COMMERCIAL LAWS OF SERBIA 
AN ASSESSMENT BY THE EBRD

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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 2014 EBRD Strategy for Serbia, 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 Serbia and does not constitute legal advice. For further information please contact ltt@ebrd.com.
Overall assessment

The last four years have seen considerable legislative reform in Serbia in several important sectors of the economy. The underlying objective of some of the reforms is clearly the recognised need to accelerate the harmonization of the Serbian legal system with EU regulations in preparation for full EU membership of the country.

Among the various new laws enacted in recent years, there is the new Law on Capital Market which came into force in November 2011 which aimed at making the Serbian capital market more attractive to domestic and foreign investors. The new Companies Act was also enacted in 2011 and constitutes a clear improvement when compared to the previous regime, although mainly related to joint stock companies. Most recently the new Public Procurement Law became applicable on 1st April 2013. The new law stipulates a number of new solutions aimed at increasing transparency, effectiveness and cost-efficiency of the procedure, as well as at combating corruption by both the contracting authorities and the bidders. Finally, new regulations on renewables and the efficient use of energy were adopted in the first quarter of 2013.

Legal system

Constitutional and political system

The Constitution of the Republic of Serbia was unanimously approved by the parliament in October 2006 and confirmed by a referendum in November 2006. It replaced the Constitutional Charter of the State Union of Serbia and Montenegro following Montenegro’s referendum and ensuing declaration of independence in June 2006. The Constitution declares the state to be based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values. The government of the country is split between legislative, executive and judicial powers and should have a balanced relationship and mutual control. The Constitution provides for the adoption of special laws regulating each branch of the state.

Legislative power in Serbia is vested with a unicameral parliament (the National Assembly), consisting of 250 members elected for a four year mandate. Besides its legislative powers the parliament has powers of election that include appointment of; the Prime Minister and his Government, judges of the Constitutional Court, the Chairman of the Supreme Court of Cassation, chairmen of courts, the General Public Prosecutor, public prosecutors, judges and deputy public prosecutors, etc.

The President of Serbia is elected by the citizens of Serbia for a term of five years and cannot be elected for this position more than twice. The President represents the Republic of Serbia, promulgates laws, nominates the Prime Minister and presides over foreign affairs of the country. The Government, itself nominated and subsequently headed by the Prime Minister, is responsible for the implementation of laws, adoption of regulatory instruments, establishment of policies, etc. Resignation of the Prime Minister results in a dissolution of the existing government.

The Constitution provides for courts of general and special jurisdiction, with or without the participation of jurors. The highest judicial court in Serbia is the Supreme Court of Cassation. A separate special law should regulate the establishment, organization, jurisdiction, system and structure of courts.

The judges are entitled to permanent tenure which they acquire in two steps. Initially a candidate is recommended by the High Judicial Council to the parliament who appoints the judge for the first term of three years. After serving the first term the High Judicial Council may decide to appoint the judge for permanent tenure. The High Judicial Council is an independent and autonomous body that guarantees the independence and autonomy of courts and judges.

The Constitutional Court is also an autonomous and independent body that decides upon the constitutionality of laws and international treaties, as well as to the legality of other statutory acts. According to the Constitution, generally accepted rules of international law and international treaties shall be an integral part of the legal system in the Republic of Serbia and apply directly.

Autonomous provinces

The Republic of Serbia also has two autonomous provinces: the Province of Vojvodina and the Autonomous Province of Kosovo and Metohija. Following the NATO campaign in Serbia and Montenegro and the UN Security Council Resolution 1244 of 10 June 1999, the United Nations established an international civil presence in Kosovo, known as the United Nations Interim Administration Mission in Kosovo (UNMIK), to prevent further conflicts in the province and to maintain the substantial autonomy granted to it under Resolution
1244/1999. While continuing to confirm that Kosovo is at present a part of Serbia, Resolution 1244/1999 provides that its final status is to be decided in future political negotiations.

**Freedom of information**

Serbia has made some progress in the area of freedom of information (FOI), but the fact that the Office of the Commissioner for Information of Public importance and Personal Data Protection continues to receive a large number of complaints shows that a considerable number of problems still remain.

For several years, a recognisable continuity in both the positive and negative aspects of the implementation of the Law on Free Access to Information of Public Importance was recorded. Around 1,000 FOI requests are filed in Serbia on various levels every day, and the requests are granted on a daily basis. Incidents are still being reported and some information can be obtained only after an intervention by the Commissioner, and at times not even that intervention can produce results.

These problems require a serious debate about the issues of irrationality, corruption and crime, and individuals in charge of public enterprises and bodies who are depriving the public of such information need to account for their actions.

**Judicial system**

Serbia’s judiciary consists of courts of general jurisdiction, which deal with civil and criminal matters, as well as specialised commercial and administrative courts. The courts of general jurisdiction comprise basic and higher courts, the latter being the courts of first instance for higher value claims, and for some specialised areas such as intellectual property. Appeals from basic court judgments as well as all higher courts lie to one of four appellate courts. Within the commercial court structure, first instance courts have general competence to hear commercial law disputes, including those relating to company law, bankruptcy and foreign investments, with appeals lying to the Commercial Court of Appeal. The Administrative Court has jurisdiction over competition matters and disputes with the government regulators and authorities. The Supreme Court of Cassation is the final instance of appeal in all matters.

The High Judicial Council is responsible for overseeing judicial training, the appointment and dismissal of judges, and the general organisation of the courts. The Council consists of eleven members, the majority of whom are judges. Even though established with the general objective of ensuring independence and impartiality of the judiciary, the Council is sometimes criticised for being too closely connected with the government. The Minister of Justice is among the member of the Council ex officio. Judges undergo mandatory initial training as well as voluntary continuous training administered by the Serbian Judicial Academy.

The EBRD Judicial Decisions Assessment found court judgments in commercial matters to be fairly predictable and of reasonably good quality, with judgments of commercial courts being of slightly better quality than those of other courts. The EU candidacy process has prompted a modernisation of the country’s legal system in line with higher standards, contributing to an increase in the quality of judgments over recent years. However, the pace of legislative change has inevitably caused some instability and created difficulties for judges. The slow pace of judicial proceedings has long been a problematic area for the Serbian judiciary. This is reflected in data from the EBRD / World Bank Business Environment and Enterprise Performance Survey, where only 11% of Serbian respondents considered that the court system was sufficiently quick. Recent reforms aimed at addressing this issue have included the enactment of the new Civil Procedure Code, in force since early 2012, which empowers the courts to impose stricter deadlines on parties to litigation, and to render judgment without a formal hearing in certain cases. Importantly, it provides that hearings are generally to be conducted by a single judge, with panel hearings now a rare exception.

