The EBRD Legal Transition Programme has always emphasised the importance of robust legal frameworks and institutions for economic environment. Until recently the so-called developed economies and their financial markets were booming. The financial crisis, however, has halted the boom and, moreover, has had a major impact on the development of local capital markets in the economic regions of the EBRD.

This edition of *Law in transition* relates to the legal and regulatory pillars of the EBRD-wide initiative on Local Currency and Local Capital Markets Development, which is aimed at addressing the impediments to the development of local capital markets in the Bank’s region. This issue of *Law in transition* not only provides insights into these various legal and regulatory impediments but also illustrates how such impediments could be addressed.

History has shown that at the height of the crisis – and shortly thereafter – regulatory activity seemed to be operating at the highest level. Regulators are now trying to address the identified weaknesses of legal frameworks by issuing a high number of rules and regulations with the aim of trying to prevent the next crisis. However, are such rules and regulations robust enough? And, at the same time, do such rules not limit market development?

This issue of the journal may not give definite answers to these questions but it provides useful pointers as to what the answers could be. As Cally Jordan specifies in her article, we are in the midst of a great sea change and, therefore, looking to the future direction of capital markets regulation is a particularly risky business. She points out several current phenomena which are likely to shape capital markets regulation in advanced markets. Are these phenomena also relevant to the EBRD region?

This question is addressed by Frédérique Dahan, Lewis Cohen and Jacek Kubas in their article which describes legal and regulatory impediments in some of the economies of the EBRD’s region. Looking at specific jurisdictions we can, together
Focus section

with Madalina Rachieru, take a ride on the “rollercoaster of Romanian capital market development” to see how EU membership impacts on market development. In the next article, we keep abreast of recent regulatory changes in the financial markets of Kazakhstan.

Addressing more technical issues, one should not neglect the importance of over-the-counter (OTC) trading for the development of local capital markets, especially at the initial stage of development. How OTC markets are regulated in transition countries and whether the concept of close-out netting is widely accepted – are questions examined by Peter Werner, from the International Swaps and Derivatives Association. Vladimir Khrenov provides an insight into Russian financial regulation over the past few years. The system is marked by fundamental shifts that have finally rewarded the industry’s efforts to overhaul the regulatory framework for OTC derivatives, including the introduction of close-out netting. From Elena Sulima we learn about the Bank’s role in developing a domestic capital market in Russia. More specifically, she provides an overview of the EBRD’s recent domestic bond issues and the challenges created by the current Russian regulatory framework.

As the Bank prepares for the expansion of its operations into the southern and eastern Mediterranean (SEMED) region, this issue of Law in transition provides an introduction to the Egyptian capital market, how it has been reborn over the last two decades and what impact the Arab uprising may have had on it.

Lastly, what does the future hold for the global financial regulatory landscape? Will it resemble a centralised, harmonised and symmetrical French garden? Or will it be more like a disorganised English-style garden, with different rules and regulations in each jurisdiction? Or will it look like a Japanese garden, “with new details and perspectives emerging at each step”? – as referred to by Cally Jordan, citing the scholars Stéphane Rottier and Nicolas Véron.
This article describes legal and regulatory impediments in some of the EBRD’s countries of operations to the development of vibrant local capital markets, as identified within the EBRD Local Currency and Local Capitals Market Development Initiative. It also describes how such impediments could be addressed.
Background

The development of vibrant local capital markets in the EBRD’s countries of operations is crucial to long-term financial stability because it allows for raising capital and providing liquidity in a safe manner, in local currency and without reliance on a frequently constrained financial sector. Underdeveloped local capital markets and the lack of domestic funding in some of the EBRD’s countries of operations have proved to be a major vulnerability in the global economic crisis that we are still experiencing. In 2010 the EBRD launched the Local Currency and Local Capital Markets Initiative (the “Initiative”), which aims to encourage local currency lending and also the development of local capital markets where local sources of domestic funding can be mobilised, thereby reducing the reliance on foreign currency lending and the related foreign exchange risks. As part of the Initiative, the EBRD identifies key impediments and assists countries in developing deeper and more efficient local capital markets. This is achieved by combining policy dialogue and technical support with some of the EBRD’s investment projects.

