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European Bank
for Reconstruction and Development

Corporate Governance in Transition Economies

Tajikistan Country Report

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If you believe that the information has changed or is incorrect, please contact Gian Piero Cigna at cignag@ebrd.com

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This Report – along with all other country reports prepared within this initiative – is available at: <http://www.ebrd.com/what-we-do/sectors/legal-reform/corporate-governance/sector-assessment.html>

Foreword

As part of its Legal Transition Programme, the European Bank for Reconstruction and Development (“EBRD”) has been assessing the state of legal transition in its countries of operations. These assessments provide an analysis of the progress of reform and identify gaps and future reform needs, as well as strengths and opportunities.

In 2012, the Legal Transition team within the EBRD Office of the General Counsel (LTT) developed with the assistance of Nestor Advisors a methodology for assessing corporate governance frameworks and the governance practices in the EBRD countries of operations. This assessment was implemented in 2014-2015 (the “Assessment”).

The Assessment aims at measuring the state of play (status, gaps between local laws/regulations and international standards, effectiveness of implementation) in the area of corporate governance.

The Assessment is meant to provide for (i) a comparative analysis of both the quality and effectiveness of national corporate governance legislation (including voluntary codes); (ii) a basis to assess key corporate governance practices of companies against the national legislation; (iii) an understanding whether the legal framework is coupled with proper enforcement mechanisms (e.g., sanctions) and/or with authorities able to ensure proper implementation; (iv) a support to highlight which are the major weaknesses that should be tackled by companies and legislators for improving the national corporate governance framework; and (v) a tool which will enable the EBRD to establish “reference points” enabling comparison across countries.

This country report is part of a series of 34 country reports. A general report synthesising all countries will close the Assessment.

Methodology

This Assessment is based on a methodology designed to measure the quality of legislation in relation to best practices requirements and the effectiveness of its implementation as evidenced by companies' disclosure, also taking into consideration the capacity of the institutional framework (e.g., courts, regulators) to sustain quality governance. The analytical grid developed for assessing the governance framework is based on international recognised best-practice benchmarks (e.g., OECD Corporate Governance Principles, Development Financial Institutions, EBRD, IFC and World Bank ROSC governance methodologies). The methodology is applied identically across all the countries reviewed. The process for gathering, analysing and reporting information is applied identically for each of the countries assessed, which allows comparing countries to each other across a long a set of benchmarking points.

For the purpose of the Assessment, the corporate governance framework and the practices were divided in five key areas: (i) Structure and Functioning of the Board; (ii) Transparency and Disclosure of company information; (iii) Internal Control; (iv) Rights of Shareholders; and (v) Stakeholders and Institutions. Each of these key areas is further divided in sections (for instance, the area "Structure and Functioning of the Board" is divided in five sections: Board composition; Gender diversity at the board; Independent directors; Board effectiveness; and Responsibilities of the board). Each section is further divided in subsections (for instance, the section "Independent Directors" is divided in three subsections: "Requirement to have independent directors"; "Definition of Independence"; and "Disclosed practices").

The assessment started by sending a questionnaire to law firms, audit firms, national regulator(s), ten largest (listed) companies, and stock exchange(s) in each country. Questions were different according to the respondents, which were asked to provide information on the legislation and on how they believe the legislation is implemented.

Responses were assigned to the corresponding subsection(s) and validated by the EBRD corporate governance specialists by looking at the applicable framework and at the disclosure offered by the ten largest (listed) companies in each country. In this respect, the working hypothesis was that the ten largest listed companies are those offering the best disclosure in each country. As such, we presumed that when certain practices were not disclosed by them, they were unlikely to be disclosed by smaller or unlisted companies. The ten largest companies were identified according to their market capitalisation. When a country did not have a stock exchange, there were less than ten listed issuers or there were no data on capitalisation of issuers, the ten largest companies were identified according to their revenues and size of the labour force. In case the largest companies were mostly of one sector (e.g., financial institutions), then the sample of ten companies was corrected to reflect other sectors of the economy.

The validation of responses was undertaken by the corporate governance specialists within the Legal Transition Team through desktop research. This research was conducted both on legislation and on the practices disclosed by the largest (listed) companies (e.g., companies' websites, annual reports, stock exchanges database etc.). In addition, the relevant reports by international financial institutions (e.g., IMF, World Bank, IFC, Transparency International, etc.) were analysed and taken into consideration. Answers received by respondents that were not grounded by specific references to legislation or consistent with the disclosed practices were not taken into consideration.

