# COMMERCIAL LAWS OF KAZAKHSTAN
## AN ASSESSMENT BY THE EBRD

**March 2014**

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Overall Assessment

Kazakhstan’s legal environment continues to remain complex and challenging despite significant reforms. Further steps are needed to strengthen the legal framework for investment and well-functioning markets. Over the last few years there have been significant improvements in crucial areas such as securities legislation, concessions, competition, anti-money laundering, insolvency, and establishing legal entities. Notwithstanding these improvements, Kazakh commercial laws still fall short of internationally accepted standards in some respects. The concession law could be improved by expanding the security package available to lenders. The corporate governance framework, including disclosure to shareholders, could be strengthened. Further improvement of the legal, institutional and regulatory telecoms framework will be a critical ingredient to ensure effective future development of the market and the delivery of a choice of affordable services of sufficient quality. Limitations on using sophisticated methods of taking security over movable assets and inexistence of a centralised register of pledges restrict the access to credit in Kazakhstan by limiting the legal certainty and business flexibility of transactions. Areas of uncertainty in the bankruptcy law remain and further reforms are underway aimed at strengthening debtor and creditor rights. Even though the basic regulatory framework for renewable energy sources has been created in Kazakhstan, further amendments are needed to encourage development of renewable energy projects. Kazakhstan’s public procurement laws need a comprehensive review and upgrade to meet modern standards. The anti-money laundering legal framework has many areas that need to be improved to ensure the country’s efforts to curb money laundering and terrorist financing are effective. Kazakhstan continues to move forward in developing legislation that will assist it in its transition towards a market economy. However, implementation and shortcomings in the judiciary and the enforcement of court judgments remain a serious problem.
Legal system

Constitutional and political system

The Constitution established a bicameral legislature consisting of a Senate and an Assembly (Mazhilis). Working jointly, the two chambers have the authority to amend the Constitution, approve the budget, confirm presidential appointees, ratify treaties, declare war, and delegate legislative authority to the President for up to one year. Each chamber also has exclusive powers.

According to the Constitution, the Republic of Kazakhstan has a presidential form of government with the presidency exercising significant influence over the legislature and the judiciary. Neither the country’s legislature nor the judiciary have sufficient powers to hold the presidency to account. According to article 44 of the Constitution, the President represents the Republic of Kazakhstan in international relations, conducts negotiations, and signs international treaties. The President is the head of state and is elected directly for a maximum of two consecutive seven-year terms. The President appoints, with Parliament’s consent, the Prime Minister, other ministers of the cabinet, the chairperson of the National Bank, and the chairperson of the National Security Committee. The President also appoints the heads of the local government entities, can reverse decisions made by these officials, and has broad authority to issue decrees and overrule actions taken by the ministries.

Freedom of information

The Constitution of the Republic of Kazakhstan provides for the right of citizens to receive and distribute information as long as it does not contradict any laws. The Constitution also forbids censorship of any kind in Kazakhstan. However, it lacks specific provisions for the right of citizens to access information.

According to NGOs, the draft law on Access to information has been a topic of discussion in Kazakhstan since 2010, with several draft proposals being produced by various groups.

Kazakhstan’s draft law on FOI was presented in 2012. In 2012 Kazakhstan dropped to 133rd (out of 176 countries, a drop of 13 places) in the World Corruption Index, published by Transparency International, who has said that adoption of the Law on Access to Information should help to improve Kazakhstan’s ranking in the future. The draft law was drafted largely to replace the law in place since 2000. It has been under discussion since 2010 and was presented to observers, including the OSCE. Observers overall assessment of the draft law is positive, however some drawbacks relating to enforcement have been identified. Three key recommendations were highlighted in an analysis of the draft law:

The judicial and legislative branches of the government should provide access to information and should be included among bodies that are obliged to respond to requests for information according to Article 9 of the Draft Law. In addition, The Ombudsman should be given further responsibility to inform and educate the public about the Access to Information Law and ensure its proper implementation; Also The Ombudsman’s powers should be provided in the Draft Law in detail, including the procedures for filing complaints to the Ombudsman and the investigations the office can undertake;

The development of an E-government portal is a positive step, however in 2013 just over 50% of the population are regularly using the internet (from a base of 2% in 2003) this is still therefore a challenging environment.

Kazakhstan has recently been working with the OSCE on the implementation of the Aarhus Convention (UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters); Kazakhstan signed the Convention in 2000.

Judicial system

Kazakhstan’s judicial system consists of three tiers of courts of general jurisdiction vested with general authority to hear criminal and civil matters. First instance matters are heard by district and city courts. Appeals lie to the regional courts and the appeal courts of Astana and Almaty, and thereafter by the Supreme Court of Kazakhstan. The Constitution permits the establishment of specialised courts. Several such courts have been established to date, including specialised economic and administrative courts, and a specialised financial court. These courts have the status of district or regional courts. The specialised economic courts have jurisdiction over all cases to which a legal entity or an individual entrepreneur is a party, as well as all corporate disputes. The Special Financial Court of the City of Almaty can determine matters involving ‘participants’ in the Almaty Regional Financial Centre, namely businesses having a permanent presence in Almaty and being licenced accordingly. Among the innovations of the court is the possibility for proceedings to be conducted in English.

Kazakhstan is a party to major international and regional conventions regarding arbitration, including the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, the European Convention on International Commercial Arbitration of 1961 and the Convention on the
Settlement of Investment Disputes between States and Nationals of Other States (ICSID) of 1965. Foreign awards will generally be enforced without re-examination of the merits. However, courts will only enforce judgments of foreign courts where a relevant bilateral treaty exists regarding reciprocal enforcement. Relatively few such treaties exist, mostly with former socialist countries, such as the Agreement on Mutual Enforcement of Arbitral Awards and Judgments of Business and Economic Courts in the Territories of CIS States.

The Supreme Judicial Council formed at the Supreme Court of Kazakhstan is responsible for the professional development and qualification of judges, as well as the general improvement of the judicial system. The Council also has authority to recommend judicial appointments, however the ultimate responsibility for appointing judges lies with the President of Kazakhstan. Currently, the Council consists of 10 members, including four judges of the Supreme Court and the General Prosecutor. However, representatives of the Parliament and the President also sit on the Council, and all members are appointed by the President, which brings into question its independence.

The EBRD Judicial Decisions Assessment found that the quality of court judgments in commercial law matters in Kazakhstan was uneven, with judgments of higher and specialised courts markedly better than first instance general courts. In the latter case, judges’ lack of experience with commercial law and practice was believed to be a factor affecting the quality of judgments. Lower court judges tended to apply general principles of laws and civil code provisions with which they are more familiar, rather than relevant provisions of commercial legislation. Whilst there is a well-developed system of judicial education in Kazakhstan, and modern resources are made available to support judicial training. Many judges have not yet undergone training in commercial law areas, a factor contributing to problems with judicial decision making at the lower instance courts.

