Commercial laws of Romania
An assessment by the EBRD
November 2015
COMMERCIAL LAWS OF ROMANIA
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Basis of Assessment: This document draws on legal assessment work conducted by the Bank (see www.ebrd.com/law) and was last updated during the preparation of the 2015 EBRD Strategy for Romania, reflecting the situation at that time. The assessment is also grounded on the experience of the Office of the General Counsel in working on legal reform and EBRD investment activities in Romania, it does not constitute legal advice. For further information please contact ltt@ebrd.com.
Overall assessment

Upon becoming a member of the European Union in 2007, Romania has amplified the process of harmonising its laws with the acquis communautaire. As a result, the country has made significant amendments to its commercial legislation and has substantially reformed the legal framework applicable to investments. Consequently, the business climate has improved, leading to an investor friendly environment. The national energy sector legislation is generally compliant with EU standards. In 2007, by Government decision 638/2007, the market was fully opened for both electricity and natural gas. With the adoption of the 2011 Civil Code Romania has reaffirmed its fairly robust framework for taking security over immovable property and movable assets and rights. Romania’s capital markets laws are relatively sophisticated. The 2007 EBRD Corporate Governance Assessment identified major shortcomings related to the quality of the corporate governance legislative framework in Romania in the area of board responsibilities, disclosure and transparency and the rights of shareholders; however, in the most recent 2015 corporate governance assessment the overall structure and functioning of the board, as well as the criteria of transparency and disclosure and shareholders’ rights have been ranked “moderately strong”. Romania has a well-developed insolvency framework, which respects both debtor and creditor interests; it allows both for early reorganisation of debtors in financial difficulty and their efficient liquidation where businesses are no longer able to continue as a going concern.

Nevertheless, several vital issues remain to be addressed in order to help Romania reach its full market potential. In particular, despite the government’s efforts the problem of corruption remains visible and laws need to be better enforced. According to the most recent Freedom House Freedom of the Press Report, although press freedom is protected by the law, it appears to be weakened in practice by financial insecurity and overriding political and business interests. The January 2015 Cooperation and Verification (CVM) report concluded that Romania had made progress in many areas of judicial reform and the fight against high-level corruption, but efforts to fight lower-level corruption should be intensified. The report also noted slow progress in addressing the issues faced by the judiciary since 2014. The approval of the judicial reform strategy, commended by the CVM for its precision, indicates the authorities’ willingness to improve the current situation, which should be complemented by furthering the reforms in implementation of the strategy. Romania’s track record for aligning domestic legislation on electronic communications with the EU acquis has reportedly been inconsistent. Romanian energy efficiency policy still has significant potential for improvement.

Furthermore, while the Concessions Act appears to implement the EU acquis, the PPP Act has not been perceived as such and has undergone a number of amendments in recent years as a result of infringement procedures initiated by the EC; despite quite a few amendments, the PPP Act still offers few indications as far as financial and security issues are concerned. The legal regime for public procurement in Romania requires further improvement and should be aligned with the new EU public procurement directives.

Legal system

Constitutional and political system

The Constitution of Romania was adopted in 1991; it stipulates the principle of separation and balance of powers within the framework of constitutional democracy.

The bi-cameral Parliament is the sole legislative authority of Romania. It comprises the Chamber of Deputies and the Senate. Both chambers of the Parliament are elected by universal, equal, direct, secret and a free vote, for a period of four years. The number of Deputies and Senators is determined proportionately to the population of Romania and is established by the electoral law. There also are a number of guaranteed seats for representatives of national minorities. The Parliament passes constitutional (those pertaining to the revision of the Constitution), organic (those related to electoral system, the functioning and financing of political parties, organisation of the government, organisation and the holding of referendum, etc.) and ordinary laws.

The President of Romania represents the Romanian State and is charged with guarding the observance of the Constitution and the proper functioning of the public authorities, to which effect the President acts as a mediator between the powers in the State, as well as between the State and the society. The President is elected by universal, equal, direct, secret and free vote. The candidate that, in the first ballot, obtained a majority of votes of the electors entered on the electoral lists is declared elected; if no candidate has reached such majority, a second ballot is held between the two candidates highest in the order of the number of votes according to the first ballot, and the candidate having the greatest number of votes is declared elected. The President may be elected for up to two terms; successive terms are permitted. The President is elected for a five-year term.

The Government consists of the Prime Minister, the Ministers and other members as established by an
organic law. The President designates a candidate to the office of Prime Minister as a result of consultation with the party that obtained an absolute majority in Parliament or with the parties represented in the Parliament if such majority exists. The candidate to the Prime Minister office must seek the vote of confidence of the Parliament upon the programme and complete list of the Government. The Parliament may pass a law enabling the Government to issue ordinance in fields outside the scope of organic laws.

The Constitutional Court acts as a guarantor for the supremacy of the Constitution. It consists of nine judges, appointed for a non-extendable and non-renewable term of nine years; three judges are appointed each by the Chamber of Deputies, the Senate and the President. They are empowered to, inter alia, adjudicate on the constitutionality of the laws and treaties (either before or after their adoption/ratification) and to carry out other relevant functions.

Freedom of information

The Constitution of Romania (Art. 31) proclaims the right of access information to any information of public interest without restriction. In implementation of this right, Romanian freedom of information (FoI) law was adopted in 2001 (Law on Free Access to Information on Public Interest No. 544/2001). Information of public interest refers to any piece of information that regards the activities or results from the activities of the public authority or institution, irrespective of the form of expressing such information.