Judicial impartiality remains another area of concern in Serbia, where courts are sometimes perceived to be under the influence of the executive government, and not free from corrupt practices. Measures taken to address these concerns include the introduction of an automated case allocation system, as well as efforts to set up a more efficient disciplinary system. However, greater transparency, including through ensuring easy public access to all court judgments, could further improve the situation - it is presently very difficult for the public to obtain access to judicial decisions, due to the application of privacy laws.

One major development has been the enactment in May 2011 of the Law on Enforcement and Security, aimed at increasing efficiency in the enforcement system. Notable improvements introduced by the Law include shortening of procedural deadlines, in particular with respect to asset sales; shifting certain enforcement responsibilities from courts to private bailiffs; reducing court participation in enforcement proceedings; providing more flexibility for the claimant to take possession of a debtor’s assets; as well as limiting grounds for challenging acts of
enforcement officers. However, enforcement of judgments remains an area of concern. The most immediate needs include increasing the number of well-trained private bailiffs and reducing the backlog of enforcement cases existing at the state enforcement service.

Further measures to strengthen contract enforcement and judicial capacity in Serbia would include: ensuring better access to court judgments; establishing comprehensive and up-to-date court judgment databases; further systematic and specialised mandatory training to judges in commercial law matters, and measures to promote the use of commercial mediation, which could assist in further reducing backlogs.

Commercial legislation

The EBRD has developed and regularly updates a series of assessments of legal transition in its countries of operations, with a focus on selected areas relevant to investment activities. These relate to investment in infrastructure and energy (concessions and PPPs, energy regulation and energy efficiency, public procurement, and telecommunications) as well as to private-sector support (corporate governance, insolvency, judicial capacity and secured transactions).

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

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

Infrastructure and Energy

Electronic Communications

The main legal basis for electronic communications regulation in Serbia is the Law on Electronic Communications, 2010, as supplemented. The 2010 law is broadly aligned with the European Union (EU) 2003 Framework and, in a number of respects, is consistent with the EU 2009 framework.

The national regulatory authority, the Republic Agency for Telecommunications (RATEL), became operational in 2005. The Ministry of Foreign and Internal Trade and Telecommunications (the 'Ministry') has overall responsibility for policy in the sector, spectrum administration and universal service.

While RATEL is stated to be functionally and financially independent of government authorities, organisations and entities, as well as organisations undertaking electronic communications activities, two recent legislative developments give rise to concern for its independence and capacity. A 2011 Law on Cinematography requires RATEL to allocate 10 per cent of its gross annual revenue towards promotion of the national film industry. Further, amendments to the budget and salaries laws adopted in 2012 further constrain RATEL's budget autonomy and impact its ability to recruit and retain competent staff.

RATEL is responsible for monitoring compliance with the law by operators and service providers. In case of repeated breaches of the law by the operators, RATEL can only report this to the Ministry, which performs its own additional inspections, causing potential overlap and inconsistency in determining possible breaches of the law. Additionally, in cases of a breach of the law, the Ministry does not appear to have clear authority to impose monetary fines, nor does RATEL. Penalties for misdemeanours can be imposed only by a “Misdemeanour Court”. Penalties of up to €20,000 are allowed, although in practice courts have tended to be lenient in imposing penalties. The absence of more significant monetary penalties means that practical enforcement for significant breaches or involving large operators or service providers is compromised.

Dispute resolution provisions do not appear sufficiently clear in the law, nor are they specific to the circumstances of the electronic communications sector.

The market analysis and significant market power provisions within the law are adequate, although
clear authority for RATEL to impose functional separation on operators should be introduced. Obligations with respect to interconnection, access and facilities sharing are applicable to all operators and are also generally aligned with EU framework. The law provides for general rights of way for operators, but these rights have yet to be fully aligned with provisions of other relevant laws. Provisions on rights of way over public property are more detailed and provide more certainty than those regulating rights of way over private property.

While electronic communications is an important contributor to the Serbian economy, it is the sector’s role as an engine of growth and development across all sectors of the economy that makes harmonisation of the domestic regulatory framework with that of the EU critical as a means of attracting the investment necessary to install next generation technologies. As EBRD maintains investment in the electronic communications sector in Serbia it is keen to see a transparent, more predictable and EU-compliant regulatory regime maintained as a means to enhance the attractiveness of the sector to private investors and the security of their investments.

Serbia is one of the largest markets in the region, but was the last one to be fully liberalised. Although the 2010 Telecommunications Law transposed the EU’s 2003 regulatory framework for communications into national law, promising improved market prospects for competitors, it still needs the implementation of the normally expected competitive safeguards before investor confidence is fully restored. The recent abolition of the special tax on mobile revenues was seen as a good step and the overall tax burden on the sector is now relatively low. In September 2010 the government adopted the strategy for the development of electronic communications from 2010 to 2020, but there appears to be no implementation plan setting out specific targets and policy priorities in the short to medium term, creating uncertainty for the market players. Administrative capacity of the policy-making body in the sector of the information society needs to be further strengthened. Similarly, administrative or financial restraints on RATEL’s capacity and independence should be resolved by the authorities.

Chart 1 – Comparison of the legal framework for telecommunications in Serbia 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.
Chart 2: Comparison of the overall legal/regulatory risk for telecommunications in Serbia 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

The Serbian Parliament adopted the new Law on Energy on 28 July 2011 (the “Law”). The Law is a step towards the process of harmonising the Serbian energy sector with the EU legal framework as it implements the second and parts of the third EU energy package.

Production of Electric Energy

Production of electric energy is no longer defined as an activity of general interest. Accordingly, government approval is no longer required for the production of electricity and the Government will no longer have a supervisory authority over the producers. The Government of Serbia, however, retains the right to adopt safeguard measures (e.g. restrict export or import, determine supply priorities, etc.) in the event of a lack of supply on the Serbian market or in the presence of other extraordinary circumstances.

Unbundling of distribution and supply activities

By 1 October 2012 the activities of distribution of electricity/gas and supply of retail consumers with electricity/gas will have to be divided into separate companies.