Following the validation process, each subsection was compiled by adding specific references to legislation and practices. Conclusions were then formulated for each subsection, each rated as per their adherence to international governance standards. The score ranges from 1 (very weak) to 5 (strong). The rating for each section was then calculated by averaging the ratings of the subsections.

Because understanding corporate governance requires a "holistic perspective", where each component needs to have a place in the overall picture – pretty much like a puzzle - in case one of the subsection was rated "weak" or "very weak", the resulting average was decreased by 0.2; in case

more than one subsection was rated “weak” or “very weak”, the resulting average was decreased by 0.5. This is because if just one component is not fitting well with the others, then all others are weakened. Similarly, the overall strength diminishes if there are more weak components.

Conversely, in order for the framework to be strong, all components need to be well fitting with each other. Hence, in case all subsections were scored “moderately strong” or “strong”, then the resulting average was increased by 0.5. However, this “positive” adjustment was used with some care as the assessment looked at the top ten largest companies in the country, hence findings tended to be often overly optimistic.

Key areas were then rated according to the same criteria.

The ratings are presented through the colours detailed in the box below and they demonstrate the adequacy or need of reform in respect to each governance area and section.

Rating:

“Strong to very strong” (DARK GREEN) - The corporate governance framework / related practices of companies are fit-for-purpose and consistent with best practice.

“Moderately strong” (LIGHT GREEN) - Most of the corporate governance framework / related practices of companies are fit-for-purpose but further reform is needed on some aspects.

“Fair” (YELLOW) - The corporate governance framework / related practices of companies present some elements of good practice, but there are a few critical issues suggesting that overall the system should be assessed with a view of reform.

“Weak” (ORANGE) - The corporate governance framework / related practices of companies may present few elements of good practice, but overall the system is in need of reform.

“Very weak” (RED) - The corporate governance framework / related practices of companies present significant risks and the system is in need of significant reform.

We believe corporate governance cannot be captured and measured simply by numerical values. Hence, alongside the “quantitative” assessment obtained according to the methodology described above, a “qualitative” assessment was also undertaken, by classifying our findings for each section as “strengths” and “weaknesses”. Because understanding corporate governance requires a “holistic perspective”, when the “quantitative” assessment was finalised, the assessment team compared it with the “qualitative” assessment, and when any inconsistency (i.e. material weaknesses or strengths) was noticed, the average scores of the sections were adjusted by up to ± 0.5 .

A preliminary version of the Assessment was made public for consultation. The comments and corrections received during the process were analysed by the corporate governance specialists. When confirmed, the corrections were reflected in the final ratings and in this Assessment.

Overview

Legislative framework

The primary sources of corporate governance legislation in Tajikistan are the Joint Stock Companies Law, the Auditors Activities Law, the Securities Market Law and the Banking Activity Law. The only endorsed Corporate Governance Code is the “Principles of Corporate Governance in Commercial Banks and other Credit Institutions, Licensed by the National Bank of Tajikistan”, which were adopted in 2005. The Principles include a list of corporate governance recommendations for Tajik banks. Although the Principles are approved by the National Bank of Tajikistan and on the face appear to be mandatory, their language is vague and do not seem to be well implemented in practice.

Structure and functioning of the board

Companies with up to 50 shareholders can choose to be organised under either a two-tier or a one-tier system. Companies with more than 50 shareholders are required to establish a supervisory board. The law does not assign to the board a clear authority to approve the company’s risk profile and to appoint/dismiss executives. Most of these key functions are retained by the general shareholders’ meeting. It was not possible to assess if boards include a diversified mix of skills as very few companies disclose the qualification of their board members. There is no requirement to have independent directors in boards. Only two banks among the ten largest listed companies disclose having one (and only one) in their boards. Gender diversity at the board is also very limited.

Transparency and Disclosure

Both financial and non-financial disclosure is poor. The requirements by law are minimal, but still they do not seem to be well implemented. There is no functioning stock exchange in Tajikistan, hence the expectation for high quality disclosure is limited. However, notwithstanding the absence of a stock exchange, it is expected that banks and state owned enterprises would provide some extensive disclosure on their organisation and activities, due to the high number of stakeholders that these types of companies have. Only financial disclosure seems to have reached – at least on paper – an acceptable level, but only by banks.