The impartiality of courts in Kazakhstan is considered questionable. A lack of easy access by lawyers and the general public to judicial decisions limits scrutiny of judicial output and behaviour. Further, in their judgments, courts are believed to show particular deference to the government and entities in which the state has a substantial interest. By contrast, time management of cases by courts is considered to be reasonably efficient, despite the substantial workload of judges in Kazakhstan. Further, the fact that courts are in demand suggests a certain level of public confidence in the courts’ ability to resolve disputes.

Enforcement of court judgments remains a problematic feature of the country’s judicial sector, as is the case in other countries in the region. The introduction in 2010 of a dual system of private and government bailiffs has improved the situation by creating incentives for more efficient handling of enforcement matters; however delays and uncertainty of success persist. Overall, the court system has a number of modern and efficient features which the authorities can use to enhance court efficiency across the country. One recommended objective for the reform agenda is to ensure that the country’s good quality judicial training system is made available to more judges, especially in commercial and administrative law areas. In addition, reforms could build on enhancements to the enforcement regime by taking steps to reduce bailiffs’ caseload, and enabling better access to information necessary to effect enforcement, such as in relation to newly established companies and bank accounts. Finally, measures to bolster confidence in the impartiality of the judiciary would be welcome, particularly in relation to matters where the state is a party or has a substantial interest. In this connection, greater access to court decisions and case materials would be a most useful measure.

**Recent developments in the investment climate**

Following the establishment of a customs union between Kazakhstan, Russia and Belarus in 2010, the three countries launched the next stage of economic integration – towards a common economic space – in January 2012. This stage envisages the creation of a common economic space within the Eurasian Economic Community. The stated ultimate goal of the community is free movement of goods, capital and people, as well as harmonisation of macroeconomic and structural policies. The Eurasian Economic Commission, a newly established supranational body of the community, is expected to gradually take over a number of responsibilities from the national authorities in areas such as competition policy, technical regulations and environmental standards. Key decisions will be taken by the Council of country representatives based on the “one country, one vote” principle. Thus far there is not much evidence that the integration process under the Russia-Kazakhstan-Belarus Customs Union (CU) has increased trade between the CU countries, but larger benefits are likely to come from gradually liberalising service sectors and market access within the economic union. Bilateral World Trade Organization (WTO) accession talks were expected to be concluded by the end of 2012, in which case Kazakhstan could have joined WTO around mid-2013 but they are still on-going. The remaining discussions focus on support for agriculture, export duties on natural resources and local content requirements in the hydrocarbon industry.
The role of the state has increased in a number of key sectors. In June 2012 the parliament approved amendments to legislation regulating state monopolies, limiting them to cases related to national security, defence, protection of public order and health. However, no concrete reduction in state monopolies has thus far been made; instead, the role of the state has increased in the natural resources and mining sectors. Following a long dispute with existing private shareholders, a 10 per cent stake in the Karachaganak Petroleum Operating (KPO) consortium was transferred to the state of Kazakhstan in June 2012. In January 2012 the state also acquired the pre-emptive right to purchase raw and commercial gas, while the National Bank of Kazakhstan (NBK) obtained the pre-emptive right to purchase refined gold “in order to protect the national interest.” Furthermore, there are proposals for new legislation that would require a mandatory 50 per cent state stake in any new oil or gas pipeline projects.

The implementation of the strategy to resolve problems in the banking sector has been slow. The new mechanism to deal with impaired loans launched by the authorities in April 2012 combined a centralised problem loans fund, established and funded by the NBK and other investors, and bank-run Special Purpose Vehicles (SPVs). In late-2011, parliament approved legislation to remove some of the tax disincentives for NPL write-offs and to create a second Distressed Asset Fund, effective from 2012, but the latter is expected to begin operating only towards the end of 2012.
Commercial legislation

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. These relate to investment in infrastructure and energy (concessions and PPPs, energy regulation and energy efficiency, public procurement, and telecommunications) as well as to private-sector support (corporate governance, insolvency, judicial capacity and secured transactions).

Detailed results of these assessments are presented below starting with infrastructure and energy and going into private sector development topics.

The completed assessment tools can be found at www.ebrd.com/law.

Infrastructure and Energy

Energy and resource efficiency

Electricity

Kazakhstan’s electricity market benefits from a competitive wholesale market for capacity and electricity, established as early as 1996, a power exchange, which has been in place since 2001, and a grid code was adopted in the same year. However, since 1 January 2009, a transition from competitive prices formation towards regulated prices has been taking place. The recent EBRD energy law reform dimensions assessment project has shown that private sector participation, regulatory autonomy, network access and tariff structure are the key strengths of the country’s electricity framework, while public service obligations and regulatory independence are its key weaknesses (see Chart 3).
Chart 3 – Quality of energy (electricity) legislation in Kazakhstan

**Note:** The spider diagram presents the sector results for Kazakhstan in accordance with the benchmarks and indicators identified in an assessment model. The extremity of each axis represents an optimum score of 100 that is full compliance with international best practices. The fuller the “web”, the closer the overall regulatory and market framework approximates international best practices. The results for Kazakhstan are represented by the green area in the centre of the web.

**Source:** EBRD 2011 Energy Sector Assessment

Until recently, Kazakhstan had a unified power system, consisting of a competitive (deregulated) wholesale market and retail markets. The balancing market, which has operated since 2008, functions in simulation mode, without financial settlement of electricity supplied/consumed on the balancing market. At the wholesale market level, the producers, KEGOK JSC, regional electricity companies and the wholesale electric energy customers have established Capacity Reserve Pool of Kazakhstan (CR Pool) to maintain continuity of power supply.

The wholesale market structure is considerably more advanced than elsewhere in the region (with the exception of Russia), though there is not as yet a fully competitive market or a transition to a real time market. Electricity exchange has been taking place since 2001. Until 2008, when the Law on electricity was amended, the wholesale market involved deregulated purchase and sale of electricity, with bilateral deals based on forward (term) contracts. As a consequence, since 1 January 2009, a transition from competitive price formulation in the wholesale market towards price regulation has been taking place in Kazakhstan. In particular, the Law on electricity provides that: (i) an energy generator sets electricity sales price independently, yet not higher than the maximum tariff set for a corresponding group of energy generators. The maximum tariff is approved according to 13 groups of energy generators classified by type, installed capacity, type of fuel and distance from fuel deposits, for a minimum term of 7 years (ii) if the investment obligations of an energy generator cannot be met at the expense of the maximum tariffs, the generator has the right to apply a calculated or individual tariff provided that technical specifications are approved by the authorised body and an investment agreement is made.