Licenses

Issuance of the licenses for various energy activities remains within the competence of the Energy Agency of the Republic of Serbia. Certain licensed activities are now designated differently (e.g. energy trading is now labelled energy supply), while the Law has changed the scope of certain licenses. Even though licenses issued under the previous legislation remain valid until their expiry, the holders of such licenses which pertain to the activities that are now treated differently under the Law will have to submit their licenses to the Energy Agency within 90 days from the Law coming into force, in order to obtain a note on the changes pertaining to the description or, as the case may be, the scope of the licensed activity. The standard duration of a license remains at 10 years, with the exception of the production of electricity, heating energy and the combined production of electric and heating energy, where a license is issued for a period of 30 years. Licenses are renewable and are not transferable.

Restrictions to Third-party Access

In line with EU Directives 2009/73/EC and 2009/72/EC, the Law regulates the conditions for refusal of third party access, especially in the
case of new gas or electricity infrastructure as well as in relation to take-or-pay commitments in the gas sector.

**Regulated Prices**

From 1 October 2010, the Energy Agency of the Republic of Serbia, as an independent regulator, will have the competence to determine the price of electricity and gas for public supply, as well as the price of access to the transmission and distribution systems. Until then, the Government of Serbia will continue to regulate those prices. From 1 January 2013, the regulated prices of electricity and natural gas will apply only to consumers connected to the distribution grid, while industrial consumers who are directly connected to the transmission grid will not be entitled to the regulated price. Consumer protection will be further reduced from 1 January 2014 in respect to electricity and, from 1 January 2015 in respect to natural gas, when regulated prices will apply only to households and small industrial consumers (i.e. companies with less than 50 employees, less than EUR 10 million of revenue and connection to the distribution grid of up to 1kV).

**Long-term PPA’s**

In order to address potential competition and state-aid issues, the Law sets forth a 15-year maximum duration of a PPA for the electricity produced in production facilities designated as being of importance for the security of supply in the Energy Strategy of Serbia.

In the coming years, Serbia should continue to reform its law to bring it not only in line with the EU Directives but also fully in line with international best practice.

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**Chart 3 – Quality of energy (electricity) legislation in Serbia**

![Chart 3](image)

*Note:* The spider diagram presents the sector results for Serbia 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 Serbia are represented by the green area in the centre of the web.

*Source:* EBRD 2011 Energy Sector Assessment

**Gas**

The largest deposits of gas in Serbia are located in the north of the country, in Vojvodina. Serbian gas needs (that cannot be settled by domestic production) are met by the importation of gas
from Russia through Ukraine and Hungary. However, Serbia is envisaged to be one of the countries through which the international Southern Stream pipeline will go. This would mean gas from Russia being transported under the Black Sea to Europe.

Almost the entire existing Serbian gas pipeline system is owned and managed by the state-owned public entity Srbijagas, except for the gas pipeline from Pojate to Niš, which is owned by the company Jugo-rogsag (majority owned by Gazprom).

Storage of gas is performed by the company Banatski Dvor, which is majority owned by Gazprom. Banatski Dvor operates with a gas storage capacity of 450 million cubic metres. It is planned that its capacity is to reach 800 million cubic metres within the next couple of years.

According to official data, it is estimated that in 2013, 17% of gas will be from domestic production while 83% will be imported.

Oil and gas exploration and production is heavily regulated. Engagement in oil and gas exploration and production involves obtaining numerous licences and permits from different state authorities, the fulfilment of a number of conditions relating to technical standards, health and safety, environment, reporting requirements, inspection controls, and so on.

The main laws regulating this area are:

- Energy Law; This regulates aims of the energy policy, conditions for the performance of energy activities, the functioning of the electricity and gas market, the protection of consumers, and so on.
- Law on Pipeline Transport of Gaseous and Liquid Hydrocarbons and the Distribution of Gaseous Hydrocarbons; this regulates the pipeline transport of gaseous and liquid hydrocarbons, the distribution of gaseous hydrocarbons, the construction and maintenance of pipelines, and so on.
- Law on Mining and Geology Explorations; this regulates mineral policy, conditions for exploration and production of minerals (including oil and gas), the construction and maintenance of mining related premises, decommissioning, and so on.
- Law on Public-Private Partnership and Concessions; this regulates public-private partnerships and the awarding of concessions.
- Law on Planning and Construction; this regulates the conditions for the planning and development of land, construction of objects, and so on.

**Energy efficiency/renewable energy**

**Renewable Energy**

Serbia’s potential for energy production from renewable energy sources (RES) is estimated at 6 Mtoe annually, including a variety of sources: hydro, solar, wind, geothermal and a significant share of biomass. However, utilisation of this potential is still at its early stages, with estimates showing only 33% being used. At the same time, as a member of the Energy Community, Serbia has committed to implementing the EU Directives, including Directive 2009/08/EC, and setting up RES targets (27% for Serbia).

The Energy Sector Development Strategy of the Republic of Serbia (adopted in May 2005) (the “Strategy”) and the Energy Sector Development Strategy Implementation Programme of the Republic of Serbia for the period 2007-2012 (adopted in 2009) (the “Programme”) are the two main policy documents, which underline the significance of renewable energy and place its development high on the government’s agenda. The National Action Plan for Renewable Energy (the “RES Action Plan”) sets forth specific actions to be taken by the government in order to achieve the national RES target. These include: review of the regulatory framework with a view to setting forth appropriate legal incentives promoting RES use, simplification of administrative procedures, as well as the introduction of an energy management system and systematic project planning in the RES sector. The Energy Law of 2011 (the “Energy Law”), replacing the previous Energy Law of 2004, is the key piece of legislation for the RES sector. Covering a broader energy sector, the Energy Law has marked a significant step in aligning the sector legislation with the EU acquis. A number of implementing regulations have been adopted; including those on the conditions for acquiring the status of a privileged power producer (2013), on incentive measures for privileged power producers (2013), and on introducing feed-in tariffs (the most recent one, of 2013). At the same time, several implementing regulations which are envisaged under the Energy Law are not yet issued, leaving the sector in a transitional phase. The energy
laws in Serbia are largely in line with the EU’s Second Energy Package, and implementation of the Third Energy Package remains one of the government’s current priorities.