According to the most recent Freedom House Freedom of the Press Report, although press freedom is protected by the law, it appears to be weakened in practice by financial insecurity and overriding political and business interests. That said, the January 2015 European Commission’s Cooperation and Verification Mechanism (CVM) report observes a general move from the authorities to provide more or better information to the media on developments in the justice system.

Judicial system

Romania’s courts of general jurisdiction include district courts, courts of appeal and the High Court of Cassation. In principle, all these courts have general jurisdiction over civil, criminal, administrative and tax matters. Civil courts comprise commercial chambers, dealing with disputes between legal entities and with insolvency matters. There are specialised commercial tribunals in Cluj, Argeş and Mureş; a specialised commercial tribunal for Bucharest has been mooted but is yet to be established. The Superior Council of Magistracy (CSM) is responsible for nominating judges for appointment, who are then appointed by the President of Romania on full tenure. The CSM is also responsible for judicial promotion, transfer and discipline. Initial and ongoing professional training for judges is provided by the National Institute of Magistracy (NIM), a public body with legal personality under the coordination of the CSM.

The 2012 EBRD Judicial Decisions Assessment noted that the overall quality of judicial decisions in Romania was relatively good, compared to those of other countries in South East Europe, although divergent jurisprudence remained a problem. Some improvements in the speed of justice were achieved through reducing backlogs of minor cases through a new “fast-track” procedure; however more complicated cases, particularly those dealing with corporate and property disputes, continued to experience significant delays. Further, the introduction of private bailiffs was seen to have improved the rate of enforcement of judicial decisions.

The European Commission’s CVM, which was established upon Romania joining the EU to assist the country in overcoming shortcomings in the areas of judicial reform and the fight against corruption, continues to monitor and report on these problems. The January 2015 CVM report noted slow progress in addressing the issues faced by the judiciary since 2014. However, at the end of 2014, the authorities approved the Strategy for the Development of the Judiciary for 2015-2020, which draws heavily upon the recommendations of the CVM reports. The approval of the judicial reform strategy, commended by the CVM for its precision, indicates the authorities’ willingness to improve the current situation, which should be complemented by further reforms in implementation of the strategy.

Investment climate

Romania’s economic growth moderated to 2.8 per cent in 2014. Private consumption emerged as the main driver of growth in 2014, boosted by a rise in the minimum wage and interest rate cuts, while the contribution of net exports and investments remained subdued. Inflation remained below the central bank’s target range of 1.5 to 3.5 per cent for most of 2014 and early 2015. General government debt is low by regional standards, standing at 39.9 per cent of GDP in 2014, while considerable fiscal adjustment since the 2008 crisis has brought the budget deficit down in recent years, reaching 1.4 per cent of GDP in 2014. The country is currently expected to enter the euro area in 2019.

Medium-term growth prospects in Romania remain favourable, reflecting the diversified economy, large market size and the significant scope for convergence within the European Union, as the GDP
per capita (adjusted for purchasing power standards) is around 54 per cent of the EU average.\(^\text{10}\)

Romania made further progress under the Cooperation and Verification Mechanism (CVM), but some challenges remain. In its January 2015 report under the CVM, the European Commission (EC) concluded that Romania had made progress in many areas of judicial reform and the fight against high-level corruption, but efforts to fight lower-level corruption should be intensified. Some concerns over inconsistency of court decisions and outstanding legislative issues remain.\(^\text{11}\)

The 2013-2014 Business Environment and Enterprise Performance Survey (BEEPS) identified tax administration, corruption and political instability as the three major obstacles in the business environment in Romania.\(^\text{12}\)

The 2016 World Bank Doing Business Report ranked Romania 37th in terms of the ease of doing business, the same compared to the previous year’s assessment. “Getting Electricity” and “Dealing with Construction Permits” have proved to be the worst performing indicators according to the Doing Business Report, ranked, respectively, 133rd and 105th. On the other hand, the “Starting a Business” indicator dropped by eight points in the past year.

The privatisation and restructuring of loss-making state-owned enterprises (SOEs) have stalled, despite this being an important pillar of the balance-of-payments programmes of the IMF and EU. SOEs remain dominant in the energy and transportation sectors; however, their suboptimal performance has an adverse effect on public finances.

Financial markets remained stable, but financial intermediation is still to be reinvigorated. Despite a fall in recent years, the share of foreign currency-denominated loans was still high at 56 per cent in 2014, leaving the banking sector exposed to exchange rate risk. Credit growth remained subdued on the back of foreign banks’ deleveraging, high corporate leverage, and a lack of lending opportunities amid still-low growth. In August 2014, the Financial Supervision Authority (FSA) approved the STEAM (Set of Actions Towards Establishing and Acknowledgement of the Emerging Market Status) project to support the further development of capital markets. The STEAM includes a set of measures to increase the attractiveness of capital markets, streamline lending operations, develop local bond markets and increase implementation of corporate governance principles by market players. Results from its implementation remain to be seen.

NPLs have been significantly reduced but further restructuring needs to be carried out. In mid-2014, the National Bank of Romania (NBR) launched a programme to stimulate Non-performing loans (NPL) write-off, by increased provisioning and requiring the write-off of fully provisioned NPLs, while allowing banks to retain legal claims against borrowers even if the loans were written off. The programme led to a decline in the NPL ratio to 12.8 per cent in June 2015, from a peak of 23.0 per cent at the end of 2013. Although the write-off process is mostly completed and provisioning policies in the banking sector are improved, a sustainable resolution may also require corporate restructuring, given that most NPLs originate in the corporate sector.