Internal Control

The internal control in companies does not look to be well developed. The law provides some regulation about internal audit, which seems to go in the right direction, but it was not possible to understand how it is implemented in practice. Only banks are required to create an audit committee at the board level, however its composition is not defined and there is no requirement that it should be made of independent and qualified directors. The law requires that the joint stock companies set a “*revision commission*”, which is appointed by the general shareholders’ meeting. We have doubts about the effectiveness of this body. The lack of independent audit committee and the unclear role of the revision commission are major issues.

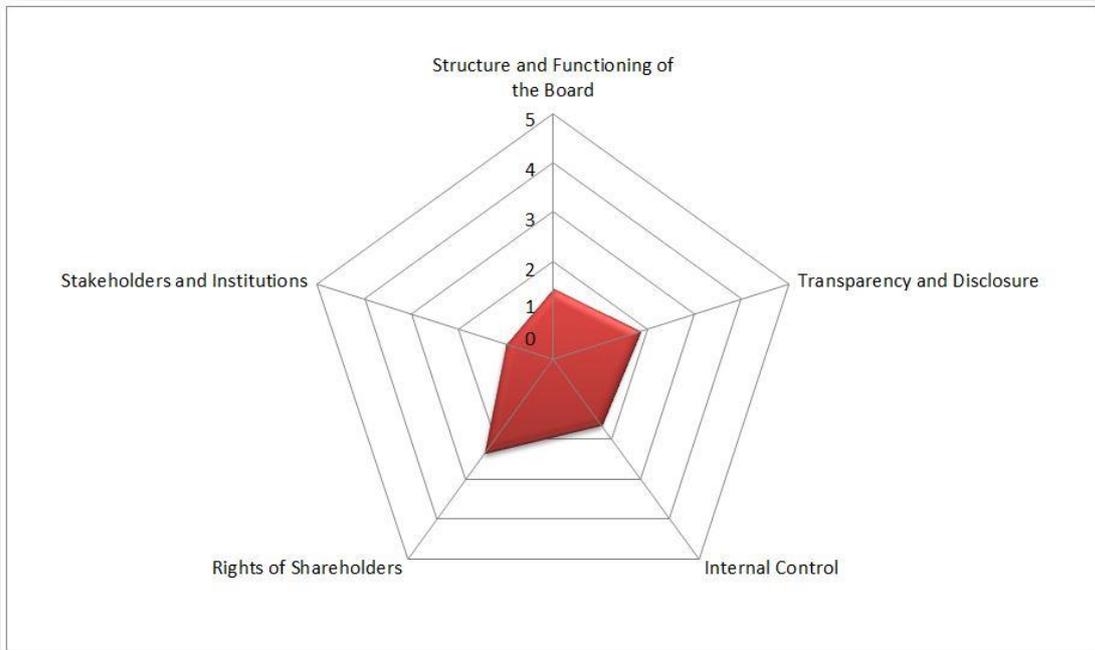
Rights of Shareholders

Shareholders have a number of rights granted by law, however it is not clear how these rights are implemented in practice. Cumulative voting is required for companies with more than 500 shareholders; other companies can adopt it if foreseen by the Articles. Minority shareholders can call a general shareholders’ meeting and nominate directors, but it is not clear if shareholders can access all necessary information in due time to allow them to take informed decisions. The extent to which shareholders can in practice have access to their rights during the general shareholders’ meeting is also unclear. Pre-emptive rights are provided by law, but it appears to be quite easy to grant a waiver.

Stakeholders and Institutions

There are very few active players and very little pressure for the promotion of good corporate governance in the country. International organisations’ indicators show a framework under urgent need of reform where corruption is perceived as a critical problem.

Corporate Governance Legislation and Practices in Tajikistan



Source: EBRD, Corporate Governance Assessment 2016

Note: The extremity of each axis represents an ideal score, i.e., corresponding to the standards set forth in best practices and international standards (e.g., OECD Corporate Governance Principles). The fuller the 'web', the closer the corporate governance legislation and practices of the country approximates best practices.

