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European Bank
for Reconstruction and Development

Corporate Governance in Transition Economies

Kosovo Country Report

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The contents of this publication reflect the opinions of individual authors and do not necessarily reflect the views of the EBRD.

The report is based on information available at the end of 2015.

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 Kosovo are the Law on Business Organizations, the Law on Banks, the Law on Publicly Owned Enterprises, and the Law on Accounting, Financial Reporting and Audit. A Corporate Governance Code for Publicly Owned Enterprises (POEs) was enacted in 2010 and reviewed in 2014. The Code represents a model corporate governance code that all POEs are required to adopt. The Unit for Monitoring POEs in the Ministry of Economic Development is in charge for monitoring the Code's implementation by POEs.

Structure and Functioning of the Board

Companies and banks in Kosovo are organised under a one-tier system. Boards appear to be relatively small with the average board size being six members. Legal entities cannot serve as board members. In banks and public owned enterprise (POEs), the law requires separation between the positions of CEO and board chair. This is not required for other companies. The law does not expressly assign the boards of companies with the authority to approve the company's strategy, budget and risk profile. It was not possible to assess if boards have a diversified mix of skills as only three companies (two banks and one POE) disclose the qualifications of their board members. It should be mentioned that there is no functioning stock exchange in the country, hence disclosure requirements are limited. However, because there are three POEs and five banks among the ten largest companies, from them we expect higher disclosure standards.

The law requires large companies and banks to have independent directors, but in practice no company among the ten largest companies disclosed having any. The definition of independence is provided in three different laws and regulations, which does not help clarity. Gender diversity at the board appears to be limited. The law requires banks and POEs to have an audit committee. In banks, the audit committee is to be made of a majority of non-executive board members and have at least one "outsider" (i.e., non-board member) experienced in accounting or auditing. In POEs, the audit committee must be made only of non-executive directors and at least two members must have adequate knowledge of accounting. The three POEs and five banks among the ten largest companies appear to have established audit committees. Other committees are not common. There is no consolidated practice of board evaluation while only three companies (all POEs) disclosed having a corporate secretary in place. It was not possible to assess the activities of board and committees as this information is not disclosed. Liability of board members and managing directors, fiduciary duties and conflicts of interest are detailed in the law.

Transparency and Disclosure

Banks and POEs are required to publish online their annual reports, which should include financial and non-financial information. This requirement seems to be implemented, but there is room for improvement in the quality of non-financial information. Financial statements must be prepared in line with IFRS and the large majority of largest companies appear to comply. Banks, large and medium size companies and POEs are required to appoint an independent external auditor and the vast majority of the largest companies appear to comply. All companies are required to disclose their financial statements, but it appears that only a few major companies comply. Only in banks and POEs, the provision of non-auditing services by the external auditor is prohibited. Other companies are not subject to restriction. Disclosure on this issue is limited.

Internal Control

Banks and POEs are required to establish an internal audit function, reporting to the audit committee and the majority of the largest companies appear to comply. There is no specific requirement for banks to have a standalone compliance function. Banks and POEs are required to establish audit committees and eight out of ten largest companies disclosed having established one. Only in POEs, the audit committee must be made only of board members. In banks at least one non-board member – with auditing qualification - must be member of the audit committee. There is no requirement that the audit committee is to be made of independent board members with due qualifications. External auditors for banks and POEs are not allowed to provide non-auditing services. In banks, rotation of auditors can be required by CBK. Related party transactions are regulated only for banks. The Corporate Governance Code recommends POEs to adopt a code of ethics

including whistle-blower protection program, however at the moment there is no comprehensive whistle blowing regulation in place.