The quality of transport infrastructure remains poor by EU standards, as the country ranks last in the EU for perceived quality of infrastructure, according to the World Economic Forum’s Global Competitiveness Report 2015-2016.
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, dispute resolution 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

Electronic Communications

The main legal basis for electronic communications regulation in Romania is the Government Emergency Ordinance 79/2002 on the general regulatory framework for communications, as amended by several laws and government emergency ordinances. The National Authority for Management and Regulation in Communications (ANCOM) is the sector regulator, established by Emergency Ordinance 22/2009.

As an EU member state, Romania must comply with all of the regulatory framework obligations accompanying the EU’s fully liberalised electronic communications market.

Unfortunately, its track record for aligning domestic legislation with the EU acquis is patchy, and has often been applied by government emergency ordinances instead of regular laws.

Nonetheless, the Romanian market has good competition in both fixed and mobile networks, and a relatively large number of players with significant market share. The comparison of the overall legal/regulatory risk for telecommunications in Romania with international best practices, with slightly worse indicators for market conditions for wireless and wired services (see Chart 1). Fixed broadband coverage is about 90% and, while the incumbent operator’s (Romtelecom) share of digital subscriber lines is almost 100%, its retail market share stands at about 30%, below the EU average of 42%. In the fixed market, an alternative operator is the leading operator with a market share of more than 40%. Most providers rely on their own infrastructure. Broadband networks are currently unregulated, with The National Authority for Management and Regulation in Communications (ANCOM) previously finding the relevant markets effectively competitive. However, intervention may be necessary to ensure access to the various emerging next-generation access networks, which may soon be put in place following ANCOM’s recent review of the market for wholesale network infrastructure access at a fixed location and the market for wholesale broadband access. Rights of way and facility sharing had been a bottleneck until the recent passage of long overdue legal provisions on communication infrastructure.

In common with some EU countries, among Romania’s challenges in the future is keeping pace with the evolving EU framework and ensuring its effective implementation as part of the Digital Agenda for Europe. Of particular importance in this respect are the regulatory enablers surrounding Romania’s initiatives on broadband and the creation of an environment that is sufficiently conducive to both attract new investment and accelerate planned investment. The recently published Romanian Digital Agenda Strategy should provide significant impetus in this respect, as will EU support of approximately €84 million.

However, the initiative needs to be accompanied by vigorous enforcement of timely access to ducting on viable terms, effective implementation of provisions on rights-of-way and ensuring continued effective regulation of operators with significant market share.
Chart 1: Comparison of the overall legal/regulatory risk for telecommunications in Romania 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.

Energy

Electricity

In 2007, by Government decision 638/2007, the market was opened fully for both electricity and natural gas. Subsequent regulatory developments have created a competitive environment for investment.

The EBRD 2011 Energy Sector Assessment (still indicates the previously revealed high quality of energy (electricity) legislation in Romania, with the only (minor) drawback being the public service obligation indicator (see Chart 2). The assessment identified that already at that time Romania’s electricity market framework has long been one of the most reflective of best practices in the region.

National energy sector legislation is generally compliant with EU standards. To this end, EU legislation requiring separation between companies involved in generation, transmission, distribution and retailing, have been transposed and implemented in the local legal framework. The Third Energy Package was transposed through Law 123/2012 on Electricity and Natural Gas, including provisions on increased transparency in the electricity market, introduction of the concept of the vulnerable consumer and enhanced actions on interconnectedness with the neighbouring markets.

The National Energy Strategy was adopted in 2007 and encouraged market transparency, liquidity and improved sector monitoring. A revised Energy Strategy, to cover the timeframe up to 2035, is currently being discussed, to include the revised prognosis of economic growth and energy consumption and take into account new EU norms.

There is a functioning, competitive electricity market for corporations, and a gradually liberalising electricity market for households.

According to the 2014 Annual report of the Romanian Energy Regulatory Authority (ANRE), the most important recent developments included, inter alia, completing the regulatory framework for connecting users to public electricity networks, approving the development plan for the transport networks for the next 10 years, measures to implement smart metering systems for electricity, increasing transparency in the electricity markets and raising the number of transactions. As a result of the deregulation of the prices for non-households, starting with the January 1st, 2014, the level of the
market opening reached approximately 66% of final consumption\textsuperscript{16}.

Chart 2 – Quality of energy (electricity) legislation in Romania

\textbf{Note:} The spider diagram presents the sector results for Romania 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 Romania are represented by the green area in the centre of the web.

\textbf{Source:} EBRD 2011 Energy Sector Assessment

\textbf{Gas}

As mentioned above, in 2007, by Governmental decision 638/2007, the market was opened fully for both electricity and natural gas.

Gas price liberalisation for corporations started with hikes in regulated prices in late 2013 and early 2014, and was finalised for small and medium-sized enterprises (SMEs) as of January 2015. Yet the pace of liberalisation for households is slow, which was a major reason for a delay in completion of the third review of the IMF programme. However, in June 2015 the Romanian government and the EC agreed on a timetable for household gas price deregulation, which envisages a gradual gas price hike over the coming years, starting from July 2015 to 2021, when full liberalisation should be in place\textsuperscript{16}.

The quality of energy (gas) legislation in Romania appears to be high, according to the 2011 EBRD Energy Sector Assessment, apart from the public service obligations criterion (see Chart 4).

