Comments are welcome: please provide comments to cignag@ebrd.com

European Bank
for Reconstruction and Development

Corporate Governance in Transition Economies

Moldova Country Report

December 2017

Prepared by:
Gian Piero Cigna
Yaryna Kobel
Alina Sigheartau

With the assistance of:
Nestor Advisors

This Report does not constitute legal advice. Readers are advised to seek appropriate legal advice before entering into any transaction, making any determination or taking any action related to matters discussed herein.

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

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

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

The team is grateful for the assistance provided by all parties involved in this exercise.

In particular, the team would like to acknowledge the precious assistance offered by the law firms Turcan Cazac Law Firm, Gladei & Partners, PricewaterhouseCoopers Legal, and ACI Partners and the auditing firms Grant Thornton Moldova, Baker Tilly Klitou, and Ernst & Young Moldova.

Finally, the Legal Transition Team would like to express its thanks and appreciation to Gabrielle Cordeiro and David Risser from Nestor Advisors Ltd for the assistance provided in relation to the analysis of countries and the drafting of the reports.

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

Foreword

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

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

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

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

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

Methodology

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

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

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

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

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

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

Because understanding corporate governance requires a "holistic perspective", where each component needs to have a place in the overall picture – pretty much like a puzzle - in case one of the subsection was rated "weak" or "very weak", the resulting average was decreased by 0.2; in case more than one subsection was rated “weak” or “very weak”, the resulting average was decreased by 0.5. This is because if just one component is not fitting well with the others, then all others are weakened. Similarly, the overall strength diminishes if there are more weak components.

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

Key areas were then rated according to the same criteria.

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

Rating:

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

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

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

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

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

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

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

Overview

Legislative Framework

The primary sources of corporate governance legislation in Moldova are the Law on Joint Stock Companies; the Law on Audit; the Law on Capital Markets (which replaced the previous Law on Securities Market); the Law on Financial Institutions; and the Law on Administration and Privatisation of Public Property. In 2007, the National Commission for Financial Market approved a Corporate Governance Code.[1] The law requires public interest entities to report their compliance with the Code or explain the reasons for non compliance (so-called "*comply or explain*" approach). In practice however, it seems that the Code is not implemented at all, as none of the ten largest listed companies included any reference or information on their compliance with the Code.

Structure and Functioning of the Board

Large companies are organised under a two-tier board system, while in companies with fewer than 50 shareholders, the supervisory board's powers can be directly exercised by the general shareholders meeting. The legislation in force and the practices of the ten largest listed companies show a framework on the structure and functioning of the board in need of reform. A major shortcoming is the lack of clarity in law in assigning key responsibilities to the board. We could not find any evidence that the board is playing a strategic role within companies. Furthermore, listed companies are not required to have independent board members. Only boards of banks are required to be made up of a majority of "non-affiliated" persons, but there is no evidence of the presence of independent directors. Board committees are non-existent and the only requirement is for an auditing commission – made of non-board members and accountable to the general shareholders' meeting. We have doubts about the effectiveness of this mechanism. There is no legal requirement regarding board members' qualification (except for banks), and boards appear to lack a diversified mix of skills. Boards are generally small. Gender diversity at the board is limited. There is no established practice of board evaluation and little evidence that the board is supported by a corporate secretary. Liability of board members and conflict of interest are regulated by law; however little case law exists. Regulation of fiduciary duties is inadequate.

Transparency and Disclosure

Non-financial information disclosure requirements for companies and banks are quite detailed. For banks, selected information must be made available on their website. In general, banks' websites appear to be informative; however, some key information does not appear to be systematically disclosed (e.g. transactions in company shares, minutes of the general shareholders' meeting). The law requires public interest entities to disclose their financial statements, which must be prepared in line with IFRS. All ten largest listed companies comply with this requirement. Reporting to the market and shareholders appears to be detailed by law, but in some cases it does not appear to be well implemented. The law is fairly detailed concerning disclosure on the external auditor and appears to be well implemented in this respect.

Internal Control

All entities are required to establish a system of internal control, but the internal audit function is regulated only for banks. Internal audit often lacks independence, with unclear reporting lines between management, the board and the audit commission. Internal audit does not seem to meet often with board members in the absence of management. Banks do not seem to be required to have a standalone compliance function. Audit committees are non-existent and the only requirement is for an auditing commission which is not a board committee. There is no requirement for companies to adopt a code of ethics. There is no specific whistleblowing legislation in the country. The external audit function is well regulated but how the independence requirements are properly implemented remains a question mark. Regulation on related party transactions and conflict of interest appears to be comprehensive.

[1] In March 2016 the Commission enacted a new code, replacing the one from 2007. While acknowledging this novelty, this was after the cut-off date of the report and the new code has not been analysed for the purposes of the report.