Rights of Shareholders

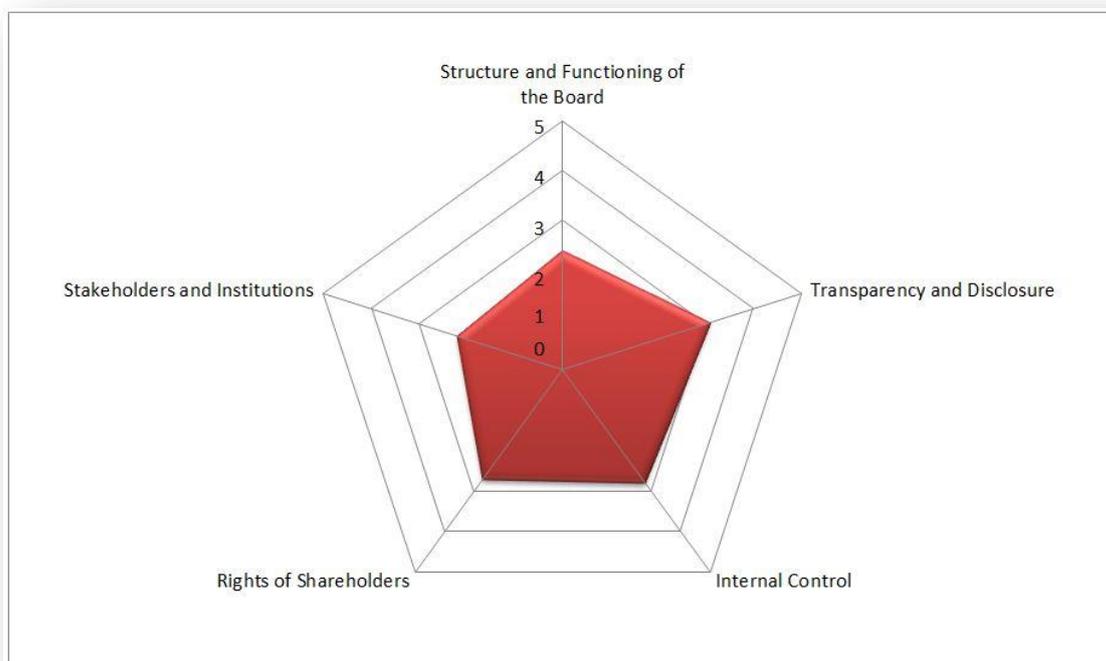
Basic shareholder rights are regulated by law. Cumulative voting is provided by law, however the Articles can provide otherwise. Shareholders representing at least 10% of the shares can call a GSM, nominate board members and place items on the GSM agenda. Shareholders have the right to access key corporate documentation and enjoy pre-emptive rights in case of capital increase.

Shares grant the same voting rights to shareholders, but the Articles can provide different voting rights. There are no qualified majority requirements for major corporate changes. Insider trading is prohibited but the level of enforcement is not clear. The law requires the registration of shareholding and any significant shareholding variation must be disclosed.

Stakeholders and Institutions

Kosovo does not have a functioning stock exchange. Rulings of regulatory agencies are documented but not easily accessible. International audit firms have a significant presence in the country; however the presence of international law firms is limited. International rating agencies are not active in the country. The Code of Corporate Governance for POEs is updated regularly with the latest version being issued in 2014 and provides a comprehensive corporate governance framework for POEs. The Unit for Monitoring POEs in the Ministry of Economic Development appears to monitor the implementation of the Code. Indicators by international organisations show a framework where corruption is still perceived as a critical problem.