RES incentives set forth by the Energy Law and implementing regulations include feed-in tariffs alongside an obligation by the public supplier to purchase electricity, both available to so-called “privileged” power producers. Such producers also are given a priority access to the transmission and distribution systems. Feed-in tariffs differentiate based on the type and capacity of a power plant and are generally set for three years (one year for solar plants) to be adjusted annually for inflation starting from February 2014. There is a cap on the total installed capacity of certain types of RES. A system of guarantees of origin of electricity production has also been introduced, though certificates are not yet tradable.

Capacity limitation on RES plants, lack of bankable power purchase agreement (PPA) model and the underdeveloped grid are considered as key obstacles for the efficient implementation of the RES projects.

While the energy laws of Serbia are largely in line with the Second Energy Package, implementation of the Third Energy Package remains one of most immediate steps, with the current plan for the government to adopt necessary legislation by the beginning of 2015. The RES Action Plan envisages the adoption of a sector-specific RES law (and implementing regulations). Simplifying administrative procedures, including licensing and planning regulations, and creation of a “one-stop shop” for renewable energy investors, are expected to be part of the improvement measures. Further amendments to the PPA model could be expected, with a view to providing better comfort to financiers in developing RES projects.

Several international donors work closely with the government in promoting sector development. Donor programmes include support with research and feasibility studies with respect to RES potential, including wood waste and biomass (USAID), capacity building of government agencies tasked with various aspects of project development (EBRD) and financing of RES projects (KfW, IFC, EIB and the EBRD). EBRD has established two credit lines for the broader Western Balkans region (WeBSECLF and WeBSEDFI) for direct financing as well as through local banks.

The adoption of a sector-specific law and secondary legislation and the implementation of the Third EU Energy Package, including 2009 Renewable Energy Directive remain the main sector objectives for the government. To encourage sector investment, the government should also focus on establishing a favourable regulatory environment by simplifying administrative procedures, strengthening capacity of public authorities, and removing obstacles to financing.

**Energy Efficiency**

Similar to the RES sector, Serbia’s current policy framework for the energy efficiency (EE) sector is set forth in the Strategy and the Programme, which promote more efficient use of energy and growth of EE measures in various sectors. The First Energy Efficiency Plan of the Republic of Serbia for the Period from 2010 to 2012 (the “EE Action Plan”) sets specific instruments intended to facilitate EE penetration, including: refurbishment of residential and industrial facilities with EE equipment, adoption of new construction / building regulations promoting minimum energy performance standards and certificates of building energy performance, utilities billing based on actual consumption / metering, establishment of the energy efficiency fund (the “EE Fund”) to provide financial support to the EE projects, introduction of EE credit lines, and promotion of ESCOs.

Much of the described remains yet to be implemented. The Energy Law, being a core law in the broader energy sector, provides only very basic regulation for the EE sector. [Some of its provisions include the promotion of heat and electricity cogeneration from fossil fuel CHP plants (with capacity of up to 10 MW) by granting them the status of “privileged” power producer. This status enables the use of feed-in tariffs, to enjoy the mandatory buyout of energy by the public supplier within the eligibility period, as well as to benefit from the priority access to transmission and distribution systems.]

Overall, the EE framework remains to be yet brought in line with the EU EE standards as part of the country’s EU accession process. The Energy Efficiency Agency has been set up to facilitate the country’s efforts in this respect.

Serbia ratified the Kyoto Protocol to the United Nations Framework Convention on Climate Change (the “Kyoto Protocol”) as a non-Annex I country, thus it is not bound to reduce greenhouse gas emissions and is eligible for implementation of the CDM projects, but cannot trade emissions. Serbia is still preparing its first national communication with the GHG inventory.

The government is currently working on a draft Law on Rational Use of Energy (the “Draft EE Law”). The Draft EE Law is intended to introduce specific incentives and support mechanisms for promotion of EE measures and increase the efficiency of energy use, particularly through
introduction of minimum energy performance standards, an energy management system for large and public energy consumers, energy audits and an EE Fund as well as otherwise implementing the EU acquis. Further promotion of combined heat and power production is expected to be another area of the government’s attention.

The international community contributes to the development of the EE sector by supporting research and study projects, such as the Study for Introduction of the Energy Management System in Energy Consumption Sectors in the Republic of Serbia undertaken with financial and technical assistance from the Japan International Cooperation Agency. The above described facilities set up by the EBRD for the Western Balkans countries (WeBSECLF and WeBSEDF) that also cover the EE sector. Other international donors providing EE projects financings in Serbia include the International Development Association and the World Bank.

Serbia has shown slow progress in the development of a comprehensive EE framework. Further efforts should be directed to the adoption of a sector-specific EE law aligned with EU standards and, at a policy level, to the development of an updated National Action Plan for EE. Particular attention should be given to providing sufficient financial incentives, enabling efficient functioning of the EE fund and promoting the ESCO model. Capacity building for state authorities and market players needs to be undertaken together with public awareness campaigns on EE benefits, in particular for the residential sector.

Serbia has made substantial progress in recent years to establish efficiently functioning RE and EE sectors, however, efforts should be intensified in order to set up a modern and enabling regulatory and institutional framework aligned with the current EU standards and responsive to the country’s international commitments.

**PPPs / Concessions**

The Law on Public-Private Partnership and Concessions (“PPP / Concession Law”) was adopted by the Serbian Parliament in November 2011 and came into force on 2 December 2011. The new law, which was prepared with EBRD technical assistance, has a fairly wide scope and covers institutional PPPs in addition to contractual arrangements. The law takes into account the EU principles of equal treatment, fair competition and is largely based on the EU procurement fundamentals. The law usefully provides an open list of sectors where PPP may be granted; clearly distinguishes between PPP, concession and a license; provides for a private party to create security over the project assets, rights and proceeds; enlists a detailed procedure for concession awards; and for an international arbitration where the concessionaire is a foreign entity. In line with the EU rules it refers to the public procurement procedure for non-concession PPP projects. Article 65 of the Law envisages establishment of a Public-Private Partnership Commission that will provide technical assistance in the implementation of public-private partnership and concession projects in accordance with the Law. The Commission was established by a Government’s decision on 9 February 2012. Following the EBRD technical assistance with preparation of the new law and with institutional capacity of the newly set up PPP Commission, the key issue remains the enhancement of local officials’ capacity for project initiation and preparation involving proper project identification and training at the municipal level.

