corporate Governance*. The assessment was conducted by using a Checklist developed by the EBRD and focused on the law "on the books" (i.e., the "extensiveness" of the law). Therefore, the practice of individual companies in a specific country and the actual implementation of the law have not been taken into consideration when assessing a given

country. In this regard, it is worth mentioning that as the 2002 CG Assessment Results indicate, while some countries (e.g., Moldova, Armenia, etc.) may not currently be performing well in terms of economic transition and generally are not perceived as having good corporate governance practices, they do have relatively good corporate governance related legislation in place. This echoes what the EBRD's Legal Indicator Surveys have shown over the years, which is that there is an implementation gap between law development and law enforcement. In the case of corporate governance, legislative reform is a necessary, but not sufficient, condition for corporate governance development. Whether a country can actually benefit from the laws and legal institutions that it has developed depends upon its being able to transform the values of its law "on the books" into economic and other transition benefits through effective enforcement.

Second, while the 2002 CG Assessment Results were finalised at the end of November 2002, it should be noted that majority of the assessment work was carried out during the first half of 2002. Therefore any new legislation that was adopted during the second half of 2002 or that was adopted in or prior to early 2002 but had not been officially promulgated in relevant government gazette when the assessments were conducted has not been taken into consideration.

Third, the revised Checklist that was used to conduct the CG Assessment has its intrinsic limitation due to its structure. The original Checklist was developed based upon the OECD *Principles of Corporate Governance*, which is a set of abstract "principles" and represents a "common international understanding of the elements of good corporate governance regimes"³. In transforming these principles (or "elements") into a concrete "Checklist" of questions a certain degree of rigidity cannot be avoided if the questions are to be kept as simple as possible and to make the size of the revised Checklist manageable and practicable. For example, in some countries company laws provide for a two-tier board structure, whereas in others only a single board is required. However, in order not to make the revised Checklist too long and complicated, it does not make the distinction between different kinds of boards when exploring issues that concern them. Another example is that the revised Checklist does not specifically limit its assessment to the relevant legal framework governing companies whose shares are listed and publicly traded on organised stock exchanges, although such framework is a focus of OECD *Principles of Corporate Governance* and of this CG Assessment.

One other aspect of the inherent limitation of the revised Checklist is that the answer columns are designed in a simple yes/no format. This kind of answering mode leaves no room for readers to appreciate nuances among different countries falling within the same specific (i.e., yes or no) answer group. That is, different countries whose answers to a specific question appear the same on the revised Checklist are likely to handle the issue involved differently. To reduce potential misleading implications caused by these inherent limitations, a comment column has been added into the revised Checklist to provide explanatory information whenever appropriate. Therefore, it is important that the assessment results be read in conjunction with the comments supplied. In addition, the legal basis on which a specific answer was based is also provided in the comment column (whenever appropriate), and readers are encouraged to refer to the legal provisions cited for more information.

³ OECD, "Preface", OECD *Principle of Corporate Governance* (1999).

Fourth, this is the first time that the Checklist has been used to assess countries' corporate governance related laws since it was developed by the EBRD's in-house lawyers in 2000. Should readers and users of the Checklist and the 2002 CG Assessment Results have any comments, they are welcome to contact the Legal Transition Team within the Office of General Counsel of the EBRD directly.

V.2. Some General Observations

Some general observations about the overall 2002 CG Assessment Results are worth mentioning.

- 1) According to the 2002 CG Assessment Results, while in terms of economic transition EU accession countries tend to be perceived as doing better than the majority of non-accession countries, they do not universally have better corporate governance related laws in place.

One explanation for this finding is that while the corporate governance related laws of some of the EU accession countries may not be as perfect as some of non-accession countries in Eastern Europe, the laws of these EU accession countries may have been implemented more effectively and hence are contributing more efficiently to the country's economic developments. As mentioned above, having good laws "on the books" is only a necessary but not a sufficient condition for moving a country's economic transition forward. Implementation remains critical if a country wishes to reap the true benefits of good laws and legal institutions.