Corporate Governance Legislation and Practices in Kosovo



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 Fair/Weak</p>	<p><i>Companies and banks in Kosovo are organised under a one-tier system. Boards appear to be relatively small with the average board size being six members. Legal entities cannot serve as board members. In banks and public owned enterprise (POEs), the law requires separation between the positions of CEO and board chair. This is not required for other companies.</i></p> <p><i>The law does not expressly assign the boards of companies with the authority to approve the company's strategy, budget and risk profile.</i></p> <p><i>It was not possible to assess if boards have a diversified mix of skills as only three companies (two banks and one POE) disclose the qualifications of their board members. It should be mentioned that there is no functioning stock exchange in the country, hence disclosure requirements are limited. However, because there are three POEs and five banks among the ten largest companies, from them we expect higher disclosure standards.</i></p> <p><i>The law requires large companies and banks to have independent directors, but in practice no company among the ten largest companies disclosed having any. The definition of independence is provided in three different laws and regulations, which does not help clarity.</i></p> <p><i>Gender diversity at the board appears to be limited.</i></p> <p><i>The law requires banks and POEs to have an audit committee. In banks, the audit committee is to be made of a majority of non-executive board members and have at least one "outsider" (i.e., non-board member) experienced in accounting or auditing. In POEs, the audit committee must be made only of non-executive directors and at least two members must have adequate knowledge of accounting. The three POEs and five banks among the ten largest companies appear to have established audit committees. Other committees are not common.</i></p> <p><i>There is no consolidated practice of board evaluation while only three companies (all POEs) disclosed having a corporate secretary in place. It was not possible to assess the activities of board and committees as this information is not disclosed.</i></p> <p><i>Liability of board members and managing directors, fiduciary duties and conflicts of interest are detailed in the law.</i></p>
<p>1.1. Board Composition Fair</p>	<p>Strengths:</p> <ul style="list-style-type: none"> • <i>Legal entities cannot serve as board members.</i> • <i>Boards appear to be relatively small with the average size being six members. Evidence has shown that smaller boards tend to perform better.</i> • <i>The law requires members of the boards of banks and POEs to have specific qualifications.</i> • <i>In banks and POEs, the law requires separation between CEOs and board chair. The Corporate Governance Code also recommends that the chair of the board of a POE should be a non-executive director.</i> • <i>The Law on POEs requires that all the members of the board of directors – except the CEO - are independent. The Law on Banks requires that the majority of the members of a bank's board is "independent, non-executive directors and at least one of them should be resident in Kosovo". In addition, the Law on Business Organizations requires that the boards of joint stock companies (JSCs) with 100 or more shareholders should be made of a majority of independent directors. The law also requires that the board of directors of JSCs with 250 or more shareholders must nominate at least two candidates who would be independent directors. However, it is not given that these independent members are then appointed at the board. Further, it appears that there are no companies in Kosovo having 250 or more shareholders.</i> • <i>Banks and POEs are required to establish an audit committee, however in banks the audit committee is not composed only of board members (see below). Both in banks and POEs some of the members of the audit committee must have knowledge of accounting or audit. The Corporate Governance Code recommends that the audit committee in POEs should supervise the work of the external and internal auditor in preparation of the auditing and financial reports. The Code also foresees the establishment of a financial committee, staff and remuneration committee, technology and research committee. Other companies are not required to establish board committees. In practice it appears that eight out of ten largest companies established audit committees, three POEs and five banks. Two companies, one bank and one POE, also</i>