**Corporate Joint Ventures with Municipalities – A recent court decision.**

The Constitutional Court of Serbia recently published a Ruling declaring the formation of a JV company between one Serbian municipality and a private investor contrary to law. According to the Ruling, Serbian municipalities are only permitted to set-up 100% state-owned companies for performance of municipal services or to delegate performance of such services to a fully private entity, but are not entitled to set-up joint venture companies with private investors for performance of municipal services. The foothold for the Ruling was found in Article 32 of the Law on Local Self-Governance which lists the competences of municipalities and specifically mentions establishment of public companies, i.e. 100% state-owned company. Even though Article 7 of the same law permits the municipalities to set-up companies (without explicitly restricting this to public company form) and the wording of Article 32 that was relied upon in the Ruling does not clearly suggest that the list of municipal competencies is exhaustive (on the contrary, the list is followed by a catch-all phrase “permitting municipalities to perform other activities in accordance with the law and municipal by-laws”), the Constitutional Court based the Ruling on interpretation that Article 32 of the Law on Local Self-Governance does not permit local municipalities to do anything that is outside the activities specifically enumerated therein.

Apart from being a threat to further existence of already established JVs in various sectors ranging from waste management to public parking and outdoor marketing, the Ruling is yet another sign that Serbia does not have a reliable legal framework for public-private partnerships and
badly needs adequate PPP legislation. The Ruling does not affect arrangements for performance of municipal services by private sector, which do not involve equity participation of municipalities in private companies.

On the books, Serbia’s PPP legal framework was found to be in “Medium compliance” with internationally accepted standards (69.17 per cent). The assessment measured the quality of PPP legislation in Serbia and scores were given according to compliance with international benchmarks. (See Chart 5 below)

An assessment of the effectiveness of the PPP framework in practice in Serbia shows that the country is in “low compliance” with international best practice (42.3 per cent). This is mainly attributable to the lack of a clear PPP policy framework in addition to weak enforcement in practice in recent years. Chart 5 below illustrates the effectiveness of PPP legislation in practice.

Chart 5 – Quality of the PPP legislative framework in Serbia

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)
Public procurement

Public procurement in Serbia is regulated by the Public Procurement Law (Official Gazette of RS No. 124/12) (PPL), adopted in January 2013 and in force since 1 April 2013. The new law was adopted to modernise procurement and incorporate basic principles of the EU Directives. The law covers the public sector, including utilities and public law entities and introduces a new institutional framework for regulating and monitoring public procurement procedures. The PPL states that a Centralized Public Procurement Body may be established at the national, provincial or local government level.

The legislative overhaul is part of the wider fight against corruption and strengthening of state finances, acknowledging that the added costs of non-competitive tenders may run to hundreds of millions of Euro. Efficiency, cost-effectiveness, competition, transparency, equality and environmental protection are the stated principles that should govern all public procurement procedures. The number of exemptions has been reduced in the new legislation. Public procurement funded from foreign credits granted by international organizations and international financial institutions is still excluded from its scope. In addition, special provisions apply to public procurement in the areas of water management, energy, transport and postal services.

Part of the new law is dedicated to the prevention of corruption. It explicitly requires the Public Procurement Office to draft a plan for combating corruption in public procurement procedures, and contracting authorities with an estimated annual value of public procurement in excess of one billion dinars (ca. 8,950,000 Euro) to adopt an internal plan for preventing corruption. In addition to stringent record-keeping requirements, contracting authorities must also devise clear rules governing the planning, execution, control and monitoring of public procurement procedures. The new legislation includes specific provisions on conflicts of interest and a duty to report corruption. Whistleblower protection is introduced in the form of a right to indemnification for individuals who are sanctioned (e.g. dismissed) as a result of reporting a violation.

The law introduces some new measures, such as the monitoring of public procurement over RSD 1 billion dinars (ca. 8,950,000 Euro) by “civil supervisors”, who are either experts in the
domain of public procurement or associations dealing with the prevention of corruption or conflicts of interests. The law also sets out in detail the rules for public procurement of standardized goods and services (done solely by electronic means using the open procedure), as well as for electronic auctions. It also introduces a "competitive dialogue" procedure, applicable in cases where the subject matter of the procurement is of such complexity (e.g. in light of its technical specifications or legal or economic structure) that the contract cannot be awarded through regular procedures.

The new legislation includes refinements of the many requirements applying at various stages of the public procurement procedure: notice, invitation and publication, tender documents, public procurement value, technical specifications, eligibility criteria, bidding process and awarding of contracts. Domestic bidders are still advantaged over foreign bidders, as are goods of domestic origin, subject however to the provisions of the Central Europe Free Trade Agreement and the Stabilization and Association Agreement (for EU bidders).

In terms of sanctions, non-compliance may lead to the imposition of fines, though it remains to be determined whether they are high enough to constitute a real deterrent. Contracting authorities may be fined up to RSD 1,000,000 (ca. 8,950 Euro) for breaching procedural or technical obligations (e.g. record-keeping, publication). For more serious violations, such as failure to follow public procurement procedures when no exemption exists or accepting bids of interested persons, fines may go up to RSD 1,500,000 (ca. 13,400 Euro). Bidders who provide inaccurate or false information, hire undisclosed sub-contractors or act as an interested person, for example, can be fined up to RSD 1,000,000 (ca. 8,950 Euro). Individuals (physical persons) acting for a contracting authority or bidder may also be fined a more modest sum.

Strengthening institutional capacity with adequate resources (financial/human) and technical capabilities will be critical to the successful implementation of the law, especially considering the broad mandate given to some bodies. The Public Procurement Office is tasked with monitoring the application of the law and the conduct of public procurement, providing assistance to contracting authorities and bidders, running the Public Procurement Portal and proposing measures to improve the public procurement system. The Republic Commission for the Protection of Rights in Public Procurement Procedures is responsible for ensuring the protection of rights in public procurement procedures and conducting minor offence proceedings. Harmonization of work between these institutions and others who have an implementing role will be important.

The new law on public procurement is one of the government’s important achievements in setting up a framework to prevent and fight corruption. In Transparency International’s latest Corruption Perception Index (CPI 2012), Serbia had marginally improved its standing, and stood at 80th overall, a score still denoting pervasive corruption problems. The hopes are high that the resources invested in the implementation of the new law to support its objectives will improve the situation.

The public procurement in Serbia is decentralised, and the PPL provides for tendering and negotiated procedures. The PPL regulates all phases of the procurement processes, although its focus is on the tendering and pre-tendering phases. Open tendering is a default procurement method, but eligibility rules allow for domestic preferences, which is inconsistent with international best practice.