The sophistication of the legal and regulatory framework is fundamental to the development of local capital markets. After 20 years of transition, the development of the legal regimes in many of the EBRD’s countries of operations remains a work in progress. Countries that have become members of the European Union, such as Poland, Hungary and Romania, have adopted relatively sophisticated legal and regulatory frameworks, which are in line with EU legislation. However, implementation and institution-building are still problematic in some areas (see article by Madalina Rachieru, “The rollercoaster of Romanian capital markets”, at page 66). At the other end of the spectrum,
The assessment consists of reviewing the status and quality of the legal and regulatory framework against the stage of development of jurisdiction in question. The initial task of the EBRD Legal Transition Programme was to develop a set of tools with which it could conduct an assessment. The assessment consists of reviewing the status and quality of the legal and regulatory framework, which is necessary to support a vibrant local capital market, against the stage of development of the jurisdiction in question (“The Legal Assessment” or “Assessment”). This is not an easy task: indeed, capital markets are not the product of a unique law or set of laws. They are complex systems that depend on a wide range of legal provisions, but also on regulations, institutions and practices in order to deliver the economic benefits mentioned above. Thus, the task consisted more of capturing the key features that in practice make the difference for investors and issuers, rather than cataloguing a single law, perhaps the securities law, against “international best practices”, which may be very important in theory but which does not necessarily translate into practical results. In other words, given the stage of development where such markets operate, it was deemed more important for the assessment to drill deeper into the issues within the local capital market of a jurisdiction and identify the incentives or disincentives that operate with regard to issuers and investors. Indeed, experience in the EBRD’s countries of operations has shown that too often a good deal of work has gone into developing laws which, unfortunately, do not match the market’s demands, or which cannot operate as intended because the local tax, accounting or listing rules, for instance, prevent it from doing so.

These concerns have led to the following guiding principles for the legal assessment:

i) The assessment would be driven by the overall concern of incentives versus disincentives (or “facilitating” versus “impeding”) for development of local capital markets

ii) The assessment would focus on money markets, taking into account the actual use of derivatives and repo transactions, as well as debt and equity markets, recognising that the former are as essential as the latter

iii) The assessment would review not only the procedural rules (for example, local issuance of debt securities) but also the functioning of the institutions involved (for example, clearing and settlement, credit rating agencies, supervisors and market regulators).

In order to validate its assessment, the EBRD set up an advisory panel. The panel includes individuals with extensive knowledge of capital markets development in various sectors (legal, market infrastructure, regulatory, investment, policy), including representatives from international financial institutions, investment banks, rating agencies, law firms, academia, and more. Using its experience at the interface of developed and developing markets, the panel was instrumental in refining both the breadth and depth of the assessment tools and has made this Initiative special and unique. The results of the assessment for seven jurisdictions, namely Hungary, Kazakhstan, Poland, Romania, Russia, Turkey and Ukraine, are presented in Table 1.

Key results

Recurring themes

The legal assessment revealed a number of significant common areas where legal or regulatory changes could have the most impact. Although each assessment was carried out independently, several common themes appeared across jurisdictions, notably a need for development of investor rights enforcement following debt securities default, disclosure rules and procedures, credit rating requirements and legislative frameworks for covered bonds and other non-speculative structured securities. These themes highlight a widespread need to create more investor-friendly and issuer-friendly jurisdictions, which can be achieved through legal reform to incorporate local debt finance into capital markets development.