Key Areas and Rating	Strengths and Weaknesses
	<p>established a remuneration committee.</p> <p>Weaknesses:</p> <ul style="list-style-type: none"> It was not possible to assess if boards have diversified mix of skills as only three companies (two banks and one POE) disclose the board members' qualifications. In companies (apart from POEs and banks see above) there is no requirement that the CEO and the chair of the board should be separate. No company among the top ten largest companies disclosed having an independent director.
<p>1.2. Gender Diversity at the Board (14.25%) Weak</p>	<ul style="list-style-type: none"> Eight out of the ten largest companies disclosed the composition of their boards. It appears that there are women on boards of six companies (with an average in these boards of 19%). In total, the eight largest companies have 7 women among 50 board members with an average of 14.25 %.
<p>1.3. Independent Directors Very weak</p>	<p>Strengths:</p> <ul style="list-style-type: none"> The Law on POEs requires that all the members of the board of directors – except the CEO - are independent. The Law on Banks requires that the majority of the members of a bank's board are independent. In addition, the Law on Business Organizations requires that the boards of JSCs with 100 or more shareholders should be made of a majority of independent directors. The law also requires that the board of directors of JSCs with 250 or more shareholders must nominate at least two candidates who would be independent directors. However, it is not given that these independent members are then appointed at the board. Further, it appears that there are no companies in Kosovo having 250 or more shareholders. <p>Weaknesses:</p> <ul style="list-style-type: none"> Notwithstanding the law requirement, no company from the top ten largest companies disclosed having any independent member in their boards. There are at least three different definitions of independence which does not help clarity. Only the definition in the POE Law seems to be comprehensive. None of the definitions addresses any positive criteria for independence (i.e., what it is expected in practice from independent directors). 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.
<p>1.4. Board Effectiveness Weak</p>	<p>Strengths:</p> <ul style="list-style-type: none"> The Law on POEs requires the board of POEs to undertake annual board evaluation. While no POE has disclosed the internal evaluation of the board, the Policy and Monitoring Unit of Publicly Owned Enterprises at the Ministry of Economic Development has published an annual report attesting that three POEs have performed a board evaluation, which have highlighted –among others - failure to set forth objectives at the beginning of the fiscal year and failure to set up concrete plans to remedy the weaknesses highlighted by the board evaluations. <p>Weaknesses:</p> <ul style="list-style-type: none"> The law does not assign to the board all its key functions. In particular, the Law on Banks provides no reference to the authority of the banks' board to approve the bank's strategy, budget and risk appetite; the Law on Business Organizations is silent on key functions as oversight of management, approval of the company's budget and risk profile; the Law on POEs does not assign to the board with the authority to approve the POE's risk profile. In companies, there is no requirement for the board of directors to meet under a specified time framework. Only in banks, the board is required to meet at least 4 times per year. Five companies disclose online the number of board meetings. Only three companies (all POEs) disclosed having a corporate secretary in place. It was not possible to assess the activities of board and committees and the qualifications of members as this information is generally not disclosed (and when disclosed, it is a "copy and paste" from corporate documentation without providing any information on the activities undertaken in practice).
<p>1.5. Responsibilities of the Board Fair</p>	<p>Strengths:</p> <ul style="list-style-type: none"> Liability of board members and directors, fiduciary duties and conflicts of interest are detailed in law. In POEs, directors are required to submit an annual statement disclosing any conflict of interest. Such statements are published in the website of the POE Monitoring Unit within the Ministry of Economic Development. <p>Weaknesses:</p> <ul style="list-style-type: none"> As mentioned above, the law does not expressly provide for a clear right of the boards of companies or banks to approve the company's strategy, budget and risk profile.

Key Areas and Rating	Strengths and Weaknesses
<p>2. Transparency and Disclosure Fair</p>	<p>Banks and POEs are required to publish online their annual reports, which should include financial and non-financial information. This requirement seems to be implemented, but there is room for improvement in the quality of non-financial information.</p> <p>Financial statements must be prepared in in line with IFRS and the vast majority of largest companies appear to comply.</p> <p>Banks, large and medium size companies and POEs are required to appoint an independent external auditor and the vast majority of the largest companies appear to comply.</p> <p>Only in banks and POEs, the provision of non-auditing services by the external auditor is prohibited. Other companies are not subject to restriction. Disclosure on this issue is limited.</p>
<p>2.1. Non-Financial Information Disclosure Fair</p>	<p>Strengths:</p> <ul style="list-style-type: none"> POEs and banks are required by law to prepare and publish online an annual report, including financial and non-financial information. Six out of the ten largest companies (five banks and one POE) publish their annual report on their websites. The annual reports of other two POEs are available on the POE Monitoring Unit's website. The Policy and Monitoring Unit of Publicly Owned Enterprises at the Ministry of Economic Development provides for a website with information – in Albanian only – on POEs. Eight out of the ten largest companies - five banks and three POEs - include a forward-looking strategic statement in their annual report. Eight among the ten largest listed companies disclose the names of board members. In banks and POEs the annual report must include the audited financial statements. <p>Weaknesses:</p> <ul style="list-style-type: none"> Apart from banks and POEs, companies are not required to prepare, submit to the registry or publish an annual report. When looking at the websites of the top ten largest companies, banks appear to update their websites more frequently than POEs. Annual reports and financial statements are published on the websites of respective banks, while that is not always the case for POEs. While the websites of banks are typically quite comprehensive, they usually lack to disclose the qualification of board members. Disclosure on board committees is also very limited. Only three companies (two banks and one POE) disclose the board members' qualifications. Six out of the ten largest companies publish their annual report on their websites, but non-financial information is often incomplete. Two companies (1 bank and 1 POE) posted the GSM minutes on their websites. Both are largely outdated though dating back to 2012 and 2011 respectively.
<p>2.2. Financial Information Disclosure Strong</p>	<p>Strengths:</p> <ul style="list-style-type: none"> The law requires POEs, large companies and banks to prepare and disclose their financial statements in line with IFRS. It appears that nine out of the ten largest companies disclosed their financial statements in line with the IFRS.
<p>2.3. Reporting to the Market and to Shareholders Fair</p>	<p>Strengths:</p> <ul style="list-style-type: none"> There is no functioning stock exchange in Kosovo, hence the expectation for reporting to the market is limited. POEs and banks are required by law to prepare and publish online an annual report, including financial and non-financial information. This requirement appears to be generally well implemented. <p>Weaknesses:</p> <ul style="list-style-type: none"> The quality of corporate governance information included in the annual report is poor. In particular, disclosure of the board activities and board members' qualifications is very limited. There is no requirement for companies to submit, file or publish an annual report. There was a requirement for that, but it was deleted in 2011.