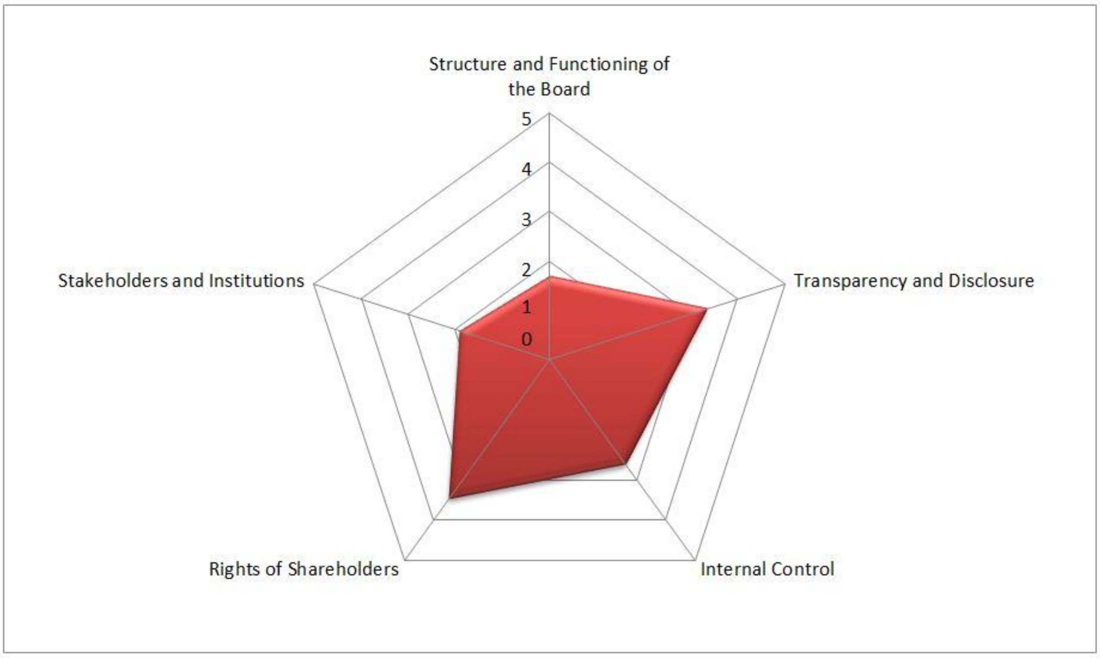
Rights of Shareholders

The law grants shareholders all basic rights related to the general shareholders meeting as well as other general protections and access to corporate documents; however, shareholders must own at least 25% of the share capital to be entitled to call a general shareholders' meeting, which seems to be an excessive threshold. Shareholders representing 5% of the shares are entitled to include items to the general shareholders' meeting's agenda and to nominate board member candidates. Shareholders owning more than 10% are entitled to request extraordinary inspections and to bring a derivative claim. Cumulative voting is mandatory for appointment of supervisory board members of companies with more than 50 shareholders. Shareholders agreements are not regulated by law and it is not clear how they are enforceable against third parties. Free transferability of shares cannot be restricted. Share registration of companies with more than 50 shareholders must be kept by an external independent registrar. Significant shareholding variations must be disclosed. Related party transactions and conflicts of interests are regulated by law; however, disclosure on these subjects is limited. Insider trading can result in civil and criminal penalties.

Stakeholders and Institutions

The Moldovan securities market is undeveloped and its stock exchange is very small, listing less than a dozen companies. The volume of transactions is low and some days there are no transactions at all. The stock exchange also operates as a platform for trading of non-listed issuers' securities, which do not need to comply with the listing requirements. The stock exchange's website does not provide any corporate governance information on issuers. The National Commission on Financial Markets (NCFM) approved a Corporate Governance Code in 2007, which has never been reviewed. It seems that the Commission has enacted a new code in March 2016. Listed companies and banks are required to dedicate a special chapter of their management report to corporate governance, covering information on the corporate governance adopted by the entity and extent to which it complies with it. Banks are expressly required to have their own code of corporate governance based on the NCFM's Corporate Governance Code and banks seem to comply with this obligation; however, information on the extent of compliance with the code is generally incomplete or inexistent. There are inconsistencies in corporate governance legislation. International organisations indicators reveal that competitiveness and corruption in Moldova are serious problems that need to be addressed.