Enforcement of investor rights in case of debt securities default

While large banks may generally be able to successfully enforce payment obligations because of their market position and often superior access to information, investors that hold a relatively small percentage of the debt securities of a given entity typically must rely on the legal and regulatory framework to enforce their rights. Thus, we looked at whether local laws and regulations have formal and/or informal impediments that prevent the
Large banks may generally be able to enforce payment obligations because of their market positions but the investors that hold small percentages of debt securities of an entity must rely on the legal and regulatory framework to enforce their rights.

Efficient enforcement of payment obligations with respect to debt securities in case of insolvency of the issuer and otherwise. Our study revealed several jurisdictions with such impediments. In Kazakhstan, for example, the current law requires the consent of all creditors for the successful restructuring of a corporate debt, which is highly impractical (although there are plans to address this issue).

Additional impediments across the jurisdictions include inconsistencies in the application of laws and/or judicial precedents, a general insufficient use of collective action clauses and lengthy, expensive and uncertain enforcement proceedings. For example, in Hungary, the average length of judicial enforcement litigation in the first instance is between three months and two years. If the judgment in the first instance does not become final and thus non-appealable, the procedure may take even longer. Where these issues arise, we recommend inter alia that laws and regulations be amended or adopted to clarify set-off rights and to ensure that enforcement rights of beneficial owners are not adversely impacted if intermediaries (that is, brokers or clearing houses) hold legal title to debt securities; and

Methodology and results format of the legal assessment

A questionnaire was developed to identify the key legal and regulatory impediments to the development of a jurisdiction’s local debt capital markets.

- The questionnaire was designed to be comprehensive by covering a wide range of legal and regulatory issues that could potentially impede capital markets development.
- The questionnaire had to be practical, so that the responses could be used to generate concrete recommendations for the countries examined.
- The questionnaire was structured to provide a snapshot of the strengths and weaknesses of each jurisdiction’s current legal and regulatory framework, so that those strengths and weaknesses could be compared and assessed.
- The same questionnaire was used in all jurisdictions assessed so far, but may be amended to fit in jurisdictions with less-developed capital markets, as many of the questions would not be relevant and a different focus altogether is needed.

The questionnaire was completed in each assessed jurisdiction by local jurisdiction teams (the “LJTMs”) with significant expertise and involvement with debt capital markets in the respective jurisdictions. The completed questionnaires were subsequently reviewed, in light of international market, legal and regulatory practice, by the Financial Law Unit of the EBRD and the Capital Markets Team in the New York office of Clifford Chance US LLP. Where appropriate, responses were supplemented by information from local fact-finding meetings (in particular in Kazakhstan and Romania).

From the completed questionnaires and with the assistance of the LJTMs, we developed recommendations for each jurisdiction that aim to provide practical suggestions for improvement of the legal and regulatory debt capital markets framework. These recommendations attempt to give a sense of timing: short-term recommendations encapsulate fairly self-contained measures, which, if adopted, would deliver impact quickly, and are distinguished from other recommendations that focus on the longer-term and call for legal and/or regulatory changes which would likely require a more time-consuming and less straightforward reform process.

The advisory panel assisted, again, in reviewing both the findings and recommendations. Each report also outlines areas where debt capital markets in the relevant jurisdiction work well, highlighting that any legal or regulatory changes should not affect such areas.

In addition to the recommendations, the assessment’s results are presented in a tabular form under 18 specific headings covering the most important areas relevant to local capital markets development (see Table 1). Under each heading, each country’s regulatory and legal framework is assigned a grade on a +2 to −2 scale, depending on the level at which the given regulatory framework currently encourages or impedes local capital markets. These grades help to quantify the strengths and weaknesses of legal and regulatory frameworks of local debt capital markets, both on a jurisdiction-by-jurisdiction basis and across jurisdictions.
The assessment also reveals that while there are recurring themes among systems in place, there are several areas where the systems showed significant disparities.

