COMMERCIAL LAWS OF BOSNIA AND HERZEGOVINA
October 2010
AN ASSESSMENT BY THE EBRD

Office of the General Counsel
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_Basis of Assessment:_ This document draws on legal assessment work conducted by the Bank (see [www.ebrd.com/law](http://www.ebrd.com/law)) and was last updated during the preparation of the 2010 EBRD Strategy for Bosnia & Herzegovina, reflecting the situation at that time. The assessment is also grounded on the experience of the Office of the General Counsel in working on legal reform and EBRD investment activities in Bosnia & Herzegovina and does not constitute legal advice. For further information please contact ltt@ebrd.com.
1. Overall Assessment

The complex governmental structure of Bosnia and Herzegovina (“BiH”) makes legal reform very difficult to achieve and hinders commercial transactions. Capital markets, corporate governance and concessions are generally regulated at the level of the country’s two autonomous “Entities,” whereas insolvency, secured transactions and telecommunication in the country are regulated through unified bodies of law at the national level.

In some areas of commercial law, BiH legislation complies with international standards to a great extent. Even in these areas, however, the application of the law in practice is poor due to the failings of key institutions. For example, the law on bankruptcy and insolvency has a score of “high compliance” with international standards. However, in practice the insolvency regime has weaknesses in delivering appropriate regulation of insolvency office holders. Similarly, the legal and regulatory framework for secured transactions is modern, but enforcement is slow and susceptible to obstruction due to the inability of courts to cope with demands. Areas of commercial law regulated at the Entity level, such as securities markets, corporate governance and concessions, receive a score of “medium compliance” with international standards and could benefit from both substantive improvements and enhanced uniformity of the law throughout BiH. Judicial institutions could also benefit from greater integration at the BiH level. Finally, public procurement practices in BiH should be simplified in order to enhance accountability and reduce bureaucracy.

Prospects for BiH depend largely on the implementation of practical legal reforms and integration both internally and regionally. The authorities need to maintain the momentum for reform through firm commitment to implementation in the fields of both commercial and constitutional law.

Chart 1 – Snapshot of the commercial laws of Bosnia & Herzegovina

![Quality of laws “on the books” and effectiveness of the laws](image)

*Source: EBRD legal assessments 2002-2009*
2. The Legal System

2.1 Constitution and courts

The current governmental structure of BiH has its origins in the Dayton Peace Agreement of 1995, which ended the country’s civil war. The Dayton Agreement included the BiH Constitution as one of its annexes. The Constitution established a limited central state that includes two fairly autonomous Entities: the Republika Srpska (“RS”) and the Federation of Bosnia and Herzegovina (“FBIH”). In addition to the two Entities, BiH includes a self-governing district for the strategically important town of Brčko. Whereas the RS covers predominantly Serb areas, the FBIH governs parts of the country that are mostly Croat and Bosnian Muslim. In addition to these locally-controlled institutions, the Dayton Agreement established an Office of the High Representative (OHR). The OHR represents the international community, including the UN and the EU. The OHR has wide-ranging powers to dismiss elected officials and enact legislation.

Reflecting the civil war’s legacy of ethnic mistrust, the BiH Constitution limits the competencies of the central government and allocates residual powers to the Entities. While the central government sets foreign policy, it has little authority to regulate internal affairs. For the most part, the central government requires approval from the Entities to formulate laws in the field of internal affairs. The BiH central state includes a central bank, a telecommunications regulator, and, since 2003, a central command for the country’s armed forces. At the helm of the central government is a three-person rotating presidency, which includes a member from each of the country’s three major ethnic communities: Bosnian Muslims, Croats, and Serbs. Each member of the presidency is popularly elected to a four-year term, and the presidency appoints the chair of the Council of Ministers. The allocation of posts in the Council must conform to quotas based on ethnic identity. The Council of Ministers must be approved by the bicameral central parliament. Although BiH citizens elect their representatives, seats in the parliament are allocated according to rigid formulas that ensure representation for each of the country’s three major ethnic communities.

The BiH Constitution also created a Constitutional Court with nine judges. The distribution of seats on the Court must also conform to ethnic criteria. The Court has jurisdiction over disputes between the central BiH institutions, between the Entities and the central government or between the FBIH and the RS. In addition, at the request of any court in BiH, the Court can examine the compatibility of any law (including the Entities’ laws) with the BiH Constitution, the European Convention on Human Rights and international public law. Finally, the Constitutional Court has appellate jurisdiction over constitutional matters arising from judgments rendered by other courts in BiH.