Another explanation is that EU accession process itself is a process concerning about harmonisation of national laws with the EU norms/directives so that the markets of all EU countries can function as a single one. Therefore, in terms of "law on the book", while corporate governance regimes in an accession country might improve as a result of the accession process, better corporate governance regimes can be considered as a side product but is never a goal as such for EU accession purposes. As some analysts have observed, "fulfilling EU membership requirements will not do much to improve corporate governance regulatory standards because EU directives on company law are generally vague, reflecting the varying standards and practices of existing member states."⁴ This does not mean that EU member countries do not care about good corporate governance. It is just that as can be seen from the accession progress reports published by EU each year, corporate governance is never an independent area of evaluation for the process of harmonisation with *acquis communautaire*.

- 2) For an EBRD country of operations, how a country's corporate governance system takes shape is usually affected by three factors: (1) the time at which a piece of corporate governance related legislation was adopted, (2) the legal tradition of the country (or countries) on whose similar law(s) the legislation was based, and (3) the donor agencies whose technical assistance was provided in the drafting process. Inconsistency (and hence implementation) problems often arise when different pieces of legislation are developed based different legal systems, a problem often seen where several different donor and development agencies are involved at the early stage of economic transition.

⁴ SG Emerging Markets Equity Research, *Standards of Corporate Governance*, London (February 2000), p.2.

However, most of the countries in the region have been making efforts to improve their respective regulatory frameworks; countries which have enacted legislation more recently are more likely to have better systems than countries whose legislation is relatively outdated.

As generally acknowledged, the term "corporate governance" does not, as yet, have a clearly defined legal doctrine in any system of law. Corporate governance is a term which embodies a range of traditional legal and non-legal concepts, and applies them to corporations. Corporate governance can be viewed as involving "a set of relationships between a company's management, its board, its shareholders and other stakeholders."⁵ In practice, corporate governance issues are mainly dealt with by countries through legal institutions in four areas: the most important are company law (or commercial code) and securities market legislation (including accounting and auditing laws/rules). Bankruptcy legislation and civil code (or legislation of similar nature, including labour law) also apply to a lesser extent.

In most of the transition countries in the region where the EBRD operates, company laws were usually enacted at an earlier stage of the reform process in order to implement the country's privatisation plan, while securities market legislation usually came a little later when financial markets were created. However, since a country may receive different technical assistance from different donor countries while developing its legal system, it is likely that the country may end up enacting laws bearing resemblance to similar laws of a developing country which has a civil law tradition, while having other legislation modelled after that of a common-law country. This, in turn, could lead to inconsistencies when the two pieces of legislation are implemented in practice. These types of problems became less frequent only after the 1997 East Asia financial crisis and Russia's 1998 banking crisis when a consensus was gradually reached within the international community on the need to strengthen the architecture of international financial systems by developing and promoting internationally recognised standards.

Despite the problems described above, the last several years have seen most of the EBRD's countries of operations making efforts to improve their corporate governance regulatory regimes. The 2002 CG Assessment Results show that countries which have enacted relevant legislation more recently are more likely to be assessed as having better regimes than countries whose legislation was promulgated years ago. This distinction can be clearly seen between the countries rated as "**High Compliance**" and countries in the "**Very Low Compliance**" category.

V.3. Some Country-specific Notes

Countries Rated as High Compliance

Armenia, Hungary, Kazakhstan, Latvia, FYR Macedonia, Moldova, Poland and Russia were rated as "**High Compliance**" according to the 2002 CG Assessment Results. Basically, the existing corporate governance related laws of these countries are relatively sound in the

⁵ OECD, "Preamble", *OECD Principle of Corporate Governance* (1999).

majority of the areas highlighted by OECD *Principles of Corporate Governance*. Also, the majority of the countries in this category have established domestic capital markets, although the level of development of these markets varies substantially. General reform priorities for countries in this category are to improve effective implementation and enforcement of existing legislation. In particular, the regulator should be given sufficient independence and resources to carry out its mandate; the competence of judiciary system in adjudicating corporate governance related disputes should also be enhanced.

In addition, some country-specific comments about **Armenia, Kazakhstan, Moldova** and **Russia** are noted below.