**Disclosure rules and procedures**
The assessment showed that, by and large, the disclosure rules and procedures of the countries studied are cumbersome and tend to impede the development of the local debt capital markets. Hindrances include excessive documentation requirements, lack of adequate training/staffing of reviewing agencies, inconsistent procedures for the review of required documentation, for example, offering documentation or a prospectus and a lack of public access to the required documentation. In some instances, these impediments were inadvertently created during the adoption and implementation of EU directives. For example, in Romania, the inconsistent implementation of EU directives led to three separate laws governing bonds that currently overlap and (to a certain extent) contradict each other. We recommend that changes be made to the current legal and regulatory framework to:

- **require a central repository of offering documents to which the general public has access**
- **set forth a clear and efficient process for approval and filing with a regulatory institution of information materials used to market debt securities**
- **set forth less rigorous disclosure requirements for large, sophisticated and/or institutional investors**
- **set forth clear and efficient rules for updating disclosures**
- **require more extensive training and education of the staff at the regulatory institution responsible for reviewing offering documents.**

**Credit rating requirements**
While credit rating agencies have come under significant scrutiny during the global financial crisis, they can provide useful local market information to investors, particularly in the absence of cost-efficient alternatives to credit ratings for the evaluation of credit risk in traded debt instruments. Both a general absence of credit rating requirements and a lack of reputable credit rating agencies (whether based locally or abroad) with appropriate experience in the studied jurisdictions impede the local debt capital markets of the assessed countries. The lack of local experience of potential rating agencies and/or the relatively high cost of obtaining a credit rating from a reputable credit rating agency with an appropriate local market experience deters such credit ratings from being obtained by local issuers.5

**Collateralised debt securities frameworks**
As a whole, the countries reviewed lack functioning frameworks for the issuance of covered bonds and other non-speculative collateralised debt securities, such as residential mortgage-backed securities. Legislation and regulations permitting the issuance of covered bonds and other collateralised debt securities are either absent or so limited and impractical that issuance does not take place. It is recommended that legislation and regulations be enacted or modified in the jurisdictions where there is a potential market for covered bonds and other collateralised debt securities. This would ensure that the framework for these securities fits the needs of the market, including the authorisation of a single cover pool to secure several issuances of covered bonds6 and the flexible usage of the pool of receivables.

**Disparate themes**
In addition to the recurring themes, the assessment also revealed that in the reviewed jurisdictions there are several areas where the systems in place showed significant disparities. Specifically, the greatest disparities surfaced in the areas of cost of debt securities issuance, insider trading protection and firewall regulations, settlement systems and governing law requirements.

**Cost of issuance**
We noted wide discrepancies in the cost of issuance of local debt securities, including fees or charges levied by governmental entities in the jurisdiction and underwriting and legal fees in connection with an offering of debt securities. For example, the very moderate cost of issuance in Kazakhstan encourages issuance even by relatively small issuers.7 In contrast, the relatively high cost of the approval fee and the requirement that the fee be paid upfront in Romania8 discourage issuers.
In Kazakhstan, Russia and Ukraine, secondary trades are generally settled bilaterally through physical delivery, which is both costly and lengthy from issuing bonds in Romania (preferring to issue bonds in other EU countries and then “passport” the securities into Romania).  

**Firewalls/insider trading protection**  
Insider trading protection laws and regulations and firewall requirements are important to a well-functioning debt securities market, as they aim to achieve market integrity (and hence, encourage market participation) by ensuring that all market participants have access to the same information when making their investment decisions. Some of the assessed jurisdictions have explicit firewall requirements and insider trading protection laws/regulations for both banks and other regulated investors, such as brokerage firms and portfolio managers, and the legislation is considered effective and is applied in practice. For example, this is the case in Turkey. Other jurisdictions have banking secrecy laws and other insider dealing laws that essentially function as firewall requirements (such as Romania, Hungary and Poland). However, some legal regimes (for example, the one in Kazakhstan) have neither explicit firewall requirements for banks or other regulated investors, nor general laws on insider trading or banking secrecy. In other cases, the laws and regulations in place are too recent or underdeveloped for the provisions to be deemed effective (this is the case in Russia and Ukraine).