Corporate Governance Legislation and Practices in Moldova



Source: EBRD, Corporate Governance Assessment 2016

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

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

Key Areas and Rating	Strengths and Weaknesses
1. Structure and Functioning of the Board *Weak/Very weak*	*Large companies are organised under a two-tier board system, while in companies with fewer than 50 shareholders, the supervisory board's powers can be directly exercised by the general shareholders meeting.* *The legislation in force and the practices of the ten largest listed companies show a framework on the structure and functioning of the board in need of reform. A major shortcoming is the lack of clarity in law in assigning key responsibilities to the board. We could not find any evidence that the board is playing a strategic role within companies. Furthermore, listed companies are not required to have independent board members. Only boards of banks are required to be made up of a majority of "non-affiliated" persons, but there is no evidence of the presence of independent directors. Board committees are non-existent and the only requirement is for an auditing commission – made of non-board members and accountable to the general shareholders' meeting. We have doubts about the effectiveness of this mechanism.* *There is no legal requirement regarding board members' qualification (except for banks), and boards appear to lack a diversified mix of skills. Boards are generally small.* *Gender diversity at the board is limited.* *There is no established practice of board evaluation and little evidence that the board is supported by a corporate secretary. Liability of board members and conflict of interest are regulated by law; however little case law exists.* *Regulation of fiduciary duties is inadequate.*
1.1. Board Composition *Weak*	***Strengths:*** • *Roles of Chairman and CEO of listed companies are split by law.* • *In banks, legal entities cannot serve as board members of banks, but it is not entirely clear if this applies for other companies.* ***Weaknesses:*** • *Companies are organised under a two-tier board system, while in companies with fewer than 50 shareholders, the supervisory board's powers can be directly exercised by the general shareholders meeting. This is not the right approach. In all cases, the law vests the authority to appoint the members of the executive board to the general shareholders' meeting unless otherwise stipulated in company's Articles of Associations. This is major shortcoming, as it deprives the board of one if its key functions.* • *The law requires joint stock companies and banks to establish an "audit commission", appointed and accountable to the general shareholders meeting. Board members cannot sit in the audit commission and, therefore, this is not a board committee. Six out of the ten largest listed companies disclosed having an audit commission in place, all composed of "outsiders". We have doubts about the effectiveness of this body. We believe it is important that the audit committee include only board members if the functions delegated to the committee are typical board functions. Secondly, it is essential that those members sitting in the committee and recommending specific actions to the board, then do actually follow up on such recommendations and vote on the committee's recommendations at the board, therefore reinforcing their positions and the board "objective judgement". Further, we believe that audit committee members should have a full vision of the business of the company in order to express their determinations – while "outsiders" might only have a partial understanding. Finally, committees that include outsiders might create problems with confidentiality and accountability issues, since such "outsiders" might not be bound by duties of loyalty and care required to board members. While it is legitimate that the audit committee might need external advice or expertise on specific issues, it should be able to request such advice, but it should not allow the advisor(s) to replace the committee in its determinations and recommendations.* • *Boards are generally small (average 5 members). Smaller boards tend to be more cohesive and perform better, provided that they have the necessary mix of skills, diversified experience and appropriate support (e.g. corporate secretary) – however, this does not seem to be the case in Moldova.* • *The law requires only banks to have the majority of "non-affiliated" supervisory board members. However, none of the ten largest listed companies discloses having any independent member on the board. To note that "non-affiliation" and "independence" are two different concepts: the first is based on negative criteria only, the second should be based on a positive attitude in practice (i.e., objectivity of mind and character).* • *Only two companies among the ten largest listed companies disclose establishing a combined nomination and remuneration committee at the board level.* • *Only for banks there are qualification requirements for board members. Five among the ten largest listed companies (all banks) disclose information on board members' qualifications. In no case does the board seem to include an adequate mix of skills. Chairs of the board often lack specific industry expertise. Boards of banks seem to often lack the necessary financial and banking experience as directors are primarily senior executives of other companies outside the financial sector. Additionally, accounting/auditing experience seems to be present only in*