Key: Very weak: 1 / Weak: 2 / Fair: 3 / Moderately Strong: 4 / Strong to very strong: 5

Key Areas and Rating	Strengths and Weaknesses
<p>1. Structure and Functioning of the Board Weak</p>	<p>Companies with up to 50 shareholders can chose to be organised under either a two-tier or a one-tier system. Companies with more than 50 shareholders are required to establish a supervisory board. Six of the ten largest companies are organised under a two-tier system; other two are directly controlled by the Government of Tajikistan; and two others do not disclose this information.</p> <p>The boards of the ten largest companies are generally small. Gender diversity at the board is very limited. It was not possible to assess if boards include a diversified mix of skills as very few companies disclose the qualification of board members.</p> <p>The law does not assign to the board a clear authority to approve the risk profile of the company and to appoint/dismiss executives. Most of these key functions are retained by the general shareholders’ meeting (GSM). This is unusual and undermines the role of the board.</p> <p>There is no established practice on board evaluation and no requirement to have a corporate secretary.</p> <p>There is no requirement to have independent directors in boards. Only two banks among the ten largest listed companies disclose having one (and only one) in their boards.</p> <p>Liability of board members and conflicts of interest are regulated by law.</p>
<p>1.1. Board Composition Weak</p>	<p>Strengths:</p> <ul style="list-style-type: none"> Legal entities cannot serve as board members. In banks, the law provides for qualification requirements for board members. The Banking Law includes basic “fit and proper” criteria for supervisory board members. According to the law, all supervisory board members must have university education, commercial competence, reliability and credibility. At least a quarter of the supervisory board members must have banking experience. Only three banks among the ten largest companies disclose the board members’ qualifications and they seem to comply with the law requirement. Two out of these three banks that disclosed the board members’ qualifications and appear to have at least one board member with some auditing/accounting/risk education or experience. <p>Weaknesses:</p> <ul style="list-style-type: none"> Companies with up to 50 shareholders can chose either a two-tier or a one-tier system. Companies with more than 50 shareholders are required to establish a supervisory board. As a general rule, the authority to appoint, dismiss and oversee the executive body is assigned to the GSM, unless the Articles provides otherwise. This is not ideal. The law provides for the minimum size of the board based the number of shareholders (i.e, at least 5 members, if the company has more than 500 shareholders; and at least 7 members if it has more than 2000 shareholders). We are not sure this is the right solution. Boards of the largest companies are generally small (average 5.4) and evidence has shown that smaller boards tend to perform better, provided that they have the necessary mix of skills and support (e.g., corporate secretary), however, this does not seem to be the case in Tajikistan. The law does not require companies or banks to have independent directors on board. From the information published online, it appears that only two banks - out of five banks that disclose information on their board members - declare having one independent board member. In companies, the law provides the possibility to establish committees. However, the requirement is vague. There are no criteria for the committees’ composition. Banks are required to establish an audit committee appointed by and reporting to the supervisory board. The committee can include “outsiders” (i.e., non-board members). Only one company (a bank) disclosed on its website that an audit committee was established, though its composition is not disclosed.
<p>1.2. Gender Diversity at the Board (6.86%) Very weak</p>	<ul style="list-style-type: none"> Only five companies (all banks) disclose the board composition. It appears that there are women in two of the boards: one in each board (average 17.4%). In total, there are 2 women among 27 board members with an average of 6.86%.
<p>1.3. Independent Directors Very Weak</p>	<p>Weaknesses:</p> <ul style="list-style-type: none"> The law only mentions independent directors when regulating the approval of related party transactions, but there are no specific requirements to have independent directors on board. The law includes a definition of independent director in case transactions with conflicts of interests are discussed at the board, however the definition is not comprehensive. Further, the definition is only made up of few negative criteria defining “non-affiliation”. It should be pointed out that the concepts of “non-affiliation” and “independence” are different. While non-affiliation can be established by negative criteria, independence necessarily needs objectivity of mind and character, which is a positive character that should be demonstrated, disclosed and explained in practice Only two out of five banks that disclose information on their board members disclose having one independent board member each. There are no requirements for independent directors in committees.