**Settlement system**  
Both Hungary and Turkey have no restrictions on, or impediments to, transfer of locally issued debt securities (such as requirements for bilateral settlement of secondary trades by physical delivery) which could discourage local debt capital markets activity. They have central settlement systems which are used and function well. At the other end of the spectrum, in Kazakhstan, Russia and Ukraine, secondary trades are generally settled bilaterally through physical delivery, which is both costly and lengthy. Between these two extremes lies Poland, where issuers can use a central depository system, but in practice typically use investment firms or banks – a practice which is perceived as limiting the liquidity of the securities.

**Governing law requirements**  
In our assessment, we considered it an advantage where local law permitted the flexibility for locally issued debt securities to be governed by non-local law and to use foreign languages for documentation. The use of foreign law where local law is less developed may increase investors’ confidence in the debt instruments (particularly that of non-local investors). Likewise, the use of foreign languages in addition to the jurisdiction’s local language for offering documents would allow wider investor participation, including from abroad. Several of the countries reviewed (Hungary, Romania, Kazakhstan, Poland) allow for foreign law and/or language usage in connection with local debt securities issuance, but three others (Russia, Ukraine and Turkey) prohibit the use of both foreign law and foreign language in connection with local debt securities issuances.

**Next steps**  
While very important, these assessments, and the recommendations derived from them, are only a very preliminary step of the overall ambition of the Initiative. As mentioned above, the intention is to trigger an understanding and consensus around the highlighted problems as well as create a momentum where reform efforts can be initiated and successfully completed. It is still early days, but there are already a few encouraging developments:

- In Ukraine, the EBRD, together with the IMF, is discussing the development of a legal framework that would provide for validity and enforceability of derivatives transactions. The proposed reform would help developing capital markets by allowing financial institutions and corporates to hedge their risks.
- In Romania, the banking association is actively engaged in reviewing the legal regime for covered bonds and the EBRD is assisting in the dialogue, between the banking association and the Romanian authorities.
- In Kazakhstan, the EBRD is looking at the regulation of private pension funds and how prudential requirements can be properly balanced with the overall concern of developing an investment policy that encourages a broadening of investment into local capital markets by funds managers.

Furthermore, with the EBRD’s expansion to the southern and eastern Mediterranean region (SEMED), legal assessments in Egypt, Morocco,
Tunisia and Jordan are also envisaged to take place in 2012, with the aim of identifying priority reforms in order to encourage the development of local capital markets in the SEMED region.

Lastly, the EBRD and the London School of Economics have launched a training seminar programme for practising lawyers, judges and regulators on “Financial Markets Law and Regulation for Transition Economies”.11

Conclusion

Although the regions in which the EBRD operates are very diverse, the legal assessment carried out so far offers an interesting window into the functioning of local capital markets in a number of countries. It has showed that, despite a clear diversity, one can nevertheless observe common themes where reforms would be beneficial for encouraging the development of local capital markets.

Moreover, the recent financial crisis has highlighted new risks but also new routes for the development of capital markets, not only in the EBRD’s countries of operations, but also globally, which must be considered in the context of transition economies.