The government has declared that after 2015 there will be a shift back to the competitive (deregulated) pricing in the electricity market.

According to the "grid code" both generators and customers have the right to non-discriminatory access to the power grids. For this purpose they need to: (i) sign with the grid company a contract for "entry", stating all the necessary conditions of joint activity; (ii) receive technical conditions from the grid company for connecting a specific energy unit to the network, and to fulfil some requirements provided by normative acts. A separate fee for access to power
grids is currently not provided. Until January 2009 there was a procedure under which if connection to the network was leading to its expansion and reconstruction, the owner of the connection had to compensate the grid company. The fee was set pursuant to the methodology approved by the Agency of the Republic of Kazakhstan on Regulation of Natural Monopolies (ANMR), a separate regulatory authority responsible for state regulation of activity of natural monopolies, subject to the connected capacity and payment per unit of power, set forth in the grid company’s approved network development plan. Subject to entrepreneurship support measures, such payments were abolished in December 2008.

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Kazakhstan was one of the first former Soviet states to reform their electricity market, beginning in 1996. To date, about 70% of generation assets are in private ownership as a result of privatisation of energy enterprises. The majority of domestic generation (primarily from coal-fired plants) is based in the north; while Kazakhstan’s hydro power plants are to the east. The grid infrastructure is old, resulting in considerable electricity losses. Until recently it was also not integrated; the transmission system was made up of three disconnected networks, with the northern two networks connected to Russia and the southern network the only one connected to the Unified Energy System of Central Asia. Security of supply issues to the south of the country has prompted efforts to build a north-south power line with the aim to supply southern Kazakhstan from the North.

Gas

Kazakhstan’s gas market is dominated by the vertically integrated state-controlled KazMunaiGaz, even though there are large independent gas producers. So far, gas exports have depended on one buyer, Russia, due to the geographical lay out of the pipelines, however the completion of the Trans-Asian pipeline to China is going to open more options for Kazakhstan. The recent EBRD energy law reform dimensions assessment project has shown that regulatory autonomy is the key strength of the country’s gas framework, while network access is its key weakness (see Chart 4).

As noted, Kazakhstan’s gas market is not open to competition. Gas supply is carried out based on gas supply contracts concluded between the suppliers and the consumers. Gas transportation is carried out based on a gas transportation contract. A contract for gas transportation is proposed and, as a rule, the transporter submits it to the supplier who previously filed an application for gas transportation. Almost all extracted gas is accompanied by oil extraction, mostly from the Tengiz and Karachaganak projects in the West of the country. The major part of this gas is brought back into the well to support certain pressure in the reservoir and to improve oil extraction.

Rules of supply, transportation and sale of natural gas approved by the Government have required Third Party Access to the transportation network since 11 June 2003. Specifically, they stipulate that the transporter shall ensure free access of the supplier to the gas transportation system at any time, and sign a contract for gas transportation subject to all the necessary conditions. In addition, Order No. 99-OD of the Chairman of the Agency of the Republic of Kazakhstan on Regulation of Natural Monopolies (ANMR), a separate regulatory authority responsible for state regulation of activity of natural monopolies, dated 24 March 2005, established the norms for provision of equal access conditions for regulated services (goods, works) in the sphere of storage and transportation of gas or gas condensate, via main and/or distribution pipelines, operation of gas distribution units or related gas distribution pipelines. A customer has the right to equal access with respect to regulated services of gas storage.

Pursuant to the Decree No. 155 of the Government dated 14 March 2006, ANMR sets gas tariffs, including among others: (i) natural gas transportation via main pipelines; (ii) natural gas transportation via distribution pipelines for domestic consumers; (iii) liquefied hydrocarbon gas transportation via gas pipelines from a group reservoir unit to a valve at the consumer’s lead-in; (iv) natural gas storage. The methods used in Kazakhstan are: (a) distance method of tariff calculation for the transportation of transit gas via main pipelines (Tariffs for transit gas transportation are set per every 1000 m3 of gas for 100 km of transportation distance); (b) tariff calculation method considering transportation volumes and reimbursement of expenses regardless of the distance (gas transportation tariffs for consumers are set per every 1000 m3 of gas regardless of the length of gas pipelines within the territory of the RK, subject to technical possibilities).

When calculating and setting tariffs the following methods are applied: setting of the rate of profit on adjustable base of the involved assets; and establishment of tariffs for the intermediate term period.
Kazakhstan is a net exporter of gas. Most of Kazakhstan’s gas reserves are located in the west of the country near the Caspian Sea, with roughly 25% of proved reserves located in the Karachaganak field. The gas companies are largely state-owned. Privatisation of the state assets was carried out only in the sphere of gas extraction and, partially, in the sphere of distribution. No supplier of last resort is provided for in the gas market structure. JSC NC KazMunaiGaz and the Ministry of Energy and Mineral Resources (MEMR), the leading policy maker for the energy sector, monitor the expected future demand and extra facilities in the gas sector and, if needed, MEMR submits correspondent proposals to the Government and the Parliament. MEMR is responsible for the development of the national fuel and energy balance in natural terms. MEMR also controls technical maintenance, operation, safety and use of main pipelines. Decisions on covering peak load are made by gas transportation companies based on the possibilities of using technical gas reserves in gas storages and also other suppliers’ sources, subject to agreement with the gas owner, or through redistribution of gas delivery to the consumers.

Note: The spider diagram presents the sector results for Kazakhstan in accordance with the benchmarks and indicators identified in an assessment model. The extremity of each axis represents an optimum score of 100 that is full compliance with international best practices. The fuller the “web”, the closer the overall regulatory and market framework approximates international best practices. The results for Kazakhstan are represented by the blue area in the centre of the web.

Source: EBRD 2011 Energy Sector Assessment

Energy efficiency/renewable energy


Kazakhstan has a huge renewable energy potential, in particular hydropower and wind which remains largely untapped. At present, renewable energy sources represent only about 1% of Kazakhstan’s energy balance (generated mainly from small
The absence of appropriate regulatory framework until recently has been a major barrier to sector development. The first legal framework supporting the development of energy produced from renewable energy sources (the “Renewable Energy Law”) was adopted in July 2009. The Law was developed with the help of several international organisations, including UNDP. The Law has introduced tariff support mechanisms, priority dispatch for renewables, mandatory purchase of electricity by the operator, facilitated licensing regime for construction of renewable energy sources, relief to renewable energy operators from grid connecting fee and others. Several regulations have been adopted to implement the Renewable Energy Law, including those detailing certain requirements to construction of renewable energy projects and their connection to the grid.