Key Areas and Rating	Strengths and Weaknesses
<p>1.4. Board Effectiveness Weak</p>	<p>Strengths:</p> <ul style="list-style-type: none"> The law assigns to the board the authority to discuss and approve the strategy and budget of the company. <p>Weaknesses:</p> <ul style="list-style-type: none"> The law does not assign to the board a clear authority to approve the company's risk profile/appetite and to appoint/dismiss executives. Most of these key functions are retained by the general shareholders meeting. This is unusual and undermines the role of the board. There is no established practice on board evaluation. No company discloses undertaking it. The law does not require companies to have a corporate secretary and no company discloses having this function in place. No company discloses the number of board or committee meetings per year and no company discloses their activities. It is not possible to understand if the board is playing a strategic role in the company.
<p>1.5. Responsibilities of the Board Fair</p>	<p>Strengths:</p> <ul style="list-style-type: none"> Liability of board members and conflicts of interest are regulated by law. The law provides for joint liability of board members, unless they voted against the decision. The law regulates conflict of interest and requires that independent directors must participate in decisions on interested transactions, however it appears that the presence of independent directors in boards is extremely limited. <p>Weaknesses:</p> <ul style="list-style-type: none"> As mentioned above, the law does not clearly confer to the board some of its key functions. The law requires that board members act with due diligence, in good faith, and in the best interest of the company and its shareholders. However, it appears that there is no relevant court practice on the subject.

Key Areas and Rating	Strengths and Weaknesses
<p>2. Transparency and Disclosure Weak</p>	<p>Both financial and non-financial disclosure is poor. The requirements by law are minimal, but still they do not seem to be well implemented. There is no functioning stock exchange in Tajikistan, hence the expectation for high quality disclosure is limited. However, notwithstanding the absence of a stock exchange, it is expected that banks and state owned enterprises would provide some extensive disclosure on their organisation and activities, due to the number of stakeholders that these types of companies have.</p> <p>Only financial disclosure seems to have reached – at least on paper – an acceptable level, but only by banks.</p> <p>It is not clear how the independence of the external auditors is assessed in practice.</p>
<p>2.1. Non-Financial Information Disclosure Very Weak</p>	<p>Strengths:</p> <ul style="list-style-type: none"> The law requires open joint stock companies and public interest entities to prepare and publish on financial newspapers their annual reports, which should include financial statements and some non-financial information. The law requires significant shareholders to be disclosed. Five companies among the ten largest (three banks and two SOEs) disclose information on their shareholders which appear to be the beneficial owners, being either natural persons or the State. <p>Weaknesses:</p> <ul style="list-style-type: none"> None of the ten largest companies disclose any information on the company's strategy in the annual reports. We could not check the disclosure of the annual reports on the newspapers, but we have seen that none of the ten largest companies post their annual reports or their financial statements online. Only five companies posted the auditor's opinion to their websites. Still, other financial and non-financial information is not disclosed. It appears that on the websites of the ten largest companies, information is incomplete and difficult to find. Only three of the ten largest companies (two of them are banks) posted their Articles of Association on their websites. Five out of the ten largest companies (these are all banks) disclose the names of their directors; three of them (again banks) also posted short qualifications description on their websites. None of the ten largest companies disclose information on their committees and their composition. Only one bank disclosed on the website that the audit committee was established, however there is no information on its composition and activities. None of the ten largest companies disclose the activities of the board or the number of board meetings per year. No company provides up to date information on their shares and capital on their websites. There is no specific requirement to disclose the minutes of the general shareholders meeting, and no company appear to disclose them. None of the ten largest companies discloses transactions in company's shares.
<p>2.2. Financial Information Disclosure Weak</p>	<p>Strengths:</p> <ul style="list-style-type: none"> The Law on Audit Activity requires public interest entities to file financial accounts in accordance with the IFRS. <p>Weaknesses:</p> <ul style="list-style-type: none"> Only five banks among the ten largest companies seem to comply and disclose their financial statements in line with the IFRS. A recent IMF Financial System Stability Assessment points out that "accounting standards are still a hybrid of IFRS and pre-independence/Soviet accounting. There is no central registry where companies' financial statements are deposited and can be examined".
<p>2.3. Reporting to the Market and to Shareholders Weak</p>	<p>Strengths:</p> <ul style="list-style-type: none"> There is no functioning stock exchange in Tajikistan, hence the expectation for reporting to the market is limited. However, notwithstanding the absence of a stock exchange, it was expected that banks and state owned enterprises would provide extensive disclosure, due to the number of stakeholders. <p>Weaknesses:</p> <ul style="list-style-type: none"> None of the ten largest companies publish its annual reports and financial statements online. Only five companies (all banks) posted the auditor's opinion on their websites. The Code on Administrative Offences foresees that a company can be fined for non-publishing its annual report. The fine seems to be very low and not enough to discourage breaches. It appears that listed companies are not required to make timely disclosures when significant price sensitive events occur, however this is only relatively important, as there is no functioning stock exchange at the moment.