ARMENIA

Armenia is a country where the current corporate governance related laws are assessed as relatively sound when compared to similar laws of other countries in the region. This result comes as no surprise since the International Finance Corporation ("IFC") assisted the country with a comprehensive Corporate Governance Project from 1999 to 2001. This project played an important role in introducing the concept of corporate governance in Armenia by working not only with the public sector but also with the private sector in advocating good corporate governance standards. However, despite these very positive developments, Armenia still has a long way to go before it can claim victory in fostering good corporate governance practices in the country. Many companies in the country have not registered their shareholders properly or have not transferred their shareholder registration to the required central registrar (i.e., the Central Depository of Armenia); many companies have never held a general meeting of shareholders; problems of insider trading and asset stripping by major shareholders are rampant, etc. Therefore, two major areas of reform which merit the attention and action of the Government of Armenia are: to raise the awareness of shareholders on their rights in general and to enhance the enforcement powers of relevant regulatory agencies (e.g., the Securities Commission of the Republic of Armenia).

KAZAKHSTAN

While the existing laws of Kazakhstan have been rated "High Compliance" according to the 2002 CG Assessment Results, it should be noted that a new Law on Joint Stock Companies is coming into force in 2003. The key changes to be brought about by the new law include: the elimination of differentiation between open and closed types of joint stock companies, the increase of minimum charter capital, the elimination of the concept of the "par value" of a share, increased equity requirements for "public" companies and new rules for maintaining share registries. According to local practitioners, the new law is intended to reduce the number of joint stock companies in Kazakhstan and to improve their quality in order to facilitate the development of local securities market. However, there have been some criticisms on the proposed new law. For example, the new law would require closed-types of joint stock companies to re-organise and register themselves into other forms of enterprises (such as limited liability partnerships). Concerns have been raised as to the possible expenses involved and potential problems regarding violation or distortion of shareholder rights that could happen in the re-organisation and re-registration process.

In terms of corporate governance practices in Kazakhstan, the most frequent shareholder rights violations include infringement of shareholders' right by the management of the company in connection with the alienation of company assets, maintaining the JSC shareholder registry, providing access to information and financial reporting, etc. Abuses also occur in providing accurate information on major transactions or related party transactions. To assist Kazakhstan in improving its corporate governance practices, the IFC is planning to undertake a project under its Private Enterprise Partnership programme. The project is expected to build on IFC's corporate governance experience in the region to provide training and information to Kazakh companies on sound corporate governance practices and compliance with the relevant legislation of Kazakhstan. It is expected that policymakers in the country will also be involved in order to improve the implementation of corporate governance regulation.

MOLDOVA

Moldova's categorisation among "High Compliance" countries according to the 2002 CG Assessment Results is not unexpected as it echoes the findings of the EBRD's Annual Legal Indicator Survey regarding Moldova, which is that the "extensiveness" scores of Moldova's commercial legislation have been high and relatively steady in recent years. However, Moldova is also a country where the Government is facing serious problems in effectively enforcing its corporate governance legislation and is therefore unable to translate the values of its good laws "on the books" into real economic benefits. One of the common violations of shareholder rights in Moldova is the abuse of authority by officials in joint stock companies arbitrarily. For example, shareholders could be excluded from participating shareholders' meetings or prevented from having access to relevant corporate information without legal grounds. Other violations commonly seen in the country include: failure to notify shareholders about holding general meetings of shareholders, failure to hold tenders in cases of purchases of controlling interests, insider purchase/sale of shares without complying with the procedures prescribed by the law, insufficient disclosure to shareholders of information on the operations and activities of the company, etc. In this regard, it is worth mentioning that the IFC is also planning to undertake a project under its Private Enterprise Partnership programme to help Moldova tackle its corporate governance problems. Building on IFC's experience in other countries, the project is expected to train and advise companies on sound corporate governance practices, advise policymakers on improving corporate regulations and introduce a corporate governance curriculum to local universities.