A swift increase in the share of renewable energy sources (mainly small hydropower and solar installations) in the country’s energy balance is one of the government of Kazakhstan’s key objectives as set out in the “2010-2014 State Programme of Accelerated Industrial and Innovative Development of the Republic of Kazakhstan approved by the President Decree No. 958 dated 19 March 2010” (the “2010-2014 Programme”). Specifically, 1 billion kWh/year is the country’s goal of renewable energy generation by 2014.

With respect to energy efficiency, Kazakhstan is a largely energy-intensive country: its total primary energy supply divided by the gross domestic product (TPES/GDP) is 1.84 – several times higher than, for instance, the same indicator in Western Europe (0.17) as estimated by the International Energy Agency (IEA). The industrial sector (in particular the fuel and the metallurgy industries) is very energy intensive, accounting for more than 60 per cent of the national electricity’s consumption and around 40 per cent of the total energy consumption. There are several reasons for the high energy intensity of Kazakhstan’s economy, such as use of outdated technologies in production, energy transmission and distribution, high deterioration of basic assets, high share of energy-intensity branches of economy, weak energy management, low efficiency of energy usage and severe climate conditions. The potential for enhancement of energy efficiency in the country is thus considered to be high (approximately from 10 per cent to 30 per cent only in the industry sector).

Several policy documents specify energy efficiency as a priority area for the country’s development. 2010-2014 Programme, for example, points out to four main tasks in the energy saving sector: reduction of energy intensity of production, restructuring of the economy by increasing low energy-intensive processing industries, realisation of the potential of technological energy saving, and implementation of an integrated system of legal, administrative and economic measures promoting the energy saving. Specific measures for enhancement of energy efficiency are stated in “the Complex Plan for Enhancement of Energy Efficiency of the Republic of Kazakhstan for 2012-2015” adopted by the Government of Kazakhstan on 30 November 2011 (the “2012-2015 Plan”), including provision of tax benefits for introducing energy efficiency measures and subsidies to cover costs related to energy audits.

On 13 January 2012, the Law on Energy Saving and Enhancement of Energy Efficiency as amended in July 2012 (the “Energy Saving Law”) was adopted, replacing the 1997 Law on Energy Saving. The Energy Saving Law introduced several specific measures to enhance energy efficiency, including: establishment of registration requirements, mandatory energy audits, energy management system, energy consumption rates, mandatory use of energy efficient materials in new buildings, energy resources meters and automated systems of regulation of heat consumption, amongst others. Adoption of the Energy Saving Law was followed by the issuance of several implementing regulations, including those prescribing energy efficiency requirements for newly constructed buildings and energy efficiency management systems.

Renewable energy and energy efficiency policy and investment considerations are of relevance to EBRD operations.

Development and implementation of renewable energy projects remains a government’s key priority. Among projects considered, the 2010-2014 Programme lists construction of the wind power plants in the Almaty oblast and by 2015, construction of wind turbines with installed capacity of 125 MW with generation of electric power 400 million kWh, as well as construction of small hydropower stations in Almaty and South Kazakhstan oblasts with total capacity of 8.4 MW. EBRD has provided technical assistance to the government on developing feed-in-tariff system, development of appropriate norms for cost allocation regulation, licensing, power purchase agreement, connection
regulation, feed-in-tariff regulation, grid code requirements and other technical ancillary rules. It is expected that the EBRD recommendations would be discussed in the Parliament and introduced into primary legislation in early 2013.

Adoption of the Energy Saving Law and implementing regulations significantly enhanced Kazakhstan’s energy efficiency regulatory framework though much remains to be done with respect to development of comprehensive legislation reflective of sector best practice. The government is considering introduction of more rigorous measures for energy audits and control over energy enterprises and is working on related framework.

As Kazakh economy is largely coal-based, with coal-fired plants generating approximately 45% of Kazakhstan’s total GHG emissions, development of renewable energy and energy efficiency remain critical within the context of reducing energy intensity and GHG emissions. Coal represents the only source of commercial heat supply. As envisaged in state policy documents, the government plans to base the country’s heat supply on cogeneration where it is economically feasible and to rely on autonomous heating systems only where no cogeneration plants are available. The government plans to prohibit direct combustion of gas in boilers of gas-fired plants and provide for replacement of boilers with heat-recovery boilers of gas turbines. The government has indicated that attracting IFI’s financing for the implementation of energy efficiency measures, including training of local specialists and institutional capacity building, remains a state objective.

As for main policy recommendations in the renewable energy sector, even though the basic regulatory framework for renewable energy sources has been created in Kazakhstan, further amendments need to be introduced to encourage development of renewable energy projects. The government should take into consideration the Bank’s recommendations on improving the primary and secondary legislation to remove existing barriers. Increasing the institutional capacity may be required for the implementation of the future amendments to the renewable energy framework. The financial viability of renewable energy projects in Kazakhstan is directly linked to the guarantees established in the local legal regime, including a certain level of feed-in tariff provided on a long term basis.

Within the context of creating favourable environment for renewable energy investment, the government should undertake full liberalisation of the electricity market and establishment of non-discriminatory capacity market for renewable energy producers (in line with the Memorandum of Understanding On Development of the Power Sector in the Republic of Kazakhstan signed between the Bank, MINT and the system operator/national transmission operator in May 2011. In the energy efficiency sector, the government of Kazakhstan is in the process of establishing energy efficiency regulatory framework and should continue its earnest work in this direction. Introduction of best practices into the regulatory framework and building up necessary implementing capacity shall be developed in parallel and in constant collaboration with each other in order to maintain consistent implementation, transparency and control mechanisms. As a next stage, the government should consider development of sector-specific energy efficiency regulation, including with respect to residential and commercial buildings, transport and others. Finally, the country would benefit from wide public campaign to raise awareness of the energy efficiency measures.

Overall, the country’s efforts towards creating well-functioning energy efficiency sector should be directed towards establishing predictable and transparent regulatory framework, while ensuring its efficient implementation and institutional capacity. Similar approach should be extended to the renewable energy sector, with both sectors also focusing on development and implementation of potential projects.

Electronic communications
The Law on Communications 2004 (amended in January 2012) is the primary legislation for the electronic communications sector in Kazakhstan. Other legislation impacting the sector includes the Statute of the Ministry of Transport and Communications (amended by Government Decree no. 314 in March 2012), Statute of the Committee of Electronic Communications and Informatisation (amended in April 2012), the Law on Licensing (2007, amended in 2012), the Law on Natural Monopolies and Regulated Markets, the Law on Competition, plus relevant secondary legislation.