Key Areas and Rating	Strengths and Weaknesses
2.4. Disclosure on the External Audit Fair	<p>Strengths:</p> <ul style="list-style-type: none">• Financial statements of public interest entities must be audited by an independent auditor on an annual basis.• The general shareholders' meeting has the exclusive authority to appoint the auditor.• The provision of non-auditing services by the external auditor is regulated by the law. The law lists the non-auditing services which auditors can provide. Auditors are restricted to provide non-audited services to the audited entity and to entities where non-audited services were provided in the two preceding years. <p>Weaknesses:</p> <ul style="list-style-type: none">• Only five companies (all banks) disclosed the name of their auditors and the auditors' opinion. All auditors are international audit firms.• The law requires the external auditor to be independent, but it is not clear who should run the "independence test". The Principles for Banks are also silent on this issue.

Key Areas and Rating	Strengths and Weaknesses
<p>3. Internal Control Weak</p>	<p><i>The internal control in companies does not look to be well developed.</i></p> <p><i>The law provides some regulation about internal audit, which seems to go in the right direction, but it was not possible to understand how it is implemented in practice.</i></p> <p><i>Only banks are required to create an audit committee at the board level, however its composition is not defined and there is no requirement that it should be made of independent and qualified directors.</i></p> <p><i>The lack of independent audit committee and the unclear role of the “revision commission” are major issues raise doubts about the independence of the internal auditor.</i></p> <p><i>It seems that there is a quite detailed legal framework on conflicts of interest and related party transactions, however it is not clear how this is implemented in practice as disclosure on these issues is minimal and we could not find any evidence of enforcement.</i></p>
<p>3.1. Quality of the Internal Control Framework Very Weak</p>	<p>Strengths:</p> <ul style="list-style-type: none"> • <i>Public interest entities are required to establish an internal audit function or to outsource this function to an auditor.</i> • <i>The law provides for qualification requirements for the head of the internal audit.</i> • <i>Banks are required to establish an audit committee appointed by and reporting to the board.</i> <p>Weaknesses:</p> <ul style="list-style-type: none"> • <i>There are no requirements on qualification and independence of members of members of the audit committee. The committee can also include outsiders (i.e., non-board members).</i> • <i>Only one bank - among the ten largest companies in the country - disclosed having established an audit committee, though its composition is not disclosed.</i> • <i>The law does not assign any authority to the audit committee for the appointment and dismissal of the head of the internal audit. Further, because of the limited presence of independent directors in boards, the independence of the internal auditors should be carefully assessed.</i> • <i>The law requires that the joint stock companies should set a “revision commission”, which is appointed by the general shareholders’ meeting. Its competence should be foreseen by the Articles of Association, and generally includes examination of the company’s financial documentation. According to the law, the revision commission conducts its inspections at least annually and any time at its own discretion. Inspection can also be requested by the shareholder(s) who own at least 10 % of voting rights. The revision commission can request an extraordinary shareholders meeting to be called. None of the ten companies on our list disclose having a revision commission. We have doubts about the effectiveness of this body.</i> • <i>No company among the ten largest discloses having established an internal audit department.</i> • <i>Banks are not required to establish a standalone compliance function.</i> • <i>None of the ten largest companies discloses having code of ethics in place.</i> • <i>The law requires that companies to establish a revision commission, appointed by the GSM. We have doubts about the effectiveness of this body.</i> • <i>The Tajik legal framework does not provide for any specific protection for whistle-blowers.</i>
<p>3.2. Quality of Internal and External Audit Weak</p>	<p>Strengths:</p> <ul style="list-style-type: none"> • <i>As mentioned above, public interest entities are required to establish an internal audit function or to outsource this function to an auditor.</i> • <i>Financial statements of public interest entities must be audited by an independent auditor on an annual basis.</i> • <i>The Law on Audit Activity requires auditor rotation after three years. All five banks that disclose the name of their auditors seem to comply with this requirement.</i> • <i>The provision of non-auditing services by the external auditor is regulated by the law. The law lists the non-auditing services which auditors can provide. Auditors are restricted to provide non-audited services to the audited entity and to entities where non-audited services were provided in the two preceding years.</i> <p>Weaknesses:</p> <ul style="list-style-type: none"> • <i>The law requires the external auditor to be independent, but it is not clear who should run the “independence test”.</i> • <i>There is no Institute of Internal Auditors in the country.</i> • <i>A recent IMF Financial System Stability Assessment points out that “The auditing profession in Tajikistan is still relatively young. The recently created Association of Auidtors has no role in training and quality control of the profession. Practical experience requirements for banks auditors have been relaxed”</i>