Key Areas and Rating	Strengths and Weaknesses
2.4. Disclosure on the External Audit <i>Fair</i>	<p>Strengths:</p> <ul style="list-style-type: none">• Banks, large and medium size companies and POEs are required to appoint an independent and qualified external auditor.• Nine of the ten largest companies disclose their auditor name and report. Seven companies appear to have appointed international auditors. <p>Weaknesses</p> <ul style="list-style-type: none">• Auditors are required to be independent, but it is not clear who is in charge for this “independence test”.• Only in banks and POEs the provisions of non-auditing services by the external auditor is prohibited. For other companies, it is not clear who is in charge of assessing if non-auditing services are provided and whether they might undermine the external auditor’s independent. Disclosure on this issue is very limited.

Key Areas and Rating	Strengths and Weaknesses
<p>3. Internal Control Fair</p>	<p>Banks and POEs are required to establish an internal audit function, reporting to the audit committee and the majority of the largest companies appear to comply.</p> <p>There is no specific requirement for banks to have a standalone compliance function.</p> <p>Banks and POEs are required to establish audit committees and eight out of ten largest companies disclosed having established one. Only in POEs, the audit committee must be made only of board members. In banks at least one non-board member – with auditing qualification - must be member of the audit committee. There is no requirement that the audit committee is to made of independent board members with due qualifications.</p> <p>External auditors for banks and POEs are not allowed to provide non-auditing services. In banks, rotation of auditors can be required by CBK.</p> <p>Related party transactions are regulated only for banks.</p> <p>The Corporate Governance Code recommends POEs to adopt a code of ethics including whistle-blower protection program, however at the moment there is no comprehensive whistle blowing regulation in place.</p>
<p>3.1. Quality of the Internal Control Framework Fair</p>	<p>Strengths:</p> <ul style="list-style-type: none"> Banks and POEs are required to establish an internal audit function. It appears that eight out of ten largest companies (five banks and three POEs) have established an internal audit function. Banks and POEs are required to establish an audit committee. Eight out of ten largest companies (five banks and three POEs) disclosed having established audit committees. The law requires that the internal audit function in banks and POEs reports to the audit committee. <p>Weaknesses:</p> <ul style="list-style-type: none"> There is no specific requirement for banks to have a standalone compliance function. There is no comprehensive whistle blowing regulation. There is no institute of Internal Auditors in the country.
<p>3.2. Quality of Internal and External Audit Moderately strong</p>	<p>Strengths:</p> <ul style="list-style-type: none"> The form and contents that the external audit report for banks must contain are laid out in the law. In banks and POEs, the provision of non-auditing services by the external auditor is forbidden. In banks, rotation of auditors can be prescribed by CBK, if deemed necessary.
<p>3.3. Functioning and Independence of the Audit Committee Weak</p>	<p>Strengths:</p> <ul style="list-style-type: none"> Banks and POEs are required to establish audit committees. Eight out of ten largest companies established audit committees, five of them being banks and three POEs. In POEs, the audit committee is appointed by the GSM and made only of board members –all board members in POEs must be independent pursuant to the law - and at least two members of the audit committee must have adequate knowledge of accounting. The Corporate Governance Code recommends that in POEs the audit committee should supervise the work of the external and internal auditor in preparation of the auditing and financial reports. <p>Weaknesses:</p> <ul style="list-style-type: none"> In banks, the audit committee is to be made by a majority of non-executive directors and at least one member of the audit committee must be an outside expert in the field of accounting or audit who meets the criteria for independence as stated by the law. While in banks the majority of board members must be independent, there is no requirement that those independent directors must be members of the audit committee. Only the outside member of the audit committee must have expertise in accounting or audit and meet the criteria for independence. We do not think this is enough to ensure the independence of the audit committee. We are not convinced that the practice of having outsiders in the audit committee – as it is required in banks – is the right approach. In our view, it is important that audit committees include only board members if the functions delegated to the committee are typical board members. Secondly, it is essential that those members sitting in the committee and recommending specific actions to the board, do actually follow up on such recommendations and vote on the committee’s recommendations at the board, therefore reinforcing their position and the board’s “objective judgement”. Finally, committees that include outsiders might create problems with confidentiality and accountability issues, since such “outsiders” might not bound by duties of loyalty and care of board members. The key question here is what could a person that it is not a board member add to the debate? The discussion is open. Our opinion is that the audit committee might be more effective if the board is composed of qualified and independent non-executive members, who should also sit on committees. While it is clear that audit committee should have access to external advisors when needed, advisors should not take the place of the committee in its determinations.