RUSSIA

Russian companies in the past have been sharply criticised for notorious violations of property rights and minority shareholders' interests. The violations were largely attributed to its poor corporate governance legal framework and practices. To tackle the problem, since the 1998 crisis the Russian Government has made an effort to amend its Joint Stock Companies Law and related securities market legislation. More recently, assisted by the EBRD through a legal technical assistance project, the Federal Commission for the Securities Market of Russia developed a Corporate Governance Code, which was officially launched in April 2002. While the Corporate Governance Code is voluntary, the Federal Commission for the Securities Market in a May 2002 resolution has required that joint stock companies

include information on the company's compliance with the Corporate Governance Code in their annual reports. Despite the afore-mentioned efforts and legislative improvements, it should be noted that the Corporate Governance Code is a fairly new initiative in Russia and it remains to be seen how this Code will work in practice. The following have recently been cited as the constraints that are still plaguing the corporate governance practices in Russia: (1) lack of transparency in company management; (2) lack of accountability to shareholders on the part of management; (3) unfair treatment of minority shareholders; (4) weak coordination and advocacy among shareholders and stakeholders; (5) a weak corporate governance culture; and (6) poor enforcement and oversight of existing laws and regulations.⁶ In addition, as suggested in the White Paper produced in 2002 by roundtable discussions organised by OECD and the World Bank group (in which EBRD representatives participated), key priorities for Russia to further improve its corporate governance practices are (1) to intensify implementation and enforcement, (2) to ensure clarity and coherence, (3) to facilitate the development of a corporate governance culture in the private sector, (4) to ensure continuing support and review of progress made, and (5) to support and enhance the development of training programmes.

Countries Rated as Medium Compliance

Albania, Bulgaria, Croatia, Czech Republic, Estonia, Lithuania, Slovakia, Slovenia and Uzbekistan were rated as "**Medium Compliance**" according to the 2002 CG Assessment Results. These countries have established a body of laws dealing with almost all areas highlighted by the OECD *Principles of Corporate Governance*, although there remain different areas of concern where improvement is needed. The majority of countries in this category have also established their domestic capital markets, although most of these remain relatively small. General reform priorities for countries in this category are also to improve effective implementation and enforcement of existing legislation, while continuing to reform their existing laws.

In addition, some country-specific comments about **Croatia** and **Uzbekistan** are noted below for reference.

CROATIA

Croatia is a good example where the authorities have had difficulties in implementing two sets of corporate governance related laws adapted from different legal backgrounds. The Company Law of Croatia was initially promulgated in 1995 and is based upon the German model. However, when Croatia developed its securities market legislation, strong reference was made to the laws and regulations of common-law countries. Given that the German system of corporate governance is "bank-based" (i.e., driven by creditors) whereas the Anglo-American one is market-oriented (i.e., driven by investors), there had been problems with and a lively debate over the compatibility between the Company Law and the securities market legislation, and on how to implement these conflicting provisions in practice. While Croatia

⁶ See the World Bank, *Corporate Governance in Russia: Regime Changed Required*, Transition Newsletter, Vol. 14, No.1-3, Jan-Feb-Mar 2003 (available at the World Bank website at www.worldbank.org).

adopted new securities law and take-over law in July 2002, it remains to be seen how these different laws are implemented and supplement each other in practice under the new corporate governance regime in Croatia.

UZBEKISTAN

According to the 2002 CG Assessment Results, when compared to similar legislation in other Central Asian countries, the existing laws of Uzbekistan seem to have laid a good basis to develop sound corporate governance practices in the country. In assisting Uzbekistan in this regard, the Asian Development Bank ("ADB") undertook a one-year technical assistance project in mid-2001 to help the Government to prepare a program of corporate governance reforms at the enterprise level. This project, aimed at enhancing transparency and disclosure and at safeguarding investors' rights, helped Uzbekistan define appropriate efforts in the state and private sector, which, among other things, would improve corporate governance practices.

Undoubtedly, there remains room for improvement under the existing Uzbek legal and regulatory framework. For example, the existing rules are insufficient to prevent insider trading since they do not prevent or punish the trading of shares where the seller or purchaser is using important information that has not been disclosed to the public. Also, at a more general level, there are considerable inconsistencies in existence across the different laws, regulations and decrees. This problem is exacerbated by the sheer volume of resolutions and decrees issued by the Cabinet of Ministers and the President. One example is that, according to the Decree of the Cabinet of Ministers No 361 dated 22 August 1998, the Government has introduced a rule giving the State Attorney the power to suspend the decisions of general meetings of shareholders. This decree, however, contradicts the Law on Joint Stock Companies and Protection of the Rights of Shareholders, under which there is no limitation on the decision-making authority of the general meeting of shareholders. Therefore, the validity of this decree remains to be tested in practice. Lastly, the underdeveloped supporting infrastructure is also preventing Uzbekistan from fostering better corporate governance in practice.