Key Areas and Rating	Strengths and Weaknesses
	the audit commission - which is not a board committee – and not in the board.
1.2. Gender Diversity at the Board (13.53%) *Weak*	• *Nine out of the ten largest listed companies disclose their board composition. It appears that six of these companies have women on their boards. Among these companies, female representation averages 20.3%.* • *In total, there are 7 women among 48 board members.* • *The average female board representation within the largest listed companies is 13.53 %.*
1.3. Independent Directors *Weak/Very weak*	***Strengths:*** • *The Corporate Governance Code recommends that the structure of the board should give the possibility to its members to act independently from each other and from the executive body and that board members should be independent in the decision-making process. The Code further recommends that board members should inform the board of any situations that may arise after his appointment that could compromise the members' independence.* • *The law requires the majority of supervisory board members in banks to be "non-affiliated" and that banks periodically verify the existence or lack of affiliation relationships between board members and the bank.* ***Weaknesses:*** • *The Chairman is neither required nor recommended to be independent.* • *It seems that there are at least two definitions of "non-affiliated" persons: one in the Law on Financial Institutions, and one in Law on the Securities Market. None is comprehensive. The Code only tangentially addresses this issue. In no case, it is specified what it is expected in practice from independent directors. The law requires only banks to have the majority of "non-affiliated" supervisory board members. It should be pointed out that the concepts of "non-affiliation" and "independence" are different. While non-affiliation can be established by negative criteria, independence necessarily needs objectivity of mind and character, which is a positive characteristic that should be demonstrated, disclosed and explained in practice* • *None of the ten largest listed companies – which include banks – discloses having independent members on their boards. Hence, it is not clear who the 'non-affiliated' members of the boards of banks are.*
1.4. Board Effectiveness *Very weak*	***Strengths:*** • *The law requires that board meetings should be held at least once a quarter. In banks, the audit commission should meet quarterly.* ***Weaknesses:*** • *The law does not assign to the board all its key functions.* • *There is no established practice of board evaluation. The Corporate Governance Code only recommends boards to annually discuss the efficiency of its activities, but none of the surveyed companies disclose performing a regular board evaluation.* • *The Corporate Governance Code recommends that a corporate secretary should assist the chair of the board. Only three companies disclose that their boards are assisted by a corporate secretary. One company disclosed that a member of its board serves as corporate secretary, which is not a good practice.* • *As mentioned above, there is no requirement by law that companies or banks should have board committees. The only requirement is for an audit commission, which is not a board committee.* • *Only two companies disclose having a combined nomination and remuneration committee at the board level.* • *Only two companies (both banks) provide a very synthetic summary of board activities, and disclose the number of their board meetings per year: one had 29 meetings and the other 13. The high number of meetings is a signal that boards are overloaded with operational issues. It seems that most of the discussion time in board meetings is dedicated to issues which are more operational than strategic.* • *None of the ten largest companies disclose the number of meeting or the activities of committees.*
1.5. Responsibilities of the Board *Weak*	***Strengths:*** • *Moldovan company law calls for a two-tier board which helps to clarify the split of roles between company oversight and management.* • *The law defines related party transactions and regulates the approval process. Shareholders are considered related party only if they own at least 25% of the shares.* ***Weaknesses:*** • *The law vests the authority to approve the priority directions of the company's activity and to appoint members of the executive board to the general shareholders meeting unless otherwise stipulated in the company's Articles of Association. This gives an unclear signal as to the role of the supervisory boards: in the event that shareholders decide to keep the default rule and retain the authority to appoint the CEO and the executive board, the supervisory board has no real leverage for meaningful oversight of the senior management. Only three among the ten largest listed companies disclose that their supervisory board appoints the CEO. On the same line, the law also assigns to the general shareholders' meeting the authority to approve the "quarterly reports of the executive body of the company" unless the Articles provide otherwise. This authority should belong to the board.* • *The law is silent on other key issues such as annual budget and the company's risk (appetite). Only the Corporate Governance Code recommends supervisory boards to be in charge of the supervision of the executive body, implementation of the corporate strategy, and control over risks; however, it is not clear whether companies*

Key Areas and Rating	***Strengths and Weaknesses***
	implement this recommendation. • *The legal framework on directors' duties of care and loyalty is not well developed. In particular, the law does not clearly provide for the duty of care and case law does not seem to exist on this matter.* • *Liability of board members is regulated by law. However, it appears that there is limited case law and judicial practice on this issue.*