Aside from the Constitutional Court, there is limited coordination at the BiH level, which also consists of a Ministry of Justice with limited powers, the State Court, the State Prosecutor’s Office, and the High Judicial and Prosecutorial Council (HJPC). One major problem has been the lack of a Supreme Court that can harmonise the application of legislation across the country. Another is the absence of a single budget for the judiciary. For the most part, BiH has two separate legal systems and judicialities for each of its two constituent Entities.

Recent efforts since to streamline the central BiH institutions by reforming the Constitution have not yet yielded results. Reform has looked more difficult in recent years as politicians have catered to nationalist sentiments in the electorate, especially leading up to the central and Entity elections in October 2010. Deadlock over constitutional reform has postponed the closure of the OHR, which represents the international community, and hampered the country’s EU integration process.
It is widely believed that there remains political interference in the judicial system. There is a substantial backlog of undecided cases. Public concern about the court system is reflected in the latest EBRD – World Bank Business Environment and Enterprise Performance Survey (BEEPS), conducted in 2008-2009, in which only 15% of surveyed business respondents expressed the view that the court system was fast, and 39% believed the courts were fair, impartial and uncorrupted.

The National Strategy for Development of the Justice Sector for 2008-2012 was adopted in June 2008. The Strategy includes provisions aiming at strengthening the independence, accountability, efficiency, professionalism and harmonisation of the judicial system in both Entities. However, due to an absence of consensus, the Strategy makes no provision for establishing a Supreme Court of Bosnia and Herzegovina.

**Federation of Bosnia and Herzegovina (“FBiH”)**

The FBiH, itself a constituent Entity of BiH, is further subdivided into ten Cantons, each with its own constitution, government, parliamentary assembly and judiciary. The FBiH has a bicameral legislature to which representatives are elected for a four-year term. The legislature comprises a House of Representatives and a House of Peoples. The bicameral legislature elects a President and two Vice-Presidents to a four-year term. The President, in consultation with the Vice-Presidents and with the approval of the legislature, nominates the Government of the FBiH, which consists of the Prime Minister and other Ministers. The President, the Vice-Presidents, the Government, and the House of Peoples are chosen based on rigid quotas that aim to ensure that the Bosnian Muslim, Croat, and Serb communities are represented in decision-making. The House of Representatives, in contrast, is elected in a direct FBiH-wide election in which each party above a 5% threshold receives proportional representation.

The judiciary of the FBiH consists of Municipal Courts, Cantonal Courts and Federation Courts. Municipal Courts are the courts of first instance for civil and commercial matters. The Cantonal Courts normally serve as appellate courts, but in certain matters they can have original jurisdiction. Three Federation Courts constitute the summit of the judicial hierarchy in the FBiH.

The Constitutional Court resolves conflicts among the various administrative units and institutions of the FBiH. The Court can also examine the constitutionality of laws adopted by the FBiH legislature. The Human Rights Court is an appellate court with jurisdiction to hear disputes on issues of human rights and fundamental freedoms. Finally, the Supreme Court is the highest court of appeal in FBiH and can hear any appeals outside the jurisdiction of the Constitutional Court. Courts in Croat-majority cantons do not always recognise the Supreme Court’s jurisdiction, however.

**Republika Srpska (“RS”)**

Unlike the FBiH, the RS has a centralised structure. The RS is headed by a directly-elected President with a four-year mandate. Two Vice-Presidents from different “constituent peoples” assist the President, in a system designed to ensure representation of the Bosnian Muslim and Croat communities. The President nominates the Prime Minister for approval by the National Assembly. The Government, which consists of the Prime Minister, two Deputy Prime Ministers, and other Ministers, must meet ethnic quotas mandated by the RS Constitution. The National Assembly is elected to a four-year term, with some required representation for all constituent peoples. The National Assembly, in turn, chooses delegates to the Council of Peoples, in which each of the three constituent peoples has an equal number of representatives.
The judiciary of the RS consists of Municipal Courts, District Courts, the Supreme Court and the Constitutional Court. As in the FBiH, Municipal Courts are the courts of first instance. District Courts serve as appellate courts for decisions at municipal level, but they have original jurisdiction in certain matters. The Supreme Court is the highest court of law. It hears both civil and criminal cases and has a special chamber for administrative cases. The Constitutional Court decides disputes about the constitutionality of laws, regulations and decrees, and on jurisdictional conflicts between the various institutions within the RS government. Proceedings can be initiated by the court on its own initiative or by other relevant bodies.