It is worthy noting that in May 2003 ADB approved a second technical assistance project to help Uzbekistan to improve corporate governance and restructure its enterprise sector. The new project aims, among other things, to strengthen the policy, legal and regulatory framework for the corporate sector and to improve regulatory oversight.

Countries Rated as Low Compliance

Bosnia and Herzegovina, Kyrgyz Republic, Serbia and Montenegro, Romania and Turkmenistan were rated as "**Low Compliance**" according to the 2002 CG Assessment Results. Countries in this category have laws in place to address corporate governance issues, although the general quality of these laws remains to be improved. Capital markets in most of these countries are almost non-existing or at a very early stage of development. A reform priority for countries in this category is to continue to improve the quality of existing laws (including strengthening the institutional design for enforcing the laws) by bringing them into

line with international standards. Also, these countries should make special efforts in raise general awareness of shareholders' rights and of corporate governance issues in general.

In addition, some country-specific comments about **Bosnia and Herzegovina**, **Kyrgyz Republic**, **Romania**, and **Serbia and Montenegro** are noted below for reference.

BOSNIA AND HERZEGOVINA

As stated in Section I of the country assessment report for Bosnia and Herzegovina, only federal legislation has been assessed for the purposes of this CG Assessment. The reason is that there currently exist two systems of corporate-governance related laws in the country – one at the federal level and another in Republika Srpska. For example, in terms of company law, a Law on Business Companies was promulgated by the Federal Government in 1999, while in the Republika Srpska a new Law on Enterprises was enacted separately in September 2002. If it is not politically feasible to formulate and promulgate a single piece of legislation governing companies incorporated in Bosnia and Herzegovina, the two company laws enacted by the Federal Government and the government in the Republika Srpska should be at least harmonised.

In terms of improving the country's corporate governance related legislation at the federal level, the Securities Commission of the Federation of Bosnia and Herzegovina proposed a bill to amend the Law on Business Companies in October 2002. This initiative was assisted by USAID through the Forum on Corporate Governance, a public-private sector dialogue partnership whose aim is to enhance the business environment in Bosnia and Herzegovina. The proposed bill of amendments to the Law on Business Companies, however, had not been adopted by the Federal Government as of early 2003. In addition, in 2002 the Securities Commission of the Federation drafted a "Book of Regulations on the Content, Methods and Standards of Disclosure of Financial Reports and Other Information on Business Operations of Joint Stock Companies" with the aim to improve the country's disclosure and transparency requirements. However, this "Book of Regulations" was not taken into consideration in the 2002 assessment because it had not become effective when the assessment was carried out. The impact of this "Book of Regulations" (and other new legislation, if any) will be considered when the results of the CG Assessment are updated at the end of 2003.

KYRGYZ REPUBLIC

While the corporate governance regime of the Kyrgyz Republic was rated as "Low Compliance", it should be acknowledged that during recent years the Government of the Kyrgyz Republic has been taking steps to improve its related legal and regulatory framework by working closely with international financial institutions and assistance agencies of donor countries. For example, the ADB initiated a Corporate Governance and Enterprise Reform Programme ("CGER Programme") in the Kyrgyz Republic in May 2000, aimed at, among other things, strengthening corporate and financial governance standards. According to the ADB, while the first phase of the CGER Programme helped establish a basic legal framework for corporate governance and helped raise awareness of corporate governance issues, the corporate sector of the Kyrgyz Republic still suffers from weak internal governance, lack of

disclosure and transparency, continuing use of outdated accounting and asset valuation standards and limited ability to effectively monitor and enforce legal and regulatory provisions. As a result, in November 2001, the ADB decided to undertake a second phase of the CGER Programme, the focus of which is to strengthen the legal framework for corporate and banking sector governance and improve enforcement of existing legislation. In addition the EBRD, in coordination with the ADB, is also considering undertaking a legal technical assistance project working with the State Commission for Securities Market of the Kyrgyz Republic to improve the corporate governance regime and enhance investor protections.