Key Areas and Rating	Strengths and Weaknesses
2. Transparency and Disclosure *Fair*	*Non-financial information disclosure requirements for companies and banks are quite detailed.* *For banks, selected information must be made available on their website. In general, banks' websites appear to be informative; however, some key information does not appear to be systematically disclosed (e.g. transactions in company shares, minutes of the general shareholders' meeting).* *The law requires public interest entities to disclose their financial statements, which must be prepared in line with IFRS. All ten largest listed companies comply with this requirement.* *Reporting to the market and shareholders appears to be detailed by law, but in some cases it does not appear to be well implemented.* *The law is fairly detailed concerning disclosure on the external auditor and appears to be well implemented in this respect.*
2.1. Non-Financial Information Disclosure *Fair/Weak*	***Strengths:*** • *Public interest entities – which include listed companies and banks – are required to publish an annual report, including financial and non-financial information. It appears that eight among the ten largest listed companies posted their annual reports with financial and non-financial information online.* • *Companies admitted to trading on the stock exchange's regulated market are required to prepare annual and half-yearly reports, which must include an activity management report pointing out the results and developments achieved by the company and information with most important transactions involving the company's shares.* • *Public interest entities are required to disclose in their annual report – among others - the names of their board members and the amount of their participation in the capital. Banks are required to publish this information online. Nine among the ten largest listed companies disclose theirs directors' names and five of them also posted short qualifications description on their website.* • *All companies disclose their major shareholders on their websites, but it appears that only one of them goes into details and discloses information on beneficial ownership.* • *Public interest entities are required to publish their Articles online. Seven of the ten largest companies (six are banks) posted their Articles on their websites.* ***Weaknesses:*** • *On average, information on the websites of the ten largest listed companies is easy to find but often incomplete. Bank's websites are more informative. Companies provide a significant amount of information on corporate governance issues; however, it is often just a "copy and paste" from the company's by-laws and does not relate to companies practices.* • *Public interest entities are also required to include a chapter in their annual report dedicated to explaining the company's compliance with the Corporate Governance Code and deviations. The majority of the ten largest listed companies nor the Moldova Stock Exchange does not publish such chapter.* • *Disclosure on the board and committee members' qualifications and on their activities is very limited.* • *Listed companies have the obligation to disclose on their websites the resolutions approved at general shareholders' meeting, but it appears that only five among the ten largest listed companies disclose the minutes of the general shareholders' meeting on their websites.* • *No company or bank appears to disclose transactions in company's shares executed by supervisory and management board members on their website.* • *Among the countries where the EBRD operates, the Moldova Stock Exchange's website is one of the weakest in terms of disclosure of issuers.*
2.2. Financial Information Disclosure *Moderately strong*	***Strengths:*** • *Public interest companies are subject to external audit and required to publish their: a) annual report; b) half-yearly report; c) interim statements; d) events affecting the issuer's financial and economic activity.* • *Public interest entities are required to apply IFRS and all ten largest companies disclose their financial statements in line with the IFRS.* • *Public interest entities' financial statements and audit report must be made available on their corporate websites to regulators and to the general public. All ten largest listed companies disclose their financial statements.* ***Weaknesses:*** • *Financial statements of banks are generally of a good quality; however, those of non-financial entities are in general uneven with incomplete disclosures.* • *Moldova has established a 'Financial Statements' Information Service' (Public Registry) for the collection and public availability of financial statements, and to ensure companies' compliance with the financial reporting and transparency provisions of the Law on Accounting; however, it seems that it lacks appropriate resources to fulfil its responsibilities.*

Key Areas and Rating	***Strengths and Weaknesses***
2.3. Reporting to the Market and to Shareholders *Fair*	***Strengths:*** • *Public interest entities are required to publish their annual reports on a newspaper or on their websites. Banks are expressly required to place their annual report on their website. Companies seem to comply with these requirements.* • *Banks are required to submit several corporate documents to the National Bank and to prepare reports concerning its administration and activities.* ***Weaknesses:*** • *Companies are required to make the minutes of the general shareholders' meeting available. Listed companies must also post them on their website; however, only five among the ten largest listed companies disclose the minutes on their websites.* • *The law requires disclosure of price sensitive information; however, issuers may take up to 15 days to disclose such information.*
2.4. Disclosure on the External Audit *Moderately Strong*	***Strengths:*** • *Public interest entities are required to have their financial reports reviewed by an external auditor appointed by the general shareholders' meeting and to disclose their names. Companies seem to comply with these requirements and all ten largest listed companies declare their auditor to be independent.* • *Nine companies among the ten largest listed in the country are audited by international audit firms; one company is audited by a local auditor.* ***Weaknesses:*** • *The auditors of all ten largest listed companies declared to be independent; however, it is not clear who runs the 'independence test' of auditors.* • *It appears that in some cases the audit reports are signed by the auditor only with the name of the firm, which is not in line with best practices.*