Starting 2014, natural gas suppliers have an obligation to inform the end customers on the commercial terms for natural gas supply, and there are minimum requirements in order to allow end customers to evaluate the final price charged and to impose the obligation to develop standard offers on suppliers.
Energy efficiency/renewable energy

Energy efficiency

The primary piece of legislation governing energy efficiency matters in Romania is Law No. 121/2014 on Energy Efficiency. The Second National Energy Efficiency Action Plan was adopted in 2011.

The framework for energy efficiency in Romania has been predominantly driven by EU accession. In the context of EU level objectives for reducing primary energy consumption by 20% by 2020, Romania has set a target of 19% reduction between 2007 and 2020. The second National Energy Efficiency Action Plan (NEEAP) incorporates a separate chapter on primary energy saving measures in the energy sector aimed at meeting the planned 2020 target. Despite energy intensity reductions (by 4 percent a year between 1990 and 2010) and an increase in the average efficiency of the power sector (from 23 percent to 39 for the same period), as of 2012 these rates remained below the EU average.

Romanian energy efficiency policy has significant potential for improvement. Little progress has been reported in terms of developing energy efficiency policies and regulations, with the greatest gaps identified in the field of appliances and the transport sector; implementation of a state aid support scheme for high efficiency cogeneration; and financial support for the rehabilitation of centralised district heating systems and residential buildings.

The recently adopted Law on Energy Efficiency transposes the provisions of the 2012 EU Energy Efficiency Directive and refers to efficiency improvement measures for all sectors of the national economy, including introduction of high energy-efficiency technologies, promotion of energy efficient equipment and appliances to end consumers and development of the energy services market. An Energy Efficiency Department within the Energy Regulatory Agency (ANRE) has been established, and will be in charge of drafting policy proposals and delegated legislation on energy efficiency; monitoring the implementation of the NEEAP and related programmes; and overseeing the equipment and appliances market subject to specific energy...
efficiency regulations. The ANRE has also been developing relevant secondary legislation.

**Renewable energy**


As an EU Member State, Romania’s target for the share of energy produced from renewable energy sources (RES) in gross final consumption of energy is established at 24%, with the 2012 share effectively reaching 22.9%. A quota system is the main means for promoting electricity RES; it is based on quota obligations, tradable certificates and minimum and maximum prices. For example, electricity producers and suppliers are under obligation to provide a certain number of “green certificates”, issued for electricity from RES. Policy measures include recommendations for considering using RES in new buildings with surfaces beyond 1000m²; subsidy programmes also support the use of RES in the electricity as well as heating sector. RES in transport sector is promoted through a quota system.

The independence and powers of the Romanian Energy Regulatory Authority (ANRE) were increased in 2012. ANRE activities in 2013 focused on the implementation of the provisions of the Third Energy Package, such as improving transparency for electricity and natural gas markets, phasing out regulated tariffs for end consumers, promoting producing electricity from RES, and others. A new Methodology for setting electricity transmission tariffs approved by ANRE in 2013 is an improved form of incentive revenue cap methodology since 2005. Also during 2014, the Memorandum on Romania’s accession to the Czech, Slovakian and Hungarian electricity markets coupling project was signed.

Romania has ratified the Kyoto Protocol to the United Nations Framework Convention on Climate Change and was the first Annex I country to do so. Under Kyoto, it has a target of 8% for the reduction of greenhouse gas emissions, with the base year being 1989. Romania has undertaken significant efforts on the method of producing energy from renewable sources, having taken more measures to deal with electricity grid barriers than most other Member States.

**PPPs / Concessions**

The two key pieces of legislation governing PPPs and concessions in Romania are the (i) PPP Act No. 178/2010 (the “PPP Act”) and (ii) Government Emergency Ordinance No. 34/2006 governing concessions of works and services (the “Concessions Act”). In addition, according to national legal tradition, the two acts are complemented with enabling regulations. A few sector specific laws, notably in the utilities sector, are also applicable.

The Department for infrastructure projects and foreign investment was set up in 2013 as a specialised body within the Government to ensure coordination of infrastructure projects and, inter alia, to promote and implement foreign investments and PPPs in place of the Central PPP Unit under the Ministry of Public Finance.

The Concessions Act sets out the general framework applicable, in particular to the awarding of public contracts for the concession of public works and contracts for the concession of public services. It refers specifically to the possibility of arbitration as a dispute resolution mechanism.

The PPP Act governs non-concession PPPs, including the selection procedure for private partners, defines the Contracting Authorities, lists sectors where PPPs are possible, including social infrastructure, and determines subcontracting rules.

While the Concessions Act appears to implement the EU acquis, the PPP Act has not been perceived as such and has undergone a number of amendments in recent years as a result of infringement procedures initiated by the EC. Despite quite a few amendments, the PPP Act still offers few indications as far as financial and security issues are concerned. For example, it does not provide for step-in rights in favour of lenders or for Government financial support for PPP projects. The fairly complex system is also somewhat unclear regarding the applicability of particular acts and sector laws. It appears that the PPP Act has not been widely used so far. Increasing awareness and capacity of civil servants might help increase the bankability of the regime.

Romania is expected to upgrade its PPP and Concessions legal framework in the near future. As part of that process, the recently adopted 2014/23 EU Concessions Directive will have to be transposed into national legislation. A revised PPP Law drafted with the help of international experts was submitted to the parliament in 2013, but referred to the Constitutional Court before being subsequently amended. It is currently awaiting approval.