Another positive sign is that the Government has prepared a new Law on Joint Stock Companies which is coming into force in 2003. The new law aims, among other things, to refine procedural requirements in connection with holding shareholders meetings, clarify and enhance measures to guard companies' interests against self-dealing or conflict-of-interest transactions, strengthen shareholder's rights (including pre-emptive rights to newly issued shares and right to dividends, etc.) and raise transparency and disclosure standards. Therefore, it can be expected that the soundness of corporate governance related laws in the Kyrgyz Republic will be improved in the short term.

ROMANIA

About Romania, it is worth noting that the Romanian Securities and Stock Exchange Law of 1994 was further amended during the second half of 2000 through a government emergency ordinance No. 229/2000. This ordinance was adopted as the result of an intense campaign promoted by some investment funds which were protesting against violations of minority shareholders rights such as the dilution of shareholdings of minority shareholders through capital increases, the transfer of profits outside the company, delays in the payment of dividends, abusive allocation of profits and limited access to information by minority shareholders. However, while this ordinance was aimed at enhancing the protection of minority shareholders rights, it also generated fierce debates and intensive coverage in the media because certain measures introduced by this ordinance were considered to excessive by certain opposition interest groups. In the end, four months after its adoption, this Ordinance 229/2000 was revoked by the then newly elected government, who promised to replace this ordinance with more balanced regulations. In this regard, while the new government did approve a new ordinance in 2002, it had yet been published in the relevant government gazette when the 2002 CG Assessment was conducted. Therefore the extent to which this ordinance has indeed improved the corporate governance regime of Romania will be reviewed in the 2003 CG Assessment.

In addition, it is also worth mentioning that there is a voluntary Governance Code of best practice in Romania. This Code was initiated and adopted by business associations in March 2000. The Code consists of a set of reference standards for use by any reputable company which adopts its own corporate governance code.

SERBIA AND MONTENEGRO

In the same way as Bosnia and Herzegovina, there currently exist two sets of corporate-governance related laws in Serbia and Montenegro. In the area of company law, for example, a federal Law on Enterprises was promulgated in 1996, with subsequent amendments made in 1997, 1998, 1999 and 2001 respectively. However, in Montenegro an earlier version of this law is still in force. Therefore, one of the priorities for the Government of Serbia and Montenegro is to reconcile the institutional conflicts existing under the corporate governance regime in order to facilitate the effective and consistent implementation of relevant laws.

Countries Rated as Very Low Compliance

Azerbaijan, Belarus, Georgia, Ukraine and Tajikistan were rated as "**Very Low Compliance**" according to the 2002 CG Assessment Results. While these countries generally have company law in place providing a basic framework governing the formation, operation and liquidation of joint stock companies, these laws are usually outdated and are deficient (or even silent) on many important issues highlighted by the OECD *Principles of Corporate Governance*. As to securities market legislation, laws in this category are generally very rudimentary since capital markets in these countries are either non-existent or still at a very early stage of development. Banking reform also remains a focus in these countries. Therefore, insofar as corporate governance is concerned, the priority for countries in this category is to reform their relevant outdated laws by bringing them in line with international standards.

Below are some additional country-specific comments about **Azerbaijan, Georgia, Tajikistan** and **Ukraine** for reference.

AZERBAIJAN

The existing Law on Joint Stock Companies of Azerbaijan was promulgated in July 1995, with the most recent amendments enacted in 1999, while the Law on Securities came into force in 1998. Despite the fact that the Law on Joint Stock Companies has covered several basic issues relating to the operation of joint stock companies, it is inadequate in many key issues concerning corporate governance. For example, the law lacks clear provisions governing the basic duties of directors and the standards for exercising their functions, etc. The provisions for protecting the rights of minority shareholders are insufficient. In addition, transparency and disclosure requirements are problematic under the current corporate governance regime, thereby making the law inadequate in protecting the company against self-dealing and conflict-of-interest issues. In order to address the above issues, it is worth mentioning that in 2001 the EBRD assisted the State Commission for Securities of Azerbaijan to amend the Law on Joint Stock Companies and the Law on Securities through a legal technical assistance project by using grant funding provided by the UK Government. The EBRD is told that recommendations proposed under the project would come into force during 2003. In addition, though the Private Enterprise Partnership programme, the IFC is planning to assist Azerbaijan through a corporate governance project which is expected to offer training and information to Azeri companies on sound corporate governance practices and compliance with local legislation. The IFC project is also expected to work with the Government of Azerbaijan to improve implementation of corporate governance regulations.