### Table 1
Quality of legal and regulatory framework for capital markets in selected transition countries

<table>
<thead>
<tr>
<th>Issues</th>
<th>Hungary</th>
<th>Kazakhstan</th>
<th>Poland</th>
<th>Romania</th>
<th>Russia</th>
<th>Turkey</th>
<th>Ukraine</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt securities investors (banks and non-banks)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Capital requirements</td>
<td>+1</td>
<td>+1</td>
<td>+1</td>
<td>+1</td>
<td>−1</td>
<td>0</td>
<td>−2</td>
</tr>
<tr>
<td>2. Policies on buying locally issued debt securities</td>
<td>0</td>
<td>0</td>
<td>+1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>+2</td>
</tr>
<tr>
<td>3. Firewalls/insider trading protection</td>
<td>+1</td>
<td>−2</td>
<td>+1</td>
<td>+1</td>
<td>+1</td>
<td>+2</td>
<td>+1</td>
</tr>
<tr>
<td>4. Tax policies</td>
<td>0</td>
<td>+1</td>
<td>+1</td>
<td>+1</td>
<td>0</td>
<td>+2</td>
<td>+1</td>
</tr>
<tr>
<td>5. Use of derivatives</td>
<td>+1</td>
<td>−1</td>
<td>+1</td>
<td>−1</td>
<td>+1</td>
<td>+2</td>
<td>−2</td>
</tr>
<tr>
<td>6. Use of repos and financial collateral transactions</td>
<td>−1</td>
<td>−1</td>
<td>+2</td>
<td>−2</td>
<td>+1</td>
<td>−1</td>
<td>−2</td>
</tr>
<tr>
<td>7. Enforcement of investor rights in case of debt securities default</td>
<td>−1</td>
<td>−1</td>
<td>+2</td>
<td>−1</td>
<td>−2</td>
<td>+1</td>
<td>−1</td>
</tr>
<tr>
<td>8. Investor remedies against market participants for market abuse</td>
<td>0</td>
<td>−1</td>
<td>+2</td>
<td>0</td>
<td>0</td>
<td>+1</td>
<td>−1</td>
</tr>
<tr>
<td>Debt securities issuers</td>
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<tr>
<td>9. Disclosure rules and procedures</td>
<td>+1</td>
<td>−1</td>
<td>+1</td>
<td>−1</td>
<td>−1</td>
<td>−1</td>
<td>−2</td>
</tr>
<tr>
<td>10. Availability of shelf registration</td>
<td>+1</td>
<td>−2</td>
<td>+1</td>
<td>+1</td>
<td>+1</td>
<td>−2</td>
<td>−2</td>
</tr>
<tr>
<td>11. Costs of issuance</td>
<td>0</td>
<td>+2</td>
<td>+2</td>
<td>−2</td>
<td>+1</td>
<td>+1</td>
<td>0</td>
</tr>
<tr>
<td>12. Rules on issuance in the local markets</td>
<td>−1</td>
<td>−1</td>
<td>+2</td>
<td>−1</td>
<td>+1</td>
<td>+1</td>
<td>−1</td>
</tr>
<tr>
<td>13. Governing law requirements</td>
<td>+2</td>
<td>+1</td>
<td>0</td>
<td>+1</td>
<td>−2</td>
<td>−2</td>
<td>−2</td>
</tr>
<tr>
<td>14. Credit ratings requirements</td>
<td>+1</td>
<td>0</td>
<td>0</td>
<td>−1</td>
<td>−1</td>
<td>−1</td>
<td>0</td>
</tr>
<tr>
<td>Debt securities trading and settlement</td>
<td></td>
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<tr>
<td>15. Settlement system</td>
<td>+2</td>
<td>−1</td>
<td>+2</td>
<td>−1</td>
<td>−1</td>
<td>+2</td>
<td>−1</td>
</tr>
<tr>
<td>Equity securities</td>
<td></td>
<td></td>
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<tr>
<td>16. Disclosure rules for equity securities</td>
<td>+1</td>
<td>−1</td>
<td>+2</td>
<td>+1</td>
<td>−1</td>
<td>−1</td>
<td>−2</td>
</tr>
<tr>
<td>17. Market integrity – insider trading for equity securities</td>
<td>+1</td>
<td>−2</td>
<td>−1</td>
<td>+1</td>
<td>−1</td>
<td>+1</td>
<td>−2</td>
</tr>
<tr>
<td>18. Corporate governance of listed entities</td>
<td>+1</td>
<td>−2</td>
<td>+1</td>
<td>+1</td>
<td>−2</td>
<td>+1</td>
<td>−1</td>
</tr>
</tbody>
</table>