State control of the main market players and the use of multiple regulatory agencies which have characterised the sector until recently have not provided the most conducive environment for the emergence of an effective competitive market. However, the recent sale by the state of most shareholdings in mobile operations can be seen as a positive development. On the institutional side, it is understood that there are moves underway to centralise authority for regulation of the sector in the Ministry for Transport and Communications, though these reforms have yet to be finalised and fully implemented. Although market entry for fixed-line services still requires licences for national and international calls services, the recent elimination of a number of licence areas, replacing them with a simpler online notification procedure is a step in the right direction. Further improvement of the legal, institutional and regulatory framework will be a critical ingredient to ensure effective future
development of the market and the delivery of a choice of affordable services of sufficient quality. While KazakhTelecom currently dominates in fixed services, facilitated by under-priced basic retail tariffs and state subsidies, this position should change with the completion of tariff rebalancing (under gradual implementation since 2008) and the reported plan to eliminate the current state subsidy for fixed lines. Fixed and mobile interconnection charges are notably overpriced when compared to an EU benchmark, though the 25%+ decrease in mobile termination rates since 2010 is an encouraging development. Overall, these deficiencies have delayed the emergence of an effective wholesale market with the consequence of depriving consumers of real choice in basic retail services, especially outside the main urban areas. Outside the urban areas, KazakhTelekom is investing in infrastructure and gradually increasing broadband service availability to the 50 per cent of the population that live in rural areas. This will serve to strengthen KazakhTelekom’s monopoly, unless it allows meaningful access to infrastructure by its competitors. That said, infrastructure competition has emerged in the cities, posing an increasingly significant competitive threat to KazakhTelekom. The EBRD’s recent Assessment has found the framework for telecommunications to be deficient in most areas when compared to international standards, in particular with respect to regulator independence and structure and authorisation regime (see Chart 7). The Assessment has also found deficiencies in several areas of overall legal/regulatory risk compared to international standards, in particular with respect to legal framework and market conditions for wireless services (see Chart 8).

EBRD has maintained investments in the sector in the past and continues to seek opportunities to enlarge its portfolio consistent with its transition mandate. Accordingly, the presence of a strongly best practice-reflective legal and regulatory framework makes the overall environment for the sector attractive for investment, promotes broader competitiveness across the economy and aids social development. The government is understood to be currently proposing significant reform to the legal and regulatory environment for the sector, to include full tariff rebalancing, cost based interconnection, more meaningful access to dominant operator infrastructure and mobile number portability. While concrete implementation plans for these initiatives have yet to become clear, where implemented, they should have a significantly positive impact on the emergence and sustainability of a meaningfully competitive market for the sector.

The priority for the sector regulator is to create an effective wholesale market, placing the dominant operator’s existing and new infrastructure investment at the service of competing retail service providers. This avoids the need to invest in separate infrastructure where it is not economic. The resulting retail competition will stimulate the market, with better product innovation, choice, quality and price. The above notwithstanding however, in enforcing such an access regime the government should be mindful of the need to balance effective competition and the lower prices, wider choice and improved quality that such competition brings, with the significant cost of extending such infrastructure throughout a country as vast and relatively sparsely populated as Kazakhstan, and the corresponding need to cover costs, including a return on investment adequate enough to incentivise such investment. When significant new “digital dividend” spectrum is released, Kazakh operators will be ideally placed to deploy 4G services. To do so efficiently, however, they may have to form cooperative ventures (against their current instincts) to be able to offer full national coverage. Such cooperation should follow the lead of the European markets and the Russian market during the last two years where the major players are entering infrastructure sharing deals for new investments and using new retail options (such as virtual mobile service providers) to optimise their business models. The regulatory body should assist this process by promoting effective wholesale markets and introducing a more modern system of competitive safeguards for alternative operators (such as number portability, virtual mobile operators and example infrastructure sharing obligations).
Chart 7 – Comparison of the legal framework for telecommunications in Kazakhstan with international practice

Key: Extremities of the chart = International best practice

Note: The diagram shows the quality of the legal framework as benchmarked against international standards (European Union). The extremity of each axis represents an ideal score of 100 per cent, that is, full compliance with international standards. The fuller the “web”, the closer the overall telecommunications legal framework of the country approximates these standards.

Source: EBRD 2012 Electronic Communications Comparative Assessment.
The 2006 Kazakhstan Concession Law No. 167-III, as amended (the “Concession Law”) is the principal source of rules governing concessions. In addition, general laws such as the Civil Code, sector specific laws as well as sub-laws are applicable to PPPs, e.g. the Government Resolution No. 693 “On Establishment of a specialised organisation on concessions” July 17, 2008, setting up the Kazakhstan Public-Private Partnership Centre (“PPP Centre”).

The government of Kazakhstan has been committed to the development of PPPs since the proclamation of the 2030 Strategy in 2007 and a number of follow up policy decisions promoting and supporting PPP. In line with such a policy the authorities have undertaken a series of measures reforming the concession enabling legislation. In addition, a National PPP Unit was set up in 2008 under the Ministry of Economy (“MoE”) to improve the PPP institutional framework.

The Concession Law constitutes a fairly solid basis for the development of projects and overall it is seen as an adequate piece of legislation enabling the implementation of concession in infrastructure based on some good standards and a competitive selection. This became possible, in particular, due to the various amendments that were introduced after the law had been enacted and that step by step eliminated some of the gaps identified as major flaws of the initial act. Specifically, the definitions have been improved, the powers of the various government bodies involved in the award of concession have been streamlined, the overly short deadline period to negotiate a concession agreement has been extended, etc. Amongst the other positive features of the Concession Law one should note the provisions concerning Government financial support, the possibility for the parties to choose international arbitration.

However, the law still falls short in meeting certain aspects of the best internationally acceptable standards. Among the main areas of concern that may present a significant obstacle to the bankability of projects are the limitations with the security package (collateral over the assets is still not allowed, although it may be possible to pledge shares in a concessionaire); the restricted assignability of concessionaire’s rights and the lack of clarity about the nature of a model/standard concession agreement in that whether it is

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**PPP / Concessions**

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**Key:** Extremities of the chart = International best practice

**Note:** The diagram shows the quality of the legal framework as benchmarked against international standards (European Union). The extremity of each axis represents an ideal score of 100 per cent, that is, full compliance with international standards. The fuller the “web”, the closer the overall telecommunications legal framework of the country approximates these standards.

**Source:** EBRD 2012 Electronic Communications Comparative Assessment.
mandatory or, hopefully, provided by way of guidance only; there are no provisions for lenders step-in right or for a direct agreement between the lenders and the grantor.

Infrastructure sectors such as transport, municipal utilities are those where potential for the EBRD investment is relatively high, ideally, subject to further improvement of the legal framework.

According to the EBRD 2012 PPP Law Assessment Kazakhstan Concession Law is in medium compliance with the international best practices (see Charts 1 and 2). Among the key priorities in the law reform the Government should consider improving the security package (see Chart 1).