2.2 Relationship between legal transition and economic progress

Experience in the EBRD’s countries of operations suggests that overall economic progress goes hand in hand with respect for the rule of law and well-functioning democratic institutions. Many of the core economic assets in BiH were destroyed during the country’s civil war in the 1990s. The legal framework consists of a complex patchwork of sometimes contradictory and often inconsistent laws. Because there is a positive correlation between legal transition and overall economic progress in EBRD countries of operation (as shown in the chart below), the future success of the transition process in BiH will depend in part on improving the quality of the country’s judicial systems and regulatory regimes. Real progress in the country’s transition is only possible if all levels of the BiH government bolster their commitment to the rule of law.

Chart 2 – Rule of law and progress in transition in the EBRD countries of operations

Source: EBRD Transition Report 2009, Table 1.1; EBRD Composite Country Law Index, July 2010

Note: The horizontal axis measures the performance of commercial and financial laws. The vertical axis displays the EBRD transition index as an average of transition indicators between 1997 and 2009, with 1 referring to very early transition stages, and 4 referring to an advanced transition level.
2.3 Recent developments in the investment climate

Like other countries in the region, BiH was affected by the global financial crisis. After years of growth, the economy contracted an estimated 3.1% in 2009. Foreign direct investment inflows contracted by more than 50% from 2008 levels. In response to fiscal strains, the BiH government entered into a three-year stand-by arrangement with the IMF worth $1.57 billion. As a condition of financing, the BiH government agreed to undertake fiscal consolidation measures.

Even before the recent downturn, investors regarded the BiH business environment as challenging by regional standards. The country’s complex institutional structure results in inconsistent legal and regulatory requirements that further compartmentalise a relatively small market. In addition, public administration at all levels generates bureaucratic obstacles to investment. Transparency International ranked BiH as the most corrupt country in the region in 2009. Similarly, the World Bank ranked the country last in the Western Balkans in its 2010 Doing Business report.

Despite these challenges, there are reasons to be optimistic about future developments in BiH. Most international organisations forecast a return to economic growth in 2010. BiH took a significant step forward in the process of EU integration by signing a Stabilisation and Association Agreement (SAA) in June 2008. While political rhetoric ahead of the October 2010 elections has been characterised by calls for greater separatism, it is possible that after the elections politicians will undertake reforms that will streamline the country’s institutions and improve the overall business environment.

3. Evaluation of selected commercial laws

The EBRD has developed and regularly updates a series of assessments of legal transition in its countries of operations, with a focus on selected areas relevant to investment activities: concessions, corporate governance, insolvency, secured transactions, securities markets and telecommunications. The existing tools assess both the quality of the laws “on the books” (also referred to as “extensiveness”) and the actual implementation of such laws (also referred to as “effectiveness”). This section presents a summary of the results accompanied by critical comments of the Bank’s legal experts who have conducted the assessments.

All available results of these assessments can be found at www.ebrd.com/law.

3.1 Concessions

In BiH there exists a policy framework for improving the legal environment and promoting PPP (public-private partnerships); there also exists a concessions legal framework and a relevant institutional infrastructure.

The 2002 Concessions Law fairly clearly defines its own scope of application: it regulates selection procedures and provides for a flexible framework for project agreements. It is one of the few laws in the region to refer to consumers’ rights and to the principles of transparency, non-discrimination and proportionality (and “equitable relations toward the private sector”). The EBRD’s 2007/08 Concessions Sector Assessment found that the country’s legal framework in this area is in “medium compliance” with international standards.

Amongst the areas that still have room for further improvement are those relating to coordination with and functioning of public authorities, certain procedural issues (in particular, pre-qualification and publication of contract awards, which would improve transparency), direct negotiations, compensation rules and mechanisms in the event of early termination. In addition, further
development is particularly needed in the area of security interests, lenders’ rights and government support issues. Improved legislation in this area would add certainty and comfort to both the public and the private sector, and ultimately reduce the price of financing.

Chart 3 – Quality of concessions legislation in the EBRD countries of operations

Note: The various categories represent the level of compliance of a given country’s legislation (“the laws on the books”) with international standards such as the UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects. The asterisk indicates in which category Bosnia & Herzegovina ranks.