The award criteria in tenders are the lowest price, but there is a provision for selection of the most economically advantageous offer for more complex projects. Online information on procurement opportunities has been made available but tender documents are not available on the Internet yet and have to be purchased from contracting entities. The law makes no distinction between small value and high value contracts – all are procured within the same complex procedures. The newly established remedies system is based on the EU model and if properly implemented will positively influence development of the public procurement system in Serbia.

In the EBRD 2013 assessment regulatory gaps in the public procurement legal framework in Serbia were recorded between 17 % and 21 % in key regulatory areas: transparency safeguards, efficiency instruments and institutional and enforcement measures. This result indicates that further reform work is needed to align the legal and institutional framework with international best practice; however, comparison of the 2010 and current EBRD assessment confirms that public procurement regulation is being modernised and has been significantly improved since 2010. The government of Serbia cooperates with EU agencies and OECD/SIGMA supporting public procurement reform work in the region. In 2012 the EBRD signed a MoU on cooperation in the public procurement area and the EBRD Procurement Department is developing policy dialogue instruments with the Serbian government.
The PPL in Serbia needs to be further developed and all stages of the public procurement processes should be at the core of technical measures to improve the regulatory framework. The reform should aim to provide more and easily accessible information on tenders and enabling optimal competition for domestic and international bidders. Implementation of the newly established institutional framework is needed to ensure that procurement procedures can be effectively monitored, with better access to procurement records and improvement of review and remedies procedures in particular.

Serbia’s new PPL has succeeded in strengthening the legislative framework and bringing Serbia from medium to high compliance with best practice benchmark (see Chart 7 for Serbia’s quality of public procurement legislation; and Chart 8 for the Quality of public procurement practice in Serbia). Further reforms are needed, particularly with regard to promoting fair competition and openness to international trade. As Serbia negotiates accession to the EU in the coming years it should continue to reform its law to bring it not only in line with the EU Directives but also fully in line with international best practice.

Chart 7 – Serbia’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 Serbia

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

Secured Transactions

The Law on Mortgages adopted in 2005 in Serbia (Official Gazette of the Republic of Serbia n. 115/2005) (“the Law”) aimed to establish a legal framework for mortgages based on international best practices. This Law introduced several new features, including expanding the type of objects that may be mortgaged (a mortgage may be established, inter alia, on the land, buildings and buildings under construction which are owned or freely disposed of by the mortgagor), a fast track, out of court enforcement procedure, and the establishment of the Central Registry of Mortgages. A mortgage is created by registering a contract or a mortgage deed in the appropriate real estate registry. Any claim, including a future or conditional claim, as well as a claim denominated in a foreign currency, may be secured by a mortgage. A mortgage includes all the integral parts of a real estate, assets not separated from real estate, fixtures and all improvements to the real estate that have occurred after registration of the mortgage.

However, the legal practice over recent years has proved that the law has some substantial weaknesses, which hinder the legal clarity and efficiency of its implementation. These ambiguities made it possible for mortgage debtors to abuse the system by obstructing the enforcement of their creditors’ rights. This has consequently decreased the confidence of lenders in the system and increased transactions costs. For example, debtors are reported to obstruct the out of court procedure by filing before the court an injunction against the procedure without serious grounds, despite the fact that the intention of the law was to limit the grounds for such injunction. This prolongs the process, raises costs and decreases efficiency of the system.

Another example occurs in the case of second or later-ranking mortgages. The law is rather ambiguous on whether the second ranking...
mortality survives the out-of-court enforcement of the first mortgage. If it did, it would have very negative consequences for the first ranking mortgagee who would have to sell the property still encumbered with a mortgage. This uncertainty has deterred many lenders from using out of court enforcement.

In addition to the enforcement-related issues, which became prevalent given the financial crisis in Serbia since 2009, other issues have also been identified (e.g. extension of mortgages established over land to developed buildings, overly strong position of lessees of the property in relation to the mortgage creditors, amending registration of mortgage, etc.). In July 2013, the Serbian Ministry of Finance has officially requested EBRD’s assistance with the reform of the Mortgage Law.

In 2001, with EBRD technical assistance, Serbia undertook to reform its framework for secured transactions and a Law on Registered Charges over Movable Property was adopted by the Serbian parliament in May 2003. It provided for the first time in the country the legal means by which lenders, investors and borrowers can secure their operations with non-possessory pledge over movable property and rights. The new provisions create a new legal instrument (registered pledge) by which movable and intangible assets can be encumbered while the borrower remains in possession of the collateral. The collateral can comprise a wide range of assets, including inventory, receivable accounts, and future assets. Full publicity is provided via a notice filing system to the register operated by the Business Registers Agency. Parties are free to agree on an out-of-court enforcement procedure and collateral realisation either by direct negotiated sale or public auction. After ten years of usage it can be said that the reform proved to be a very successful one as the introduced system is highly appreciated and used by the market players which consider it as reliable and see it as an integral part of everyday financial transactions. The quality of the law is also reflected in the fact that no amendments were needed or proposed since its introduction, a rare case for Serbia.

Financial Leasing

Financial leasing is regulated by the Financial Leasing Law. Financial leasing is defined as a transaction whereby the lessor concludes a supply agreement with the supplier of the leased item (thereby acquiring ownership of the leased item), after the supplier is selected and the item is specified by the lessee, and concludes a financial lease agreement with the lessee thereby granting to the lessee the right to use the equipment during a certain period of time in return for the payment of rentals in line with agreed payment schedules. Financial lessors are companies licensed by the National Bank of Serbia to engage in financial leasing operations. A Financial lessee can be either a legal entity (company, institution, etc.) or a natural person (household). The Serbian leasing industry is made up of 16 active leasing firms, 10 of which are foreign-owned. Although a good legal framework for leasing seems to be in place there are currently other economic factors influencing the gradual downturn in leasing activities (e.g. according to the report of the Serbian central bank for the Q1 2013, relative to 2012, total income and gains dropped by 18.6% and total expenses and losses by 13.2%).