In terms of the quality of the PPP legislative framework in Romania, the EBRD 2012 PPP Legislative Framework Assessment revealed major drawbacks in the area of security and support issues and project agreement (see Chart 5); a practical implementation assessment highlighted major issues in the area of policy and institutional framework (see Chart 6).
Chart 5 – Quality of the PPP legislative framework in Romania

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 6 – How the PPP law is implemented in practice in Romania

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 legal regime for public procurement in Romania requires further improvement and should be aligned with the new EU public procurement Directives.

Public procurement in Romania is governed by the Government Emergency Ordinance No. 34/2006 on the award of public procurement contracts, public works concession contracts and services concession contracts, with subsequent amendments (“GEO 34/2006”), approved by Law No. 337/2006 and secondary legislation (such as Government Decisions and National Authority for the Regulation and Monitoring of Public Procurement (“ANRMAP”) orders). In 2014, Government Emergency Ordinance No. 51/2014 amending the public procurement law, called to help reduce the high volume of challenges to domestic public procurement.

As Romania is an EU member state, its public procurement legal framework is generally a transposition of the 2004 EU public procurement legislation. It aims to ensure compliance with the principles for contract awarding in public procurement: equal treatment, mutual recognition, transparency, proportionality, optimum use of funds etc. In the EBRD’s 2010 assessment of public procurement law and practice, Romania scored medium compliance with international procurement standards (71 per cent), with major issues in the area of proportionality and efficiency of the public contract (see Chart 7); stability and integrity appeared to be the most problematic areas in terms of the quality of public procurement practice in Romania (see Chart 8). The subsequent 2012 analysis revealed a significant overall decrease in the regulatory gap.

At the same time, the public procurement legal framework has been criticised for its suboptimal enforcement mechanisms caused by multiple government bodies involved in procurement procedures, corruption and lack of adequate capacity of the contracting authorities.

Such criticism resulted in the passing of multiple amendments to the public procurement legal framework over the past years. These amendments dealt, for example, with measures aimed at assimilation of a public procurement contract with an administrative act, clarifying the regulation of conflict of interest provisions or attempting to reduce procedural delays by decreasing the volume of challenges to public procurement procedures, through requiring a “guarantee of good conduct” (to be provided by any person wishing to challenge
public procurement procedures in order to have their application heard). The effects of the latter amendment remain to be seen, with some arguing that it may be declared unconstitutional on grounds of obstructing access to justice or that the EU may find the approach of setting high financial barriers to dissuade challenges not an optimal approach.

Romania has a central eProcurement platform, operating under the responsibility of the Agency for the Digital Agenda. All Romanian contracting authorities are required to publish their notices on this platform, and all businesses aiming at supplying products or services to a public authority have to use the platform.

The agencies involved in regulating public procurement procedures in Romania include the ANRMAP (responsible for managing the public procurement system), National Council for Resolving Complaints (the administrative-jurisdictional body competent to resolve complaints relating to the procedure for awarding public procurement contracts) and the Ministry of Public Finance (responsible for verifying all procedural aspects relating to the process for awarding public procurement contracts).

Chart 7 – Romania’s quality of public procurement legislation

Note: The chart shows the score for the effectiveness 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
Chart 8 - Quality of public procurement practice in Romania

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

Private Sector Support

Access to finance

With the 2011 Civil Code Romania has reaffirmed its fairly robust framework for taking security over immovable property and movable assets and rights. Key legal instruments comprising access to finance framework in Romania include the Civil Code of Romania, in force since October 1st, 2011 (the “new Civil Code”); the Code of Civil Procedure, in force since February 1st, 2013 (the “new Code of Civil Procedure”); Law No. 93/2009 regarding non-banking financial institutions; Government Ordinance No. 51/1997 on leasing operations and leasing companies; the Law on Protection of Persons Concerning the Processing of Personal Data and Free Circulation of Such Data, No. 677/2001; Decision no. 105 from 15 December 2007 regarding the processing of personal data performed in an evidence system of credit bureau type systems.

Secured transactions

The new Civil Code reform has maintained the key structure of the legal system whilst introducing some important changes. The Code introduces general provisions dealing with security interests over both immovable and movable property and they are referred to as hypothec (mortgage). ‘Pledges’ refer to possessory security rights over movable assets only.

The mortgage agreement must identify the mortgagor, the mortgagee, the cause of the secured obligation and to make a sufficiently precise description of the asset over which the mortgage is created. The secured debt can be defined generally. Nevertheless, the mortgage is valid only if the secured amount can be reasonably established based on the mortgage agreement. The mortgage can secure the performance of future obligations, thus acquiring a priority status starting with the moment when it is registered.

The object of the movable property mortgage can be any movable asset, either tangible or intangible, or immovable asset. The mortgage established over a universality of assets creates encumbrances on immovable property only starting with the moment
when the mortgage is registered with the Land Book for each real estate property Bank accounts must be separately identified in the security agreement in order to be charged. Priority ranking is determined based on the time of registration.

Ownership and other rights over immovable property are registered in the Land Book. Registration will be used as a proof of ownership only once all the cadastre works are finalised on the entire territory of Romania. Such works are pending, thus the registration with the Land Book still has only opposability effects (establishing priority) but cannot be relied as a proof of the existence of rights. However, the mortgagor that has acquired its right in good-faith against some consideration (so not gratuitously) and has registered such right in the Land Book is considered to be the holder of the mortgage right even if the mortgagor was de-registered from the Land Book.

Mortgages over movable property and rights are registered in the Electronic Archive for Secured Transactions which can be accessed through operators performing registrations. The Archive is available online and searches can be performed based on the name of the mortgagor or the name of the mortgagee (and other identification details thereof, i.e. for legal persons: name and/or registration number and/or fiscal code; for physical persons: name and/or surname and/or personal numeric code).