### Chart 1 – Quality of the PPP legislative framework in Kazakhstan

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 concessions laws of the country approximate these standards.

Source: EBRD 2012 PPP Legislative Framework Assessment (LFA)
Chart 2 – How the PPP law is implemented in practice in Kazakhstan

Note: The extremity of each axis represents an ideal score, that is, a fully effective legal framework for PPPs.

Source: EBRD 2012 PPP Legal Indicator Survey (LIS).

Public procurement

The Public Procurement Law of Kazakhstan of 21 July 2007 (PPL), with the most recent amendments of 13 January 2012, is the main legislative act of Kazakhstan in the public procurement sector. The government of Kazakhstan has adopted a number of regulations to implement the provisions of the PPL, including regulations of eProcurement procedures and detailed regulation of the procurement process. On international level, Kazakhstan has not yet become a member of the WTO Agreement for Government Procurement (the WTO GPA) and has not yet been accepted as an observer.

Kazakhstan’s public procurement laws have been based on sound principles of the 1994 UNCITRAL Model Law but largely outdated since then. In the EBRD 2010 assessment, the PPL scored low to medium compliance (69% compliance rate) in the region, compared to the international best practice (see Chart 5).
Local public procurement policy implemented several transparency safeguards and provided administrative monitoring instruments; it’s less comprehensive when it comes to ensuring accountability of contracting entities, and efficiency and economy of procurements (see Chart 6). A very positive feature of the Kazakhstan public procurement framework is establishment of the national eProcurement portal and the development of local procurement capacity by the Central Purchasing Body. The Kazakhstan government undertook several amendments to the PPL, the most substantial in January 2012. The amendments were focused on introduction some elements of e-Procurement, with electronic request for proposals as the core procurement method, with limited touch on few other subject matters. Overall, the amendments had limited effect and do not address the long-standing issues of the regulatory framework for public procurement sector, such as absence of a dedicated independent review and remedies system or lack of open and competitive procurement procedures suitable for contracts of different complexity and value. In addition, current PPL did not adopt several integrity safeguards and efficiency instruments as recommended by current international standards, the 2011 UNCITRAL Model Law on Public Procurement in particular and the public procurement sector in Kazakhstan is generally closed to international trade.
Note: The chart shows the score for the extensiveness of the national public procurement laws. The scores have been calculated on the basis of a questionnaire on legislation that is developed from the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each Core Principles benchmark indicator. The bigger the “web” the higher the quality of legislation.

Source: EBRD 2011 Public Procurement Assessment

As for relevance to EBRD operations, the EBRD Procurement Policies and Rules shall be implemented in the course of the Bank’s operation, as there is a high procurement risk in conducting procurement under local system.

The Bank currently does not undertake any projects within the Kazakhstan PP sector. The Kazakhstan government has been invited by the Bank and UNCITRAL to join the EBRD UNCITRAL Initiative on Enhancing Public Procurement Regulation in the CIS and Mongolia.

As for the main policy recommendations, the Kazakhstan government should undertake a comprehensive review of the local procurement policies and practices and while modernising it increase accountability, efficiency, and economy of public procurement by implementing contemporary procurement methods, ensuring open access to procurement opportunities, and implementing a review and remedies system. The Kazakhstan government should continue its efforts in implementation of eProcurement tools in the local procurement practice in order to allow wider participation in public tenders. Close collaboration with all process stakeholders is essential for successful implementation of the reform agenda as the new legal framework as it creates new market platform. Efforts have to be undertaken to facilitating Kazakhstan’s accession to the WTO GPA, with first step being obtaining the GPA observer status.

Overall, Kazakhstan’s public procurement laws are outdated and need a comprehensive review and upgrade to achieve compliance with the 2011 UNCITRAL Model Law. The Kazakhstan government started on modernising procurement by introducing some eProcurement tools, but there is a need for a comprehensive sector reform in the country, implementing standards of non-discrimination and fair competition in the public procurement regulatory framework. Increase of transparency of procurement decisions, along with commitment to bringing the local procurement practice in line with modern recommendations of the 2011 UNCITRAL standards shall set the ground of the reform agenda and its successful implementation.
Private Sector Support

Access to finance


The general rules on security are contained in the Civil Code of the Republic of Kazakhstan, Art 292 to 328. In addition, the Law on Registration of Pledge of Movable Property (hereinafter: the Pledge Law) and the Decree on Mortgage of Immovable Property (hereinafter: the Mortgage Decree) further develop taking and registering pledge over movable property and mortgage over immovable property.

There are two main types of security over movable assets (pledges) under Kazakh law: possessory (where the possessor of the collateral is transferred to the creditor) and non-possessory (where the debtor may retain the collateral during the life of the security and use it). The registration system is two-tier: there is a mandatory registration, which applies to specific types of assets such as motor vehicles, aircraft etc. These assets are registered in specific registries and the pledge should be registered there too (e.g. the policy for pledges over motor vehicles). For all other types of assets, pledge registration is voluntary only and is conducted in the Centres for Registration of Immovable Property and their subsidiaries. However, regardless of the fact that the registration is voluntary, the significance of registration is raised by the fact that the registered pledge gets priority over the unregistered one on the time of the registration. Generally, the legal underpinning can be seen as adequate, however not particularly enabling for sophisticated transactions as some transactions remain complex to achieve (e.g. a pledge over assets described generally would not be a viable option to secure a transaction since the law provides that the pledge agreement must specify the assets and their value or a method for their valuation).

There is no centralised registry but separate centres in each region and the parties have to file according to their business seat. The registries are supervised by the Registration Service Committee under the Ministry of Justice in Astana.

Security over immovable assets (mortgages) is covered primarily by the 1995 Mortgage Decree (with the force of law). To be valid, the mortgage must be registered in the Real Estate Register, under supervision of the Ministry of Justice. The Register is paper-based and not centralised (local registration offices spreader across the country). The application for registration must be accompanied by a deed confirming ownership title to the mortgaged property.

In 2011 the Law On The Introduction of Amendments and Additions to certain Legislative Acts of the Republic of Kazakhstan regarding Improvements to Civil Legislation introduced some amendments to the Mortgage Law which clarified some ambiguities that existed in practice about the application of certain provisions of the law (e.g. when the changes to a pledge agreement are subject to registration or which party and under which conditions may apply for the deletion of the mortgage).

Limitations on using sophisticated methods of taking security over movable assets (e.g. by using general descriptions of pledged property) and inexistence of a centralised register (database) of pledges over movable property restrict the access to credit in Kazakhstan by limiting the legal certainty and business flexibility of transactions. This might very much adversely influence SMEs which usually have limited resources to offer as collateral and substantially rely on movable collateral.