Key Areas and Rating	Strengths and Weaknesses
	<ul style="list-style-type: none"> • Due to the very limited disclosure offered by the largest companies in Kosovo, it was not possible to assess if members of the audit committee are qualified for their functions and responsibilities. • None of the ten largest companies offers details of activities of audit committees. Only three companies (all POEs) disclose the number of meetings of the audit committee. The frequency of meetings seems to be very high. • Notwithstanding the requirements of the law, none of the ten largest listed companies disclose having any independent board member.
<p>3.4. Control over Related Party Transactions and Conflict of Interest Fair</p>	<p>Strengths:</p> <ul style="list-style-type: none"> • Related-party transactions in banks are regulated by law. • In banks, independent directors are required to oversee all significant related party transactions and either decide or make proposals to the GSM. • Directors of JSCs, banks and POEs have an obligation to disclose personal or financial interests • POEs are required by law to adopt a code of ethics including a whistle-blowing protection programme. However, it is not clear if this requirement is well implemented. • In line with IAS 24, significant related party transactions need to be registered in the company financial statements. <p>Weaknesses:</p> <ul style="list-style-type: none"> • There is no comprehensive regulation on related-party transactions in companies and POEs. • Only two companies (one bank and one POE) disclosed having adopted a code of ethics.

Key Areas and Rating	Strengths and Weaknesses
<p>4. Rights of Shareholders Fair</p>	<p>Basic shareholder rights are regulated by law.</p> <p>Cumulative voting is provided by law, however the Articles can provide otherwise. Shareholders representing at least 10% of the shares can call a GSM, nominate board members and place items on the GSM agenda. Shareholders have the right to access key corporate documentation and enjoy pre-emptive rights in case of capital increase.</p> <p>Shares grant the same voting rights to shareholders, but the Articles can provide different voting rights.</p> <p>There are no qualified majority requirements for major corporate changes.</p> <p>Insider trading is prohibited but the level of enforcement is not clear.</p> <p>The law requires the registration of shareholding and any significant shareholding variation must be disclosed.</p>
<p>4.1. General Shareholders' Meeting (GSM) Fair</p>	<p>Strengths:</p> <ul style="list-style-type: none"> • Cumulative voting is provided by law (however, the Articles can provide otherwise). • Shareholders representing 10% of shares can call a GSM, nominate a board member and place no more than two issues on the GSM agenda (in banks, 5% shareholding is required to request items to be placed on the GSM agenda). <p>Weaknesses:</p> <ul style="list-style-type: none"> • The right of the shareholders to ask questions at the GSM is not specifically provided by law. • Unless provided otherwise in the Articles, only simple majority is required at the GSM for major corporate changes (i.e., no supermajority required). • The charter can provide that shares are assigned different voting rights.
<p>4.2. Protection against Insider Trading and Self-dealing Weak</p>	<p>Strengths:</p> <ul style="list-style-type: none"> • The sanctions for insider trading/market abuse/market manipulation are envisaged by law. <p>Weaknesses:</p> <ul style="list-style-type: none"> • Except for banks, there is no comprehensive regulation of related-party transactions. • Because it is not entirely clear if companies have independent directors on their board, the approval of related party transactions might not be fully objective. • Self-dealing and insider trading are regulated by law, but it is not clear if they are enforced in practice