Enforcement of mortgage over immovable property shall follow the enforcement rules provided by the Code of Civil Procedure. Sale is conducted by mortgage officers (executors) appointed by the mortgagee but is largely court controlled as the court of local jurisdiction confirms the enforcement requests and is quite formal. Enforcement may be slow due to the high level of court involvement, and the obtained sale proceeds are often below the property’s market price. Difficulties may also arise when enforcement is contested by the debtor.

In case of the movable mortgage the creditor can opt for enforcement as regulated by the new Civil Code or for the general enforcement procedure regulated by the new Code of Civil Procedure. The Code of Civil procedure seems more mortgagee friendly than the Code of Civil Procedure as it offers more options from sale through enforcement officer (court controlled) to private sale or even appropriation of assets by the mortgagee.

Agricultural financing

Law 101/2014 and Government Decision 169/2015 regulate the storage of seeds, warehouse receipts and the related indemnity fund. Warehouses must be licensed, and are subject to inspection by a commission appointed by the Ministry of Agriculture and Rural Development. The warehouse operator can be held criminally liable if the goods are transferred to someone other than the holder of the warehouse receipts and can be fined if the goods are not stored properly. The Ordinance also mandates that all warehouses be insured against risks such as explosion, fire or floods. However the current system is closed to SME agro-producers and only a few warehouses have obtained licenses. The Ministry of Agriculture recently announced plans to adopt new legislation in order to “allow all farmers to access finance based on warehouse receipts”. A feasibility study examining the necessary conditions would be a welcome component of any future work on the system.

Leasing

Government Ordinance No. 51/1997 on leasing operations and leasing companies regulate both the financial and operational leasing contracts. Financial leasing can be granted on a regular basis (professionally) only by non-banking financial institutions, organised as joint stock companies, having a minimum share capital of EUR 200,000 (or EUR 300,000 in case the respective institution provides mortgage financing) and registered in the special registers held by the National Bank of Romania.

Leasing contracts having as object immovable property have to be registered in the relevant Land Book. As regards movable assets, before the current Civil Code entered into force, leasing contracts were registered in the Electronic Archive, so any leasing contracts registered before October 1, 2011 can be checked online.

Factoring

Factoring operations in Romania are not formally ‘regulated’. The sector has been able to operate based on enabling legal provisions and general regulations issued by the National Bank in Romania („BNR”) in relation to activities performed by commercial banking and non-banking financial institutions. So, a licence from the National Bank of Romania („BNR”) is needed. The Civil Code does not contain the specific provisions relating to factoring and the contract is performed on the basis of the provisions for assignment of receivables. As a result, there is no clear distinction between factoring and secured transactions. Before the enactment of the new Civil Code assignment of receivables required registration of assignment of receivables in the Archive and all the factoring agreements were being registered consequently. This registration is no longer a requirement for validity in the new Civil Code but the practice is uncertain about the way to go forward. This confusion can create further negative consequences in case of insolvency of factoring clients (assignors).
Credit Bureau

The Decision no. 105 from 15 December 2007 regarding the processing of personal data is the main basis for handling personal information and hence the operation of credit bureaus in Romania.

Data subjects are entitled by law to see their credit reports in person, online, or by telephone, fax, or e-mail. The report has to indicate which financial institution entered the information in the credit registry and can request the inaccurate information to be rectified. Data registered into credit bureau type filling system can be updated, modified, competed or deleted either directly by the participant, which transmitted the data or by credit bureau at the request or in accordance with the participant (data provider). Negative data are transmitted to credit bureau 30 days after the debt becomes due and payable (and are kept for maximum 4 years). Only authorized persons may be granted access to the personal data stored in a credit bureau.

The credit reporting system in Romania includes the public Central Credit Registry (“CCR”) and a private credit bureau, Biroul de Credit (“BdC”). The CCR was established in 1999 by the National Bank of Romania, while the BdC, which was founded at the initiative of the Romanian banking sector in 2003, has been operational since 2004. In addition to these entities, additional credit reporting organisations have operated in Romania, including Alfa Credit, Delos, Intercredit Bucuresti, and Experian, but there is currently little or no information available regarding these organisations. Creditinfo Romania also provides credit information on businesses, including both positive and negative data. Creditinfo acts as a distributor and correspondent of Dun & Bradstreet and serves customers from the telecommunications, transport, pharmaceuticals, banking, and IT sectors.

Capital Markets

Capital markets are governed by the Capital Market Law No. 297/2004. It governs regulated markets, the activities of intermediaries, investment managers and undertakings for collective investment, issuers and their securities operations, including public offerings, as well as the registration, clearing and settlement activities. The law was amended several times, most recently in 2014, and transposes a number of EU directives, including the MiFID, the ICSD, the UCITS Directives, the Settlement Finality Directive, the Prospectus Directive, the Market Abuse Directive and others. The rules are further detailed in the legislation of the securities markets regulator.

The primary regulator of capital markets is the Financial Supervisory Authority (Autoritatea de Supraveghere Financiara) (the “ASF”). It was formed in April 2013 and assumed the responsibilities of three previously independent regulatory agencies: the National Securities Commission, the Insurance Supervisory Commission and the Private Pension System Supervisory Commission. The National Bank of Romania (Banca Nationala a Romaniei) (the “BNR”) regulates and supervises Romanian credit institutions and is responsible for preserving financial stability in the country. The ASF and BNR share responsibility over the mortgage (covered) bond issuances. In addition, the government policy on public finances (including debt) is established by the Ministry of Public Finance (Ministerul Finanțelor Publice).