Factoring

The Factoring Law was passed in June 2013. The law provides a modern legislative framework for undertaking factoring transactions. Factoring is defined as ‘the financial service of selling and purchasing existing non-matured or future short-term receivables arising from agreements on the sale of goods or provision of services, either nationally or abroad’. Factoring companies are regulated, licensed and supervised by the Ministry of Finance. The law defines basic factoring transactions (with and without recourse) as well as a special type of factoring, reverse factoring where a factoring client is a debtor instead of individual creditors. Reverse factoring can be a useful tool in mitigating the adversity caused to SME suppliers by payment illiquidity since it can effectively provide working capital finance to SMEs against the credit risk of their big buyers (by assignment of receivables). EBRD is currently conducting a feasibility study with the aim to establish the feasibility and marketability of supporting a national reverse factoring programme.

Credit Bureau

The Credit Reporting Agency in Serbia is a private credit bureau established in 2004 by the Association of Serbian Banks. Only financial institutions are required to provide data. Government entities and other credit providers are excluded although some, such as telecommunications companies, may access credit histories as users. Data protection requires that information is collected and distributed solely for assessing the creditworthiness of potential borrowers. The bureau provides access to historical data for a 5 year period and the data contain current liabilities, such as liabilities in respect of extended loans, credit cards, allowed overdrafts, and leasing contracts, potential liabilities, such as data on given guarantees (guarantors) in respect of credits extended to
other individuals and irregularities (default, contested claim) in settling current liabilities, including the amount and duration of defaults. In case the data held about an individual in the databases available to the bureau are incorrect, there is the possibility of complaint. The request for data correction may be submitted at any bank or at the bureau. The prescribed deadline for data correction is 15 days. In order for the bureau to fully achieve its function it would be welcome if the data collected would include nonfinancial data as well, e.g. utility bills or trade credit.

**Capital Markets**

Capital markets activity in Serbia is primarily regulated and monitored by the Securities Exchange Commission (the "SEC"). The most notable feature of the Serbian capital markets legal framework is that it is currently undergoing extensive reform, as the Law on the Market of Securities and Other Financial Instruments was entirely repealed in 2011 and the Law on the Capital Market (the "Law on the Capital Market") adopted, which entered into force as of 17 November 2011 and which implements a number of European Union Directives ("EU Directives"). In addition to the Law on the Capital Market, repurchase transactions and derivatives transactions are regulated by decisions of the National Bank of Serbia (the "NBS").

There is one stock exchange, the Belgrade Stock Exchange ("BELEX"). The BELEX capitalisation at the end of 2012 was about EUR 6.5 billion. There is a single depository providing clearing and settlement services, the Centralni registar depo i kliring hartija od vrednosti.

Primary and secondary debt capital markets activity in the Republic of Serbia is now regulated predominantly by the Law on the Capital Market. This law regulates, amongst other things: (i) the public offering and secondary trading of financial instruments; (ii) the regulated market, MTF and over-the-counter ("OTC") markets in the Republic of Serbia; (iii) the provision of investment services and activities; (iv) the disclosure and reporting obligations of issuers and public companies; (v) the protection of investors and the sale of financial instruments; (vi) the clearing, settlement and registration of transactions in financial instruments and (vii) the organization and competences of the SEC and CSD. The Law on the Capital Market implements several EU directives and is in line with international standards.

The legislative and regulatory issues in Serbia are mostly related to three issues: derivatives, repurchase transactions and financial collateral. These are either not regulated or there are regulatory loopholes and uncertainties such as the possibility of classification of derivatives transactions as gambling and thus unenforceable; concerns about recognition of the single agreement concept; concerns about the recent "netting legislation" that was enacted in Serbia because it is not sure what "netting" means as it has not been defined. Further, there is no standard local agreement for derivatives and repos to be entered into by local participants.

The remaining issue that underpins the development of local debt and equity capital market in Serbia is not in the legal system per se but the issue of high level euroisation, the over-leverage of local banks, and lack of institutional investors.

The NBS, together with the industry, is currently working on developing local repo and also local derivatives agreements. Moreover, the NBS is working on revisions to its decision on derivatives to address various uncertainties such as the possibility of classification of derivatives transactions as gambling and thus unenforceable; concerns about recognition of the single agreement concept; concerns about the recent "netting legislation" that was enacted in Serbia because it is not sure what "netting" means as it has not been defined. Further, the NBS is planning on addressing the issue of financial collateral.

**Corporate governance**

Corporate governance in Serbia is mainly regulated by the Law on Business Entities published in the Official Gazette of the Republic of Serbia on 27 May, 2011. The Law came into force on 4 June 2011 and was fully applicable from June 2012.

With reference to corporate governance of banks, the Law on Banks, enacted in 2005 as amended, regulates the operations, organization and management of banks.

In 2008, the Belgrade Stock Exchange issued the Corporate Governance Code of the Belgrade Stock Exchange* to be applied by listed companies under the so-called “comply or explain” mechanism”.

Joint stock companies (JSCs) in Serbia can be organised under a one-tier or two-tier system. In the one tier system, directors are appointed by the general shareholders meeting. In the two tier system, the general shareholders’ meeting appoints the members of the supervisory board, which in turn appoints the executive directors.

The new Law on Business Entities constitutes a clear improvement from the previous regime: the framework for JSCs has been much clarified and it should help to improve the effectiveness of
companies’ governance. In particular (i) companies (JSCs and limited liability companies (LLCs) can now choose to be organised under a one-tier or two-tier system (this flexibility is much appreciated by foreign investors); (ii) the requirement for all open JSCs to have two board committees and two independent directors has been abolished and now only listed companies are required to have an audit committee with at least one independent and qualified director (while the other committees are voluntary); (iii) the role and functions of internal control, internal audit and audit committee have now been clarified (while in the previous law the audit committee was alternative to internal audit, which has a different scope and functions); (iv) the law now requires listed companies to report in their annual report on their compliance with the corporate governance code.

As mentioned above, the adoption of the new Law on Business Entities constitutes a clear improvement from the previous regime. However, there are a few issues that are still unresolved and to which the authorities should dedicate some attention:

- **The value of shares in an IPO:** The old law required shares to be issued at a market value. The provision caused difficulties in practice as a new issue of shares is not necessarily priced at market value. In the event of an IPO, pricing should be the result of negotiation between the issuer’s management, and the underwriters. International practices suggest that the right to determine the value of shares to be issued should belong to the board. Instead, in the new Law, the general shareholders’ meeting maintains the authority for deciding the value of shares in new issues.