GEORGIA

Similarly to Croatia, Georgia developed its Law on Entrepreneurs of 1994 by modelling itself on the German Stock Corporations Act, while its Law on Securities Market was inspired by Anglo-American legislation. Although both laws have been amended several times since their adoption, the current corporate governance regime of Georgia remains insufficient in many areas. For example, the Law on Securities Market appears to regulate tender offers. However, Georgia currently has no take-over law or regulations imposing obligations on a shareholder to offer to buy all shares of the company when its share holdings reach a specified threshold percentage. Another example is that while the Law on Securities Market prohibits the use of insider information, there is no regulation in place to deal with insider trading or self-dealing issues. In terms of transparency and disclosure issues, another example of the inadequacy of the law is that directors and management are not legally required to disclose any personal interests in transactions affecting the company under the current regime. The situation of deficiency in the current corporate governance laws is further exacerbated by two facts. One is that the National Securities Commission of Georgia lacks sufficient resources (human and financial, etc.) to effectively enforce the law; another is that the awareness of shareholder rights remains low. To assist Georgia in improving its corporate governance regime, the IFC is planning to undertake a project under its Private Enterprise Partnership programme that is expected to build on IFC's programs in Armenia and Russia by working with Georgian companies to strengthen their corporate governance practices and with the Government of Georgia to reform relevant laws.

TAJIKISTAN

Tajikistan is a very good example of a country where corporate governance laws are outdated and need to be overhauled. The Law on Joint Stock Companies was adopted in 1991 and the Law on Securities Market in 1992, and the most recent amendments made to these two laws were in 1998. In order to help Tajikistan facilitate corporate and financial governance reforms, the ADB approved a technical assistance grant in February 2003. This technical assistance is aimed at strengthening the legal and regulatory framework for corporate and financial governance in commercial banks, supporting corporate sector development, enhancing institutional capacity for enterprise restructuring and formulating directions to guide the Government of Tajikistan in corporate and financial governance and enterprise restructuring.

UKRAINE

To many professionals involved in advancing corporate governance reform in Ukraine, the result that Ukraine was rated as among "Very Low Compliance" countries comes as a disappointment but should not be a surprise. It is true that over the years a lot of effort has been put by international communities in promoting good corporate governance in Ukraine. From 1999 through 2001 IFC ran a corporate governance project in Ukraine which included delivering a corporate governance training programme, developing a Corporate Governance

Manual and participating in the drafting of a wide range of legal and regulatory acts (including a draft Law on Joint Stock Companies), etc. However, despite these efforts and the repeated call for a new company law by professionals working in the country, this draft Law on Joint Stock Companies has not yet been adopted by the Government of Ukraine. Given the efforts of the IFC, other donor agencies and the Securities Market State Commission of Ukraine over the last few years, it is possible that Ukraine has become a country where the current level of corporate governance awareness and practices is more advanced than the level of its legislation. Major areas where improvements are needed under the existing Ukrainian laws include: (1) the role of shareholders' meetings which needs to be strengthened (including the expansion of the scope of the meetings' authority); (2) the duties of a company's board of directors (especially supervisory boards), which need to be clearly defined and regulated; (3) the relevant rules regulating the company's transactions with related parties and safeguarding the company against self-dealing and transaction involving conflict of interest issues, which need to be enhanced; (4) disclosure rules concerning company information, which are not adequate; and (5) rules preventing shareholder stakes in a company from being unfairly and secretly diluted, which remain vague. Lastly, it is worth noting that since 2002 the IFC has been undertaking another three-year "Ukraine Corporate Development" project. This project builds on IFC's previous corporate governance project and aims to promote the development of the private sector in Ukraine by introducing international best practice and by advising enterprises, government agencies and educational institutions on various issues, including corporate governance. This new initiative is funded by the Governments of Canada and Switzerland.

EBRD Corporate Governance Assessment 2002 Rating