Source: EBRD.
Table 2
Assessment table – explanatory notes

The assessed issues are deemed to cover the most important areas relevant for local capital markets development. The following notes provide background information on how the scope of the questions has been defined and the methodology used for deciding the grading.

| 1. Capital requirements | The gradings are provided only in connection with the stimulus which certain capital requirements provide for holding local debt securities, and the gradings do not purport to assess the capital requirements per se and particularly, with respect to their primary goal of risk management. Any grades should be evaluated separately against the effects of the given capital requirements on risk management. The grade given covers the risk weighting applied to locally issued debt securities for the purpose of calculating required capital (and liquidity ratios) for banks, other financial institutions or regulated investors. An upgrade is given when in the Jurisdiction the risk weighting rules are clear and appropriate and applied on an on-discretionary basis. There are incentives for the holding of locally issued debt securities. |
| 2. Policies on buying locally issued debt securities | There are no limitations/prohibitions applicable to banks, other financial institutions and regulated investors on buying debt securities issued by issuers based in the jurisdiction; and there are informal/unwritten policies, applied by regulators, creating incentives for banks, other financial institutions or regulated investors to invest in locally issued debt securities. |
| 3. Firewalls/insider trading protection | There are regulations requiring banks and other regulated investors in the jurisdiction to maintain “firewalls” or the like between non-public information received separately from borrowers of the bank and/or from their capital markets investment activity and the information used to invest in debt securities issued by the same borrower and/or client entities, and that such regulations are effectively implemented and enforced. |
| 4. Tax policies | The highest grade is given if the jurisdiction has tax or other fiscal rules creating strong incentives for local investors to buy, hold or dispose of debt securities issued by local issuers. |
| 5. Use of derivatives | Banks and other investors may freely purchase and sell derivative instruments in the jurisdiction and are permitted to hedge risk taken on through the purchase of debt securities. There is no uncertainty in relation to enforcement and validity of derivatives transactions and underlying legal documentation. |
| 6. Use of repos and financial collateral | Repo transactions with respect to locally issued debt securities are permitted in the jurisdiction, and there are no legal or documentation issues relating to repo transactions that would impede local capital markets activity. |
| 7. Enforcement of investor rights in case of debt securities default | Upgrade is given when there are no formal or informal impediments to enforce payment obligations with respect to debt securities in insolvency proceedings or otherwise; laws, regulations and practices show that investor enforcement rights and options are optimal. |
| 8. Investor remedies against market participants for market abuse | The highest grade is given when there are laws providing for specific remedies for investors against market participants that issue or trade in debt securities based on false or misleading information they have provided to prospective purchasers (or have otherwise engaged in “market abuse”), and such laws are implemented; there is a regulatory institution which can bring enforcement claims where they are not brought by private investors; such claims are actually brought; the jurisdiction has an “ombudsman”-type entity (advocate) for investors with securities law claims; governmental issuers are not treated differently from other issuers with respect to such remedies/enforcement. |
| 9. Disclosure rules and procedures | The disclosure requirements do not impede local debt securities’ issuance; the offering process is speedy and efficient; there is a central repository of offering documents to which the general public has access; there is a process of approval/filing, with a regulatory institution, information materials used to market debt securities and such process is efficient and prompt; large, sophisticated and/or institutional investors are subject to less rigorous disclosure requirements; the underwriting and legal costs for local issuance of debt securities are reasonable; any listing requirements, if applicable, do not create an impediment to issuance of debt securities; any updating disclosure requirements do not create an impediment to issuance of debt securities; no documentation issues impede local capital markets activity. |
10. **Availability of shelf registration**

If a “shelf” programme (one in which, following an initial approval process with the relevant regulatory institution, subsequent public offerings can be made without further approval) is available and is used, functions well and is efficient, the highest grade is given.

11. **Costs of issuance**

The cost of issuance of debt securities is such that it encourages local issuance of debt securities.