Key Areas and Rating	Strengths and Weaknesses
<p>3.3. Functioning and Independence of the Audit Committee Very Weak</p>	<p>Strengths:</p> <ul style="list-style-type: none"> Banks are required to establish an audit committee appointed by and reporting to the board. <p>Weaknesses:</p> <ul style="list-style-type: none"> There is no qualification or independence requirement for members of the audit committee. The law only refers to revision commission, and provides that it should carry out its inspections at least annually. The Principles do not appear to incorporate a required frequency of audit committee meetings (although they do mention audit committees specifically). We have reservations about the possibility of “outsiders” being audit committee members. We believe it is important that the audit committee include only board members if the functions delegated to the committee are typical board functions. Secondly, it is essential that those members sitting in the committee and recommending specific actions to the board follow up on such recommendations and vote on the committee’s recommendations at the board meeting, therefore reinforcing their positions and the board’s “objective judgement”. Further, we believe that audit committee members should have a full vision of the business of the company in order to express their determinations – while outsiders might only have a partial understanding. Finally, committees that include outsiders might create problems with confidentiality and accountability issues, since such “outsiders” might not be bound by duties of loyalty and care required to board members. While it is legitimate that the audit committee might need external advice or expertise on specific issues, it should be able to request such advice, but it should not allow the advisor(s) to replace the committee in its determinations and recommendations. Only one bank - among the ten largest companies in the country - disclosed having established an audit committee, though its composition is not disclosed. No company discloses the number of audit committee’s or control commission’s meetings per year or its activities, hence it is not possible to understand if the audit committee play a strategic role in the company.
<p>3.4. Control over Related Party Transactions and Conflict of Interest Weak</p>	<p>Strengths:</p> <ul style="list-style-type: none"> Related party transactions are regulated by law. Interested parties are required to inform the board about their interests. Related party transactions are approved by the board or general shareholders meeting. <p>Weaknesses:</p> <ul style="list-style-type: none"> The lack of independent directors in boards might undermine the objective board oversight over related party transactions and conflicts of interests.

Key Areas and Rating	Strengths and Weaknesses
<p>4. Rights of Shareholders Fair</p>	<p>Shareholders have a number of rights granted by law, however it is not clear how these rights are implemented in practice.</p> <p>Cumulative voting is required for companies with more than 500 shareholders; other companies can use it if foreseen by the Articles. Minority shareholders can call a general shareholders' meeting and nominate directors, but it is not clear if shareholders can access all necessary information in due time to allow them to take informed decisions. The extent to which shareholders can in practice have access to their rights during the GSM is also unclear.</p> <p>Pre-emptive rights are provided by law, but it appears to be quite easy to grant a waiver.</p> <p>Insider trading is prohibited by law but the fines seem to be inadequate to discourage breaches. Enforcement also appears to be very limited. Regulation and disclosure on self-dealing also needs to be improved.</p> <p>The framework and enforceability of shareholders agreement is not clear.</p> <p>The shareholding registration framework seems adequate, but we could not access any information on how the system is implemented in practice.</p>
<p>4.1. General Shareholders' Meeting (GSM) Fair</p>	<p>Strengths:</p> <ul style="list-style-type: none"> Shareholders representing 10% of the capital can call a GSM. Shareholders representing 2% of the capital can propose new items to the agenda and nominate directors. Cumulative voting is required for companies with more than 500 shareholders. Other companies can use it if foreseen by the Articles. One share-one vote applies. The general shareholders' meeting is the exclusive body authorised to approve the distribution of dividends. <p>Weaknesses:</p> <ul style="list-style-type: none"> The general shareholders' meeting notice and agenda should be sent to shareholders at least 20 days before the meeting, which might not be enough to ensure informed participation. The notice must include information where the relevant documents can be found. The following documents have to be made available: financial statements and the independent auditor's opinion, report of the revision commission, information on the board candidates, drafts of the resolutions submitted by the management board, the supervisory board, the shareholders or an auditor (if approval of such resolutions is required by law). No company appear to publish notifications and documentation for the general shareholders' meeting on their websites. No company seem to publish notifications and materials on their websites. The law is silent on whether shareholders can submit questions in advance and ask them during the GSM.
<p>4.2. Protection against Insider Trading and Self-dealing Weak</p>	<p>Strengths:</p> <ul style="list-style-type: none"> Insider trading and market abuse are regulated by law. <p>Weaknesses:</p> <ul style="list-style-type: none"> Sanctions against insider trading are very low, not appropriate to deter behaviours. Since the stock market is not developed in Tajikistan, many issues on market manipulation are not regulated. Legislation on insider trading does not appear to be enforced in practice. The lack of independent directors does not allow to ensure that related party transactions and conflicts of interest are objectively dealt.
<p>4.3. Minority Shareholders Protection and Shareholders' Access to Information Fair/Weak</p>	<p>Strengths:</p> <ul style="list-style-type: none"> Cumulative voting is required for companies with more than 500 shareholders. Other companies can use it if foreseen by the Articles. Shareholders owning 10% or more of voting shares can start a derivative claim, however they do not seem to be used in practice. By law, shareholders have the right to access basic corporate documentation. ¾ majority at the shareholders meeting is required for major corporate changes (the blocking minority shareholding for major corporate changes is 25%+1). <p>Weaknesses:</p> <ul style="list-style-type: none"> None of the ten largest companies publishes the annual reports or financial statements online. Only five banks posted the auditor's opinion to their websites. Other financial and non-financial information is not disclosed. Pre-emptive rights are granted in all cases of capital increase, however they can be waived by a simple majority vote at the GSM. Given the concentrated ownership in the country, this is a major weakness.