There are no reported current or proposed reforms.

Overall, a modern, centralised, on-line register of pledges over movable property should be introduced to further support lending against movable collateral by increasing the legal certainty of secured transactions.

Capital Markets

Under the current regulatory and legal framework governing the local debt capital markets of Kazakhstan, the primary regulatory institutions are the Ministry of Finance (the "MOF") and the National Bank of Kazakhstan (the "NBK"). On 12 April 2011 Kazakhstan’s President Nursultan Nazarbayev issued a decree to abrogate the country’s Agency for Financial Supervision (the ‘FMSA’), regulator of the banking industry, and the Agency for Regulation of the Financial Centre of Almaty. Their respective functions have been transferred to the NBK.

There are several important laws and regulations which regulate Kazakhstan’s primary and secondary debt capital markets activity. The Civil Code (General Part) contains general provisions relating to property and proprietary rights, including the classification of securities. The Law on Securities Market sets the basic regulatory framework for activity in the securities market. The Law on Minimization of Risks adopted in 2012 regulates, in a rather restrictive way, various capital markets activities, like derivatives or pension funds’ investments.
In addition, laws and regulations govern specialised areas of debt capital market activity, like the Law on Securitization.

The Kazakhstan Stock Exchange (the “KASE”) is the only stock exchange operating in Kazakhstan.

There have been a number of laws and regulations adopted in Kazakhstan, mostly in 2011 and 2012, as a direct reaction to financial crisis of 2008. Financial crisis proved to have a harmful impact on Kazakh economy and, subsequently, capital market. Some of the reform efforts seem to be, at first glance, positive; for example, the 2011 Law on Investor Protection introduced the possibility to restructure corporate bond debt on securing a minimum of 85 per cent of bondholders’ votes at the general meeting. However, the same law provides that even if 85 per cent of bondholders’ agree on restructuring a dissenting creditor may still have a legal right to file for bankruptcy, which clearly undermines bondholders’ meetings concept.

The Law on Minimization of Risks was adopted as a direct reaction to the crisis, it introduced very important, for capital market development, changes that may further impede development of such market and, moreover, were not welcomed by market participants: (a) specific conditions, as of 2013, will apply to (i) ownership of Kazakh pension funds (some of them would need to be restructured in order to comply with the law); and (ii) pension funds’ investments in securities (which will make it almost impossible for pension funds to operate profitable business); (b) any listing or placement of securities abroad would need to receive a prior approval from the NBK; (c) the concept of Central Counterparty (the “CCP”) has been introduced but neither the ownership structure nor which transactions would need to be cleared by the CCP were provided; (d) derivatives transactions between local, Kazakh banks have been banned (unless permitted by the NBK); however, this prohibition does not apply to derivatives transactions between local, Kazakh bank and bank located outside Kazakhstan; the aim of this provision was to limit risks related to derivatives transactions but most of the local transactions that are now banned were plain vanilla derivatives like forwards or options and transactions with foreign banks are usually more complicated derivatives that exactly amount to risks that regulator’s intention was to minimize.

Finally, the long awaited law on ‘Peoples’ IPO’ was adopted but the programme was further delayed by the government.

All the reform efforts aim at protecting Kazakh capital market, which is understandable; however, they seem to be rather restrictive and possibly hampering development of such market.

The EBRD is committed to helping Kazakhstan to strengthen its financial sector, increase the efficiency and output of its power and energy industry, improve its infrastructure and unleash the vast potential of the country’s agribusiness. It seems that investments in relation to capital markets are not under current pipeline of projects.

In terms of financial markets, the main on-going reform is implementation of the Law on Minimization of Risks.

In terms of the legal framework of capital markets the priority is as follows: (i) implementation of the Law on Minimization of Risks by the NBK (especially to decrease its negative impact on the market); (ii) a clear legislative framework for derivatives and derivatives transactions could be adopted. The framework could explicitly recognize the possibility for close-out netting upon the liquidation or bankruptcy of one party. Additionally, clear and unequivocal statutory language could be adopted to recognize that derivatives trading under contracts, like ISDA's Master Agreements, will not be characterized as gambling under locally applicable law or regulation and will be enforced by Kazakh courts; (iii) legislation and regulations could be adopted to extend the list of securities available for repo. Repo transactions are generally permitted in Kazakhstan, though not directly regulated by legislation. Clear legal guidance through statutory regulation of repo transactions could also be developed.

Government efforts in regulating Kazakh capital market are fully noted, however, it seems that some of the rules and regulations may have different, than initially envisaged, effect leading to hampering of development of local capital market. Finally, legal uncertainty in relation to derivatives and repos could be addressed.

Corporate governance

The principal legislation governing corporate governance in Kazakhstan is the Law on Joint Stock Company No. 415-II, dated 13 May 2003, as amended (the “JSC Law”); the Law on banks and banking activities in the Republic of Kazakhstan No. 2444 as amended (Adopted on 31 of August 1995); and Decree No. 359 "Instruction on requirements to risk management and internal control systems in the second level banks", adopted by the Kazakh Supervisory Authority on 30 September 2005, regulating the organisation or risk management and internal control systems in banks.

The current Kazakh Corporate Governance Code (the “Code”) was developed in February 2005 by a working group led by the Financial Institutions Association in Kazakhstan, the Kazakhstan Stock Exchange and the Kazakh Supervisory Authority and was revised in 2007. The Code is voluntary and applies to Kazakhstan listed companies, which are recommended to incorporate the provisions of the
Code in their own codes and bylaws. While the majority of companies formally incorporate the Code in their corporate documents, in practice the implementation of the Code’s principles remains weak.

It appears that corporate governance framework in Kazakhstan does not provide clear guidance to the corporate bodies on how to manage companies effectively. The 2007 EBRD Corporate Governance Sector Assessment found several deficiencies in Kazakhstan’s corporate governance framework, in particular disclosure and transparency (see Chart 9). The corporate governance practices were found to lack in particular in speed of disclosure and institutional environment (redress).

Chart 9– Quality of the Corporate Governance Legislative Framework in Kazakhstan

Note: the extremity of each axis represents an ideal score, that is, legislation fully in line with the OECD Principles of Corporate Governance; the fuller the ‘web’, the better the quality of the legislative framework.

Source: EBRD Corporate Governance Assessment 2007
Currently, the Boards are not given a mandate to manage their companies, which is also coupled with the power to delegate responsibility as they see fit. Boards are not seen as supervisory body where the executive powers are assigned to a management body, instead the law appears to micromanage the distribution of powers between boards and management. Furthermore, broadly defined and enforceable director duties of loyalty and care do not exist in Kazakh Law. Boards that are suffering from ‘information overload’ regarding operational matters find it harder to concentrate on the major strategic issues. The JSC law does not clearly define the functions of the audit bodies, the audit committee’s oversight on the integrity of the financial statements is week and disclosure is inadequate.