- **Board of directors in LLCs and oversight over management:** the wording of the new Law explicitly allows joint stock companies to establish the board of directors in a one-tier-system. This seems to apply also to LLCs, unless specifically excluded by the memorandum of association or the resolution of the general meeting. Instead, the prevalent interpretation is that LLCs should not mix oversight and management functions within the same body. Consequently, LLCs willing to put in place some board structure to perform oversight over management are required to be organised under a two-tier system.

- **Comply or explain:** In line with EU legislation, the new Law requires listed companies to issue a compliance statement with the corporate governance code as an integral part of their annual report. The statement should also contain explanations for the practices not in line with the code. However, notwithstanding the legal requirement, listed companies do not seem to comply with this requirement.

- **Public information on shareholders of unlisted joint stock companies:** The new Law mandates that public information related to all JSCs are maintained in the Central Securities Depository and Clearing House. However, this novelty does not seem to be properly implemented and it is in fact now very difficult to identify shareholders of unlisted JSCs.

With reference to corporate governance of banks, the responsibility for approving the budget rests with the annual general meeting. This is a requirement that might undermine the board’s strategic responsibility of having the final say on the way resources are deployed to achieve strategic objectives. Accountability and responsibility might be weakened in this context. Banking regulation as regards director independence is a source of uncertainty: the Law on Banks requires “independence from the bank” in the board and the audit committee. However this is often interpreted as a requirement to appoint outsiders (i.e., non-board members) to the audit committee. The disclosure offered by banks on corporate governance is poor. Banks do not file a report on risk enabling a better assessment of their risk profile and their capital adequacy and there is no requirement for the appointment of a chief risk officer or the independence of the risk management function. Finally, as noted above, listed banks should “comply or explain” with the Corporate Governance Code of the Belgrade Stock Exchange but the practice is disregarded. See graph below (Chart 8) for graphical presentation of the quality of laws on corporate governance in Serbia, and Chart 9 for graphical presentation of how the corporate governance framework works in practice in Serbia.

As clearly acknowledged by the 2012 EC Commission Progress Report for Serbia “Good progress was made in the area of company law, with the entry into force of the new law”. However, there are still issues of concern which affect the smooth implementation of the law. Further, there are mismatches and sometimes contradictions between the new Law and the existing legal framework, which should be duly addressed.
Chart 9 – Quality of the Corporate Governance Legislative Framework in Serbia

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

Source: EBRD Corporate Governance Assessment 2007
Chart 10 – How the corporate governance framework works in practice in Serbia

**Note:** the extremity of each axis represents an ideal score: the fuller the ‘web’, the more effective the corporate governance framework.

**Source:** EBRD Corporate Governance Assessment 2007

### Debt restructuring and bankruptcy

Bankruptcy proceedings in Serbia are governed by the Law on Bankruptcy (‘Official Gazette of the Republic of Serbia’, No 104/09 of 16 December, 2009) (as amended) (the ‘Bankruptcy Law’), which became effective as of 23 January 2010, and replaced the earlier 2004 law. The Bankruptcy Law, which is generally of a high quality, facilitates both the reorganisation of the debtor’s business by means of a reorganisation plan or its liquidation. There have been significant developments in bankruptcy legislation to encourage reorganisation in bankruptcy proceedings, which appear to have had a positive effect also on the consensual (out of court) restructuring environment. In 2011, amendments were made to the Bankruptcy Law to enable debtors to file a bankruptcy petition accompanied by a ‘pre-packaged reorganisation plan’, which involves the debtor obtaining the necessary level of creditor support for a reorganisation plan prior to filing the bankruptcy petition. If a ‘pre-packaged plan’ is approved by the court, bankruptcy proceedings are closed and there is no need to appoint an insolvency office holder. The ‘pre-packaged reorganisation plan’ therefore provides a useful and efficient tool for restructurings, where it is difficult or impossible to reach a universal agreement with all creditors and has proved to be very popular over the last couple of years in Serbia.

Voluntary pre-bankruptcy workouts may now also be concluded within the scope of the Companies (Arranged Financial Restructuring) Act of 2011 (‘Consensual Financial Restructuring Law), which became effective in April 2012 following the introduction of relevant secondary legislation. The Consensual Financial Restructuring Law establishes a framework, administered by the Serbian Chamber of Commerce and Industry (the CCIS) in which the terms of a financial restructuring can be agreed between a debtor and two or more of its banking creditors using the services of a CCIS appointed mediator. Special incentives, such as tax relief for the write-off of debts and postponement of amounts owed to the State for debtors, as well as lower risk classification of the restructured debt and preservation of the ranking of existing collateral post-restructuring for creditors, are offered in relation to financial restructuring agreements.
concluded and certified by the CCIS under the Consensual Financial Restructuring Law.

On 21 August the Legal Transition Team of the EBRD launched a project in Serbia, in partnership with the Serbian Chamber of Commerce and Industry (CCIS) in support of effective implementation of the Consensual Financial Restructuring Law.

To date, the number of consensual financial restructuring cases before the CCIS has been low. This appears to be due, at least in part, to lack of stakeholder awareness of the new procedure and its benefits, as well as unfamiliarity of local stakeholders with the mediation framework in which the consensual financial restructuring cases are conducted.

From 2005 to 2010, the EBRD also worked closely with the Serbian Bankruptcy Supervision Agency, responsible for overseeing the work of bankruptcy administrators appointed to bankruptcy cases. This close and successful collaboration resulted:

- in March 2010, in the introduction of National Standards and a Code of Ethics (collectively ‘the Standards’) for bankruptcy administrators into Serbian legislation; and

The Standards and the Manual were the result of a close and successful collaboration between the Bankruptcy Supervisory Agency (‘BSA’), the Ministry of Economy and Regional Development (now the Ministry of Finance and Economy) and the EBRD. The Standards were designed to establish rules and guidelines for bankruptcy administrators (‘IPs’) in the day-to-day conduct of insolvency cases, in line with international best practice. Whilst the National Standards were concerned with the practical administration of the IPs’ duties, from the bank accounts of the debtor to the preservation and keeping of records, the Code of Ethics set certain guidelines of professional behaviour and conduct that were expected from IPs. A follow-up visit by the EBRD in September 2012 concluded that there is a clear perception that the National Standards and Code of Ethics have had a significant, positive effect on the working practices of IPs.
Chart 11 – Quality of insolvency legislation in Serbia

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

See the Corporate Governance code of Serbia available on http://www.ebrd.com/pages/sector/legal/corporate/codes.shtml