12. **Rules on issuance in the local markets**

The rules on issuance of debt securities in the local markets encourage local issuance of debt securities (for example, minimum or maximum tenors, as well as minimum denominations are reasonable; no/or reasonable limitations on requirements on currency of denominations; no prohibition on “put” or “call” options or “equity kickers” (such as warrants); early redemption rights permitted; no/or reasonable maximum interest rate.

13. **Governing law requirements**

Highest grade is given if local law allows that locally issued debt securities be governed by foreign law and foreign language be used for documentation.

14. **Credit ratings requirements**

Locally issued debt securities are required to have a rating from a reputable credit rating agency with appropriate experience in the local market; overall, the credit rating requirements encourage local debt capital markets activity. There could be no legal requirement but there is a market practice to use a rating from a credit agency with appropriate experience in the local market. If there is no such requirement or market practice, then downgrade is given.

15. **Settlement system**

There are no restrictions on transfer of locally issued debt securities by law which would impede local debt capital markets activity; there is a local settlement system with central counterparties that clear secondary trades in debt securities; such a settlement system is used and functions well and has a number of links with other settlement systems; any requirements regarding the settlement of debt securities do not impede the effectiveness of the settlement process.

16. **Disclosure rules for equity securities**

No improvements are needed to the disclosure regime for initial public offerings or secondary placements of equity (that is, the process is fast and efficient, generally in line with international standards, the fees are reasonable and so on.

17. **Market integrity-insider trading for equity securities**

The highest grade is given for high overall integrity of the market (for example, current and accurate information about listed companies is available; insider trading generally not present; effective curbs on manipulative share trading).

18. **Corporate governance of listed entities**

Effective corporate governance and protection of minority interests is implemented and applied in practice (for example, independent directors are required; transactions with insiders have to be disclosed).
Notes

1 The EBRD Early Transition Countries Initiative covers the following countries: Armenia, Azerbaijan, Belarus, Georgia, Kyrgyz Republic, Moldova, Mongolia, Tajikistan, Turkmenistan and Uzbekistan.

2 We have used the same local jurisdiction questionnaire for all jurisdictions studied so far: Kazakhstan, Hungary, Romania, Russia, Ukraine, Turkey and Poland. We are using the same questionnaire for Serbia’s assessment as well, which is still ongoing. We will be amending the questionnaire for the purposes of studying jurisdictions with less-developed debt capital markets, such as Mongolia, as many of the questions in the current questionnaire would not be applicable to such jurisdictions, and a different focus altogether is likely to be needed.

3 All reports contained long-term and short-term recommendations, except for the report on Poland, where our recommendations were split instead into high-priority and lower-priority, as the timing needed for the implementation of the recommendations was not a distinguishing feature of the recommended actions.

4 For example, in Russia, it seems that investors seeking to enforce payment obligations are unsure about the legal provisions which would be applied to their claims.

5 Furthermore, additional requirements in some studied jurisdictions further discourage issuers from obtaining credit ratings. For example, Turkish rules provide that if a credit rating is obtained, it must be updated annually.

6 In Romania, for example, a proposed new law on covered bonds would allow a given pool of mortgage loans to support several issues of covered bonds; the current mortgage law requires that a given pool of mortgages supports only a single issue of covered bonds, which is relatively inefficient.

7 In Kazakhstan, the approximate cost for offering debt securities is US$ 31,000, while state registration of bonds is free of charge.

8 In Romania, the applicable approval fee may be up to 0.5 per cent of the offering proceeds (not applicable to sovereign or municipal bonds).

9 “Passporting” of securities is possible due to the implementation in Romania of EU Directive 2003/71.

10 Regulations requiring banks and other regulated investors to maintain “firewalls” or the like between non-public information received separately from borrowers of the bank and/or from their capital markets investment activity and the information used to invest in debt securities issued by the same borrower and/or client entities.

11 See the programme of the seminar at the EBRD’s web site: www.ebrd.com/downloads/legal/developments/LSEfin.pdf

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