Market infrastructure in Romania is relatively developed. The main regulated market is the Bucharest Stock Exchange (Bursa de Valori București) (the “BVB”). In 2010, it launched an Alternative Trading System for SMEs and start-ups. The other organised market operating in Romania is Sibex-Sibiu Stock Exchange, which is primarily a derivatives market. Each of the exchanges operates its own securities depositary and clearing house. The BNR operates a separate central securities depositary for government securities and certificates of deposit issued by the BNR (SaFIR).

With EU directives transposed into national law, Romania’s capital markets laws are relatively sophisticated. The Romanian authorities have been actively focused on further developing the country’s capital markets, including by improving legislation.

Several important legal acts have either recently become effective or are currently being developed, including the new Civil Code, which became effective in 2011, the 2014 Insolvency Law and the amendments to the Law Regarding Mortgage Bonds currently under consideration.

The legal framework for security issuances has been improved. In particular, the requirement to have a prospectus approved twice (prior to the roadshow and prior to the start of the subscription period) no longer applies. The “waiting period” between the approval of a prospectus for a public offering of debt and the commencement of subscription has been eliminated, so subscription may start the next business day after publication of an offering announcement.

However, the results of these reforms have been mixed. Although Romanian capital markets are among the more developed in the EBRD’s countries of operations, non-banking finance still constitutes a small share of the total volume of financing. Specific regulations are in place for a wide variety of financial instruments, but the issuance of and trading in them is often limited.

For example, while legislation on convertible bonds is in place, there have been relatively few issuances in the market. No covered bonds have been issued in Romania, largely due to shortcomings of the
applicable Mortgage Bonds Law. The EBRD is currently assisting with a review of the law, with a particular focus on the issuance authorisation procedure through the BNR, the process of mortgage assignment, the possibility of substituting assets within the pool and other problem areas identified by market participants. The new Insolvency Law came into effect in July 2014, as a result of the previous legislation having been pronounced unconstitutional in October 2013. The new law, in particular, improves the close-out netting regime, which is based on the UNIDROIT Principles on the Operation of Close-out Netting Provisions. That said, as of 7 December 2015, Romania has not communicated full transposition of the EU Bank Recovery and Resolution Directive19.

In August 2014, the ASF launched an initiative aimed at furthering the development of the local capital markets – Set of Actions Towards Establishment and Acknowledgment of Emerging Market Status (STEAM). The goal of STEAM is to achieve emerging market status for Romania within two years of launching the initiative (currently it is ranked as a frontier market in indices such as the MSCI). Local authorities plan to achieve this goal through facilitating investor access to local markets by a series of regulatory reforms, by developing the local primary and secondary corporate bond markets, encouraging Romanian companies to list both locally and abroad and implementing standards of corporate governance in line with those of developed countries, among other steps.

**Corporate governance**

The principal pieces of legislation governing corporate governance in Romania are:

- The Companies Law 31/1990 which establishes general principles related to competence, functions and obligations of the management bodies of companies. It allows joint stock companies to choose between the one-tier and two-tier systems.
- The Capital Markets Law 297/2004 which, among others, sets forth detailed disclosure and reporting requirements for issuers of securities.
- The Government Emergency Ordinance 109/2011 which provides for specific corporate governance rules applicable to state-owned enterprises, in particular composition, selection and assessment of the board members, protection of minority shareholders, transparency, external audit and remuneration.

The Corporate Governance Code (the “Code”) was adopted by the Bucharest Stock Exchange (BSE) in 2008. In line with EU legislation, companies are required to explain any non-compliance with the recommendations of the code (the so-called “comply or explain” approach). The Code refers to the OECD Principles of Corporate Governance and is composed of 11 chapters titled (i) Corporate Governance Framework; (ii) The Share - and other Financial Instruments Holders’ Rights; (iii) The role and Duties of the Board; (iv) Composition of the Board; (v) Appointment of Directors; (vi) Remuneration of Directors; (vii) Transparency, Financial Reporting, Internal Control and Risk Management; (viii) Conflicts of Interests and Related Parties’ Transactions; (ix) Treatment of Corporate Information; (x) Corporate Social Responsibility; and (xi) Management and Control Systems. In general the Code includes 19 Principles and 41 Recommendations.

In line with the EU legal framework, the Romanian company law allows companies to choose between a unitary and dual board structure. If the company adopts a two-tier system, its supervisory board appoints and dismisses the members of the management board and oversees their activities. The law is not clear in assigning strategic functions to the supervisory board. Further, the authority for approving the budget rests with the GSM. This is unusual and undermines the role of the board, since the responsibility for deciding on the way resources are deployed to achieve strategic objectives is given to shareholders. Another issue to mention is that the law does not detail a procedure for related party transactions’ (RPTs) approval. The Code briefly recommends that the (supervisory) board should be in charge of the oversight of RPTs and that the board should adopt best practices for ensuring substantial procedural fairness of RPTs. The independence requirements for directors are detailed in the Companies Law and the Code. Companies are not required but only recommended to appoint independent directors, complying with the independence criteria set out in the Companies Law. Only state controlled companies are required to have a majority of independent directors in the supervisory boards – however, there are some doubts about the real independence of board members in SOEs. As a matter of fact, only four out of the ten largest listed companies in the country disclose having one or two independent directors at the board, while the remaining six companies do not provide any information. The law “recommends” companies to establish board committees, composed exclusively of board members and at least one independent director. However, the law does not require that the independent director is also qualified for its functions. The law and the Code recommend companies to have board committees and that the audit and the remuneration committees to contain a “sufficient” number of independent directors.
However, there is no indication of what “sufficient” means in practice. Two companies among the ten largest listed companies in the country disclose having one independent member on their audit committee; one other company has the audit committee made of two independent members; while all other companies do not disclose having an audit committee in place. In practice, the extent to which independent directors are indeed independent in practice and duly qualified for their functions is not clear.