Key Areas and Rating	Strengths and Weaknesses
4.4. Registration of Shareholdings Fair	Strengths: <ul style="list-style-type: none">• Free transferability of shares cannot be restricted.• Open joint stock companies should have their shares registered at an independent registry institution. Weaknesses: <ul style="list-style-type: none">• It is not clear if shareholders agreements are enforceable, since they are very rare and we are not aware of any case law on the matter.

Key Areas and Rating	Strengths and Weaknesses
<p>5. Stakeholders and Institutions Very Weak</p>	<p>There seems to be little pressure for the promotion of good corporate governance in the country.</p> <p>There is no functioning stock exchange, hence the country is not expected to have a corporate governance code for listed companies. A set of principles highlighting best practices for banks exists and it has been endorsed by the National Bank of Tajikistan, Undoubtedly, the Principles are a step in the right direction, but they should be better implemented.</p> <p>Inconsistencies exist among different laws.</p> <p>Case law is not available, and the perception by the international community is that reform is needed.</p> <p>Corruption is perceived as a key problem.</p>
<p>5.1. Corporate Governance Structure and Institutions Very Weak</p>	<p>Weaknesses:</p> <ul style="list-style-type: none"> • There is no stock exchange in the country. • International audit and law firms have a limited presence in the country. • International rating agencies are not active in the country. • There are no corporate governance training providers for directors. • A recent IMF Financial System Stability Assessment points out that “the judiciary is not used by the banks to support contract enforcement, due to excessive uncertainty about duration and outcome of lawsuits”. • The same IMF Assessment points out that “enforcement of prudential standards is weak, in particular with regard to the large and systemically important banks, which might be due to the National Bank’ insufficient independence”
<p>5.2. Corporate Governance Code Weak</p>	<p>Strengths:</p> <ul style="list-style-type: none"> • The only corporate governance code in Tajikistan appears to be the “Principles of Corporate Governance in Commercial Banks and other Credit Institutions, Licensed by the National Bank of Tajikistan” adopted in 2005. Although the Principles are approved by the National Bank, their language is vague and do not expressly state that they are mandatory or establish any compliance mechanism. <p>Weaknesses:</p> <ul style="list-style-type: none"> • There is no evidence of implementation of the Principles. • The Principles were not revised since their adoption. • There is no case law referring to the Principles.
<p>5.3. Institutional Environment Very Weak</p>	<p>Weaknesses:</p> <ul style="list-style-type: none"> • It appears that there are many inconsistencies in corporate governance legislation and some key corporate governance issues are not regulated. • Case law is not aggregated and is not easily accessible by lawyers in the country. The 2015 EBRD Assessment on Accessibility of Court Decisions noted a very low level of court decisions accessibility, reportedly caused by inadequate legal framework, which in itself is a basic requirement for adequate functioning of the court system. • There are very few active players for the promotion of good corporate governance in the country. • International organisations’ indicators show a framework under urgent need of reform where corruption is perceived as a critical problem.