<p>4.3. Minority Shareholders Protection and Shareholders' Access to Information Fair</p>	<p>Strengths:</p> <ul style="list-style-type: none"> • Cumulative voting is provided by law (however, the Articles can provided otherwise). • The law grant any shareholder to access the company's list of shareholders, its charter and bylaws. • Shareholders representing 10% of shares can start a derivative suit. • Shareholders enjoy pre-emptive rights in case of capital increase. <p>Weaknesses:</p> <ul style="list-style-type: none"> • No supermajority or qualified majority at the GSM is required for major corporate changes. • The Articles can provide that shares are assigned different voting rights.
<p>4.4. Registration of Shareholdings Fair</p>	<p>Strengths:</p> <ul style="list-style-type: none"> • Registration of shareholding is required and any significant shareholding variation must be disclosed. • Shares are freely transferable but the charter may provide for restrictions on their transferability. <p>Weaknesses:</p> <ul style="list-style-type: none"> • No independent registry of shareholders is required. • Shareholders agreements are not regulated. They are considered to be enforceable;, however there is no consolidated case law on the matter.

Key Areas and Rating	Strengths and Weaknesses
<p>5. Stakeholders and Institutions Fair/Weak</p>	<p>Kosovo does not have a functioning stock exchange. Rulings of regulatory agencies are documented but not easily accessible. International audit firms have a significant presence in the country; however the presence of international law firms is limited. International rating agencies are not active in the country. The Code of Corporate Governance for POEs is updated regularly with the latest version being issued in 2014 and provides a comprehensive corporate governance framework for POEs. The Unit for Monitoring POEs in the Ministry of Economic Development appears to monitor the implementation of the Code. Indicators by international organisations show a framework where corruption is still perceived as a critical problem.</p>
<p>5.1. Corporate Governance Structure and Institutions Fair</p>	<p>Strengths:</p> <ul style="list-style-type: none"> International audit firms have a significant presence in the country. POE Directors are required to attend at least one corporate governance training annually. The Unit for Monitoring POEs in the Ministry of Economic Development organizes corporate governance trainings annually for directors of POEs and appears to be active in monitoring POEs' governance. <p>Weaknesses:</p> <ul style="list-style-type: none"> There is no functioning stock exchange in Kosovo. The presence of international law firms is limited. International rating agencies are not active in the country Rulings of regulatory agencies are documented and publicly available but not easily accessible.
<p>5.2. Corporate Governance Code Fair/Moderately strong</p>	<p>Strengths:</p> <ul style="list-style-type: none"> There is one Code of Corporate Governance in Kosovo, which applies to POEs. The Code of Corporate Governance for POEs updated regularly with the latest version being issued in 2014 and provides a comprehensive framework in setting forth the minimum standards to be applied by POEs. It appears to be drafted in accordance with international best practices of corporate governance. The Unit for Monitoring POEs in the Ministry of Economic Development appears to monitor the implementation of the Code. <p>Weaknesses:</p> <ul style="list-style-type: none"> No corporate governance code for banks exists in Kosovo. There is no judicial practice on corporate governance.
<p>5.3. Institutional Environment Weak</p>	<p>Strengths:</p> <ul style="list-style-type: none"> The Investor Protection Index by the World Bank Doing Business places the country in a relatively good position. <p>Weaknesses:</p> <ul style="list-style-type: none"> The Transparency International's Corruption Perceptions Index highlights that corruption is perceived as a critical problem. There are a few inconsistencies in the law and some key corporate governance issues are not well regulated. According to the 2015 EBRD Assessment on Accessibility of Court Decisions, case law is not timely aggregated and is not easily accessible.