The BSE provides a template for companies to declare their compliance with the Code, but this template fails to adequately address the CG Code recommendations: the template does not cover important aspects of internal control such as the existence of an internal audit function or how risk management is organised. Further, any company listed in Tier 1 is required to comply with at least 14 of 19 principles. Companies can pick and choose among principles. In addition, disclosure is very formalistic in nature. At the moment there is no effective monitoring of implementation of the CG Code and the EBRD is working with the BSE for the revision of the code and for the establishment of an effective implementation mechanism.

The 2007 EBRD Corporate Governance Assessment identified major shortcomings related to the quality of the corporate governance legislative framework in Romania in the area of board responsibilities, disclosure and transparency and the rights of shareholders (see Chart 9). However, in the most recent 2015 assessment the overall structure and functioning of the board, as well as the criteria of transparency and disclosure and shareholders’ rights have been ranked “moderately strong”.

### Chart 9 – Quality of the Corporate Governance Legislative Framework in Romania

- **Structure and Functioning of the Board**
- **Transparency and Disclosure**
- **Internal Control**
- **Rights of Shareholders**
- **Stakeholders and Institutions**

**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 2015

### Debt restructuring and bankruptcy

Romania has a well-developed insolvency framework, which respects both debtor and creditor interests; it allows both for early reorganisation of debtors in financial difficulty and their efficient liquidation where businesses are no longer able to continue as a going concern. The effective implementation of the law is also reinforced by the handling of insolvency cases by a specialist court, the Insolvency Division of the Court of First Instance.

The new Insolvency Law (Law No. 85/2014 regarding preventative insolvency proceedings and insolvency proceedings), came into effect on 28 June 2014. It combined preventative insolvency proceedings and insolvency proceedings under one piece of legislation, which have previously been dealt with by
two separate pieces of legislation. Notably, even the past insolvency legislation of Romania was of good quality; the 2009 Insolvency Law Assessment rated Romania’s general insolvency legislation to be in high compliance with international best practices, ranking treatment of creditors and liquidation proceedings the highest, closely followed by the reorganisation processes and commencement of proceedings (see Chart 11).

The Insolvency Law enables both liquidation as well as reorganisation of legal entities as a going concern upon insolvency or imminent insolvency. Liquidation leads to liquidation of the debtor’s estate and distribution of proceeds in satisfaction of its liabilities. Reorganisation requires the approval of a reorganisation plan aimed at achieving an operational, corporate and/or financial restructuring, which may be proposed by the debtor, by the insolvency office holder or by one or several creditors representing at least 20 per cent of the aggregate value of claims against the debtor. In addition, a simplified liquidation procedure exists for certain “qualifying” debtors (including sole traders). Overall, creditors under the Insolvency Law have significant rights vis-à-vis commencement of insolvency proceedings, appointment of the insolvency office holder and determination of his remuneration.

Notwithstanding the existence of different reorganisation tools under the Insolvency Law, there is not yet a real culture in Romania of out-of-court restructuring involving a number of different creditors. Although a set of “Bucharest Rules” (based on the INSOL Principles for multi-creditor workouts) has been developed, banks and their advisors report that it is not used in practice. Non-performing loans (NPLs), especially in the corporate sector, remain a material issue for Romanian banks20. The current focus of the EBRD-supported Vienna Initiative is on NPL resolution21.

Romania is one of the few EBRD countries to have developed “preventative procedures” for debtors in the early stages of insolvency, aimed at averting insolvency. These are modelled based on French insolvency law and consist of two debtor-in-possession procedures known as the “ad hoc mandate” and the “composition”. The ad hoc mandate is a confidential procedure, triggered at the request of the debtor, involving the appointment of an ad hoc agent by the court to negotiate a deal with one or more creditors. Composition involves the preparation of a recovery plan by the debtor and its advisor, known as a “conciliator”, which needs to be approved by creditors holding at least 75 per cent of accepted and uncontested claims and to be subsequently ratified by the court. The role of the syndic judge, being the judge appointed to manage the insolvency case, is very important in conciliation and also in liquidation and reorganisation proceedings. The syndic judge in Romania plays a much greater role in directing the course of insolvency proceedings compared to members of the judiciary in other insolvency law systems in the region.

Romania has a reliable and well-functioning legal framework for the insolvency office holder (IOH) profession, being the highest performing country in terms of the legal and regulatory framework for IOHs in the recent EBRD assessment of IOHs in the Bank’s region22.
Chart 11 – Quality of insolvency legislation in Romania

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

6 http://www.ebrd.com/ics/Satellite?c=Content&cid=1395239019703&d=&pagename=EBRD%2FContent%2FDownloadDocument
12 http://ebrd-beeps.com/countries/romania/
13 http://www.doingbusiness.org/data/exploreeconomies/romania/

20 Total loans overdue for 90 or more days comprised some 22% of total loans at 2013 year-end.
21 http://vienna-initiative.com/