As regards the corporate governance in banks, with the adoption of Decree No.359, the country has established a comprehensive regulatory framework on internal control and risk management in financial organisations. However, the Decree does not require the adoption of an explicit statement on risk appetite or the appointment of a chief risk officer, which are key elements to ensure proper analysis and objective management of risks. While Decree No.359 contains very detailed requirements on duties of control functions, it does not require the establishment of board audit committees that are independent from major shareholders and management. This issue has been recently regulated by the Law on Risk Minimisation enacted on 28 December 2011, which requires, among others, all JSCs to have a number of committees chaired by an independent director. This approach is questionable and might not provide the benefits that are hoped by the legislator. First of all, it is not clear why all JSCs should have a strategic planning committee, a personnel and remunerations committee, an internal audit committee and a social affairs committee. These committees might be appropriate for systemically important banks, but they are undoubtedly overburdening small JSCs. Moreover, the law still misses to regulate other key aspects relating to the board committees (such as functions, reporting lines, etc.), which are key in making sure committees are working properly. As a result, there are many doubts that the law will provide improvements in practice.

The issues outlined above are all relevant for the EBRD direct investments in Kazakh banks and companies. No investee companies’ corporate governance related suits have been reported, but the recent cases affecting BTA bank (former TuranAlem bank) and Alliance bank, which have corporate governance elements should be mentioned. The
banks’ unsound lending policies and non-transparent practices destabilized the banks and necessitated a takeover by Kazakhstan’s National Welfare Fund, Samruk-Kazyna.

The Legal Transition Team is currently discussing with the Kazakh authorities (i.e., the Ministry of Economic Development and Trade of the Republic of Kazakhstan and the National Bank) and other key stakeholders, with the collaboration of the IFC, a possible technical cooperation project aimed at improving the corporate governance framework in the country. In particular, the project would aim to revise the JSC Law and the Corporate Governance Code so to align them to best international and international standards, also addressing the shortcomings mentioned above.

The legal framework on director duties should be enhanced to include duties of care and loyalty. The law should avoid micromanaging the distribution of powers between boards and management and leave boards in charge of strategic issues with a stronger mandate to direct and supervise their companies. Disclosure to shareholders should be strengthened and the regulators should develop more effective monitoring system of such disclosure. There is no need for all JSCs to have independent directors and board committees, but there is much need to have board able to provide direction and oversight to their companies.

Overall, governance is not just about how many board committees and independent directors there are; it is about how well they are able to do their jobs. This is the key challenge that Kazakh authorities should be addressing.

Debt restructuring and bankruptcy

Law of the Republic of Kazakhstan dated 21 January 1997 No. 67-I On Bankruptcy (as amended, including most recently on 17 February 2012) (the “Bankruptcy Law”). The Bankruptcy Law only applies to legal entities, excluding ‘treasury enterprises and institutions’. Insolvency of natural persons is governed by the provisions of the Civil Code.

The EBRD’s 2009 insolvency sector assessment (the “Assessment”) concluded that the Bankruptcy Law did not meet international standards of insolvency law and that the legislation was weak in a number of important areas, including commencement of insolvency proceedings, protection of assets of the debtor’s estate, creditor rights and reorganisation (see Chart 11).

Chart 11 – Quality of insolvency legislation in Kazakhstan

Note: the extremity of each axis represents an ideal score, that is, legislation fully 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’s “Legislative Guidelines for Insolvency Law”; and others. The fuller the ‘web’, the better the quality of the legislative framework.

Source: EBRD Insolvency Sector Assessment 2009
In February 2012, Kazakhstan strengthened the possibility of rehabilitation in bankruptcy by introducing an accelerated rehabilitation proceeding and extending the maximum period of rehabilitation from three to five years. Previously no accelerated reorganisation procedure had existed, thus reducing the possibility of early intervention and rehabilitation. New requirements were added to the Bankruptcy Law regarding the court’s supervision of the rehabilitation proceeding and the powers of the court in the rehabilitation process were defined more clearly. A timeframe was also introduced for the adoption of a rehabilitation plan, which must be adopted within three months from the date of entry into force of a court’s decision on the implementation of a rehabilitation proceeding.

The 2012 amendments have also expanded the powers of an insolvency administrator and improved qualification requirements with the objective of creating a professional, regulated profession. Such changes build on amendments introduced by government decree dated 27 July 2011, which replaced the insolvency administrator licensing system with a simple registration system, created a web based register of insolvency administrators and gave certain powers to creditors to dismiss insolvency administrators. These 2011 and 2012 changes to the insolvency administrator profession are welcomed. The Assessment had identified qualifications and appointment of insolvency office holders as an area of significant weakness in the Bankruptcy Law.

Nevertheless areas of uncertainty in the Bankruptcy Law remain and further reforms are underway aimed at strengthening debtor and creditor rights. It is unclear whether these will ensure that the moratorium on legal proceedings, which arises upon filing by the debtor for bankruptcy, covers secured creditors. If secured creditors are not caught by the moratorium, this may seriously undermine chances of debtor rehabilitation, particularly where the debtor has granted security over key assets.

Another area identified by the EBRD Assessment relates to provisions protecting the debtor’s estate from preferential or undervalue transactions. The Assessment concluded these were vague and unsatisfactory. Further reform in this area may be advisable.

Insolvency law is cross-sector and affects all sectors where the EBRD has either an equity or a debt stake. It impacts on the willingness of creditors generally to invest in the country and therefore also to enter into joint ventures with the EBRD.

We understand that a draft law is being developed, which aims to further strengthen creditors’ and debtors’ rights in a balanced manner, simply the existing bankruptcy procedures and increase their transparency by improving administration of insolvency system and improving competence of insolvency administrators. In addition, a draft government decree has been submitted for approval aimed at ensuring maximum satisfaction of creditors’ claims through strengthening auction procedures for sale of assets. We understand that the Kazakhstan government has worked on recent reforms to the Bankruptcy Law independently.

The recent reforms to the Bankruptcy Law make significant improvements to the bankruptcy legislation. The focus now should be on effective implementation of the law. With the professionalization of insolvency administrators, further reforms to the Bankruptcy Law may be needed to provide insolvency administrators with the necessary powers to conduct investigations into the recovery of assets of the debtor and to obtain the co-operation of third parties in the insolvency process.

Overall, the Bankruptcy Law contains a framework for both reorganisation and bankruptcy (liquidation). Many reforms have been introduced recently aimed at strengthening reorganisation proceedings and raising the professional standards of insolvency administrators. It remains to be seen how effectively these will be implemented.