Key Areas and Rating	Strengths and Weaknesses
3. Internal Control *Weak*	*All entities are required to establish a system of internal control, but the internal audit function is regulated only for banks.* *Internal audit often lacks independence, with unclear reporting lines between management, the board and the audit commission. Internal audit does not seem to meet often with board members in the absence of management. Banks do not seem to be required to have a standalone compliance function.* *Audit committees are non-existent and the only requirement is for an auditing commission which is not a board committee.* *There is no requirement for companies to adopt a code of ethics.* *There is no specific whistleblowing legislation in the country.* *The external audit function is well regulated but how the independence requirements are properly implemented remains a question mark.* *Regulation on related party transactions and conflict of interest appears to be comprehensive.*
3.1. Quality of the Internal Control Framework *Weak*	***Strengths:*** • *All legal entities are required to establish an internal control system which may be supported by internal auditors, or by independent auditors hired for this purpose; however, it is not clear how this provision is implemented in practice.* • *Banks are required to set up a standalone internal audit department reporting directly to the board, and the appointment and dismissal of the head of the internal audit department is either determined by the board or is coordinated by the senior management with the supervisory board.* • *The National Bank is responsible for verifying the adequacy of internal control systems of every bank under its control and for approving a bank's external auditor.* • *Eight companies (seven are banks) among the ten largest listed companies disclose having internal audit units in place.* ***Weaknesses:*** • *It does not appear that the law requires banks to set up a standalone compliance function in charge of monitoring compliance risk.* • *It appears that there is no Institute of Internal Auditors in the country.* • *The auditing commission – required for all joint stock companies and banks - exercises control over financial and economic activities of the company. As mentioned above, the auditing commission is not a strategic board committee, but an advisory body for shareholders and accountable to them and operates as an ex post review. We have doubts about the effectiveness of this mechanism as to ensure the quality and independence of the internal control mechanisms and of the external audit.* • *There is no requirement or recommendation for companies and banks to adopt a code of ethics. Only one of the surveyed companies discloses having one in place.* • *In 2008 a draft Law on protecting whistle-blowers was developed but it was not adopted.*
3.2. Quality of Internal and External Audit *Fair*	***Strengths:*** • *Companies and banks are required to establish an internal control system. Most of the companies in our sample seem to comply with this requirement.* • *Banks must have an independent internal audit function, reporting directly to the board.* • *Public interest entities are required to have independent external audit appointed by the general shareholders' meeting. Companies seem to comply with this requirement.* • *External auditors are subject to rotation in order to meet the independence criteria. Additionally, audit firms are prohibited from providing non-audit and audit services simultaneously to a company; however, it seems that this requirement is not strongly enforced in practice (see below).* • *The Ministry of Finance is responsible for the certification of auditors and the Audit Oversight Council (AOC) is responsible for ensuring that external auditors and audit firms comply with the relevant auditing standards, IFAC's (International Federation of Accountants) Code of Ethics – mandatory for statutory auditors – and quality assurance requirements. The AOC further assists the Ministry of Finance with the certification process of auditors and with the regulations as regards auditing. The AOC has authority to impose sanctions on auditors and audit firms.* ***Weaknesses:*** • *The audit commission is in charge of assessing the internal control systems and policies. In banks, it also has the responsibility of cooperating with external auditors and presenting recommendations on the selection of external auditors. We have doubts as to the effectiveness of this mechanism as that body is not a board committee and not necessarily an independent body.* • *The auditors of all ten largest listed companies declared to be independent; however, it is not clear who runs the*

Key Areas and Rating	Strengths and Weaknesses
	'independence test' of auditors. • The provision of non-auditing services by the external auditor is prohibited, but it seems that in some cases non-auditing services are provided. • The law requires the auditor to rotate every three years, but it appears that in some cases the same auditor is in place for a longer period.
3.3. Functioning and Independence of the Audit Committee *Very Weak*	***Strengths:*** • *Auditing commission members are required to be qualified in accounting, financial or economy field, and they are subject to the same regime of liability applicable to the board members.* • *Audit commission members cannot be members of the executive body or employees in the accounting department. However, for banks the law only requires that the majority should not be persons employed at the bank.* ***Weaknesses:*** • *Companies are required to establish an auditing commission to exercise control over financial and economic activities of the company; however, this body is comprised of members appointed by the general shareholders' meeting and they cannot be board members. The law expressly establishes that the auditing commission members are accountable to the shareholders. Its role is somewhat unclear in that it is not an internal audit function as it is appointed by and reports to shareholders, it is not an external audit function as it reports separately from external audit and appears to exercise a control function, and it is not an audit committee in that they do not appear to have a formal relationship with the external auditors (and is not a board committee).* • *The law allows the functions of the auditing commission to be delegated to an audit firm. This provides a duplication of activities and raise of costs. The added value of this solution is questionable. Further, it remains unclear if the board is in charge of the oversight of financial issues and internal control.* • *Five companies among the ten largest listed disclose having an 'audit committee' in place; however, in no case it appears that the committee is made up of board members.* • *Disclosure on the auditing commissions' qualifications and activities is limited.* • *There is no recommendation or requirement for companies to establish an audit committee made up of independent board members.* • *There is no independent body or committee in charge of the relationship with the external auditors.*
3.4. Control over Related Party Transactions and Conflict of Interest *Fair*	***Strengths:*** • *Related party transactions and conflicts of interests are regulated by law and legislation seems to be comprehensive. Related party transactions must be disclosed in the annual report – which most companies seem to comply with.* • *The National Bank monitors disclosure of conflicts of interest and misuse of corporate assets and in the last few years some penalties – mostly warnings - were imposed for breaching the rules on disclosure of conflicts of interest. In some cases, the National Bank of Moldova has applied significant fines for abusive use of corporate assets and unauthorized/undisclosed related party transaction. One such case has resulted in a license withdrawal.* ***Weaknesses:*** • *It is not clear how the law is enforced in practice as to non-financial listed companies.* • *The lack of independent directors in boards and the questionable effectiveness and independence of the audit commission raise doubts about the objectivity of related party transactions' approval process.*

Key Areas and Rating	***Strengths and Weaknesses***
4. Rights of Shareholders *Fair/Moderately strong*	*The law grants shareholders all basic rights related to the general shareholders meeting as well as other general protections and access to corporate documents; however, shareholders must own at least 25% of the share capital to be entitled to call a general shareholders' meeting, which seems to be an excessive threshold.* *Shareholders representing 5% of the shares are entitled to include items to the general shareholders' meeting's agenda and to nominate board member candidates. Shareholders owning more than 10% are entitled to request extraordinary inspections and to bring a derivative claim. Cumulative voting is mandatory for appointment of supervisory board members of companies with more than 50 shareholders.* *Shareholders agreements are not regulated by law and it is not clear how they are enforceable against third parties.* *Free transferability of shares cannot be restricted. Share registration of companies with more than 50 shareholders must be kept by an external independent registrar.* *Significant shareholding variations must be disclosed. Related party transactions and conflicts of interests are regulated by law; however, disclosure on these subjects is limited. Insider trading can result in civil and criminal penalties.*
4.1. General Shareholders' Meeting (GSM) *Fair*	**Strengths:** • *Shareholders that own in aggregate 5% of the shares are entitled to include issues in the agenda of the annual GSM and to propose candidates to the board and to the audit commission.* • *Notification with agenda of the GSM should be sent to the shareholders at least 30 calendar days before the meeting.* • *The Corporate Governance Code emphasises that the shareholders have the right to address questions and to receive answers to these questions and that the GSM should last a sufficient amount of time to accommodate this. However, these are only recommendations.* • *Cumulative voting is obligatory for appointment of supervisory board members of companies with more than 50 shareholders.* • *'One share – one vote' rule is foreseen by law; however, the law allows the issuance of shares of different classes.* **Weaknesses:** • *Companies are required to make the documents for the GSM available to all shareholders at least 10 days before the meeting, which seems to be insufficient for the shareholders to organise themselves and analyse the material.* • *The law only provides for voting in person or by proxy. Electronic voting is not possible.* • *Shareholders owning more than 25% of the company's shares can call a GSM. This threshold seems too high.* • *As a matter of fact, it appears that only three companies published notifications on their website. Among them, only one company also disclosed materials for the GSM.*
4.2. Protection against Insider Trading and Self-dealing *Fair*	***Strengths:*** • *Insider trading is prohibited and may be punished with fines and imprisonment.* • *According to the National Bank, insider trading cases have been investigated in two banks in the last 5 years and sanctions were applied.* • *Related party transactions and conflicts of interest are regulated by law and the Moldovan accounting standards follow in that respect the IFRS rule (IAS 24).* ***Weaknesses:*** • *Board members, senior managers or controlling shareholders are required by law to inform the company and the National Commission of Financial Market of transactions with the company's shares. However, none of the ten largest listed companies make this information available on their websites.* • *The lack of independent directors in boards and the questionable effectiveness and independence of the audit commission raise doubts about the objectivity of related party transactions' approval process.*
4.3. Minority Shareholders Protection and Shareholders' Access to Information *Moderately strong*	***Strengths:*** • *Shareholders that own 5% of the shares are entitled to include items in the agenda of the annual GSM, to propose candidates to the board and the audit commission, and to require an extraordinary board meeting. Shareholders owning 10% of the shares are entitled to request the execution of extraordinary inspections of financial and economic activities of the company and to bring a derivative claim.* • *Shareholders are granted the right to address the management bodies, the regulator and/or court for the purpose of protection of their rights and lawful interests. The company must review the complaint and respond to the shareholder within a month.* • *Qualified majority is required for major corporate changes (the blocking minority shareholding for major*

Key Areas and Rating	**Strengths and Weaknesses**
	corporate changes is 33%+1). In banks, amendments to the articles, reorganisations and substantial sale of assets require the authorisation of the National Bank. • *The law provides for cumulative voting and pre-emptive rights.* • *Shareholders have a general right to inspect the corporate documents.* • *The purchase of more than 50% of a company's voting shares requires the acquirer to carry out a public offer to acquire all the share of the same class.* ***Weaknesses:*** • *Companies are required to make the documents for the GSM available to all shareholders at least 10 days before the meeting, which seems to be insufficient for the shareholders to organise themselves and analyse the material.*
4.4. Registration of Shareholdings *Moderately strong*	***Strengths:*** • *The share register of companies with more than 50 shareholders must be maintained by an external independent registrar.* • *As a general rule, free transferability of shares cannot be restricted.* • *In the banking sector, a transfer of shares that would result in a person(s) holding, directly or indirectly, more than 1% of the share capital or an acquisition that results in a person's ownership reaching or exceeding 5%, 25%, 33% and 50% of the share capital requires approval by the National Bank.* • *A person that purchases 5% or more of the voting rights must, within 5 working days, inform the issuer, which is under the obligation to publish such information.* ***Weaknesses:*** • *Shareholder agreements do not need to be disclosed and it is not clear whether they are enforceable as they are very rare and there is no case law on this matter.*

Key Areas and Rating	***Strengths and Weaknesses***
5.Stakeholders and Institutions *Weak*	*The Moldovan securities market is undeveloped and its stock exchange is very small, listing less than a dozen companies. The volume of transactions is low and some days there are no transactions at all. The stock exchange also operates as a platform for trading of non-listed issuers' securities, which do not need to comply with the listing requirements. The stock exchange's website does not provide any corporate governance information on issuers.* *The National Commission on Financial Markets (NCFM) approved a Corporate Governance Code in 2007, which has never been reviewed. It seems that the Commission has enacted a new code in March 2016.* *Listed companies and banks are required to dedicate a special chapter of their management report to corporate governance, covering information on the corporate governance adopted by the entity and extent to which it complies with it.* *Banks are expressly required to have their own code of corporate governance based on the NCFM's Corporate Governance Code and banks seem to comply with this obligation; however, information on the extent of compliance with the code is generally incomplete or inexistent.* *There are inconsistencies in corporate governance legislation.* *International organisations indicators reveal that competitiveness and corruption in Moldova are serious problems that need to be addressed.*
5.1. Corporate Governance Structure and Institutions *Weak*	***Strengths:*** • *International audit and law firms have a material presence in the country. It seems that international rating firms, which used to be uncommon in Moldova, have been expanding their presence lately.* • *Companies are required to have their financial statements in line with the IFRS and to prepare an annual report containing non-financial information.* • *Regulators seem to have the appropriate authority to monitor compliance with regulation and it seems that regulators are increasingly performing monitoring activities.* ***Weaknesses:*** • *The Moldova Stock Exchange is very small and has very low liquidity. It keeps two lists of issuers: regulated market and the MTF (multilateral trading facility). Companies admitted to trading in the MTF are not required to comply with the listing rules.* • *The stock exchange's website provides very little information on the issuers and no information at all on their governance practices.* • *None of the ten largest listed companies in Moldova is listed at a recognized international stock exchange.*
5.2. Corporate Governance Code *Weak*	***Strengths:*** • *Public interest entities (including listed companies and banks) are required to have a special chapter of their annual report on their corporate governance code informing its source and the extent to which the entity complies with it (comply or explain).* • *Banks are further required to implement the Corporate Governance Code approved by the NCFM and disclose the existence of their own code. During annual onsite inspections, the National Bank reviews the banks' code's existence and quality. This may provide a valuable first step in promoting good corporate governance values, once adequate enforcement mechanisms are established.* • *It appears that eight (six of them banks) among the ten largest listed companies disclose that they have adopted their own corporate governance codes. However, the extent of application of these codes is not clear. There is no evidence of officers in charge of monitoring compliance.* ***Weaknesses:*** • *The National Commission on Financial Markets approved a corporate governance code in 2007, providing higher governance standards and recommending companies to transpose it into their own code. The code is out-dated in many aspects. It seems that the Commission has enacted a new code in March 2016.* • *The Corporate Governance Code does not seem to be well structured for a "comply or explain" approach. In some cases, it seems to duplicate the provisions of the law, which are mandatory and not subject to comply or explain.* • *None of the ten largest listed companies included clear information on compliance with its code into the annual report.* • *It appears that there is no monitoring on listed companies' "comply or explain" disclosure.*

Key Areas and Rating	Strengths and Weaknesses
5.3. Institutional Environment *Weak*	***Strengths:*** • *Rulings of regulatory agencies are publicly available and easily accessible.* • *It seems that case law is aggregated and easily accessible by lawyers in the country. According to the 2015 EBRD Assessment on Accessibility of Court Decisions, one of the major issues in this regard was the inefficiency of relevant court employees.* • *The National Commission on Financial Markets and the National Bank have the authority to address corporate governance failures and compel appropriate remedial action. It seems that the National Bank is increasingly active in monitoring corporate governance practices. However, monitoring of non-banking companies seem to be insufficient.* ***Weaknesses:*** • *There are inconsistencies in the law and regulations, and some key corporate governance issues are not regulated. We found for instance at least five definitions of public interest entities which are not identical. This might cause confusion.* • *When looking at the indicators provided by international organisations, Moldova performs relatively well in terms of investor protection, but it is not well positioned in terms of competitiveness and corruption.*