Overall, the Concessions Law constitutes a solid basis for the development of PPP in the country and in practice concessions are being granted in BiH. However, the weak regulatory oversight and lack of institutional capacity need to be addressed through reform. In particular, the government may wish to consider establishing a clearer delineation of competences amongst all the institutions involved on the BiH and Entity levels. This could allow effective functioning of the Commission for Concessions and collaboration with the “competent ministry” (to be defined). The complex governmental structure of BiH is likely to add uncertainties and to impede the effective application of the Concessions Law; given the existence of four similar laws in one state (BiH, the RS, the FBIH, and the Brčko District each have separate laws in the area of concessions). The financial crisis and the accompanying downturn in economic activity may provide the authorities with a reason to further upgrade the laws, procedures and institutional infrastructure that apply to the granting and monitoring of concessions.
Note: The extremity of each axis represents an ideal score in line with international standards such as the UNCITRAL Legislative Guide for Privately Financed Infrastructure projects. The fuller the ‘web’, the more closely concessions laws of the country approximate these standards.

3.2 Corporate governance

Corporate governance in BiH is regulated at the Entity level. In practice, two distinct corporate governance regimes exist and each Entity has its own Securities Commission and framework of primary and secondary legislation. According to the results of the EBRD’s 2007 Corporate Governance Sector Assessment,¹ if the quality of corporate governance legislation in both parts of BiH were assessed as a whole, BiH is in “medium compliance” with the OECD Principles of Corporate Governance and must focus on addressing shortcomings in the legislation detailing the rights of shareholders and the responsibilities of the board (see charts below).

Note: The various categories represent the level of compliance of a country’s legislation (the “laws on the books”) with international standards as set out in the OECD Principles of Corporate Governance. The asterisk indicates in which category Bosnia & Herzegovina ranks.

Federation of Bosnia and Herzegovina (“FBiH”)

In the FBiH the basic legislation on corporate governance is for the most part set out in the Law on Business Companies of 1999. The FBiH recently made important amendments to this act to align it with EU legislation. According to this law, joint stock companies are organised under a two-tier system, where the general shareholders meeting appoints the supervisory board and the latter appoints the management board. In 2006, the Securities Commission issued a Regulation addressing corporate governance in joint stock companies. The Regulation addresses issues such as conflicts of interest, auditors, risk management, internal audit, and dividends, procedures for the general shareholders meeting, and the duties and responsibilities of the boards. Joint stock companies are required to harmonise their by-laws with the provisions of the Regulation.2

According to the results of the EBRD’s 2007 Corporate Governance Sector Assessment, which assessed the quality of corporate governance legislation in force in November 2007, the FBiH was in “medium compliance” with the OECD Principles of Corporate Governance. FBiH legislation showed weaknesses especially in the “right of shareholders” and “disclosure and transparency” categories. It remains to be seen to what extent the recent amendments improve the legal framework.

By examining the effectiveness of corporate governance legislation, the EBRD’s 2005 Legal Indicator Survey revealed that judicial procedures can be complex and lengthy, while enforcement can be troublesome. Company books are generally reliable, but statutory auditors might not be fully independent. The statutory framework for related-party transactions is insufficient, while the competence and experience of courts, prosecutors and market regulators must be improved.

Ensuring the basis for an effective corporate governance framework 100%

The rights of shareholders 75%

The equitable treatment of shareholders 50%

The role of stakeholders in corporate governance 25%

Disclosure and Transparency 0%

The Responsibilities of the Board

Source: EBRD Corporate Governance Sector Assessment 2007

Note: The extremity of each axis represents an ideal score, i.e., corresponding to OECD Principles of Corporate Governance. The fuller the ‘web’, the more closely the corporate governance laws of the country approximate these principles.

Republika Srpska (“RS”)

In the RS, corporate governance legislation is for the most part set out in the Law on Business Companies, which was enacted in December 2008 with the aim of aligning legislation with the EU *acquis communautaire*. According to the RS law, joint stock companies are organised under a two-tier system where the shareholders meeting appoints the members of both the management and the supervisory board. In 2006, the Securities Commission adopted “The Standards of Corporate Governance.” Listed companies are required to incorporate these standards in their by-laws.

According to the results of the EBRD’s 2007 Corporate Governance Sector Assessment, which assessed the quality of corporate governance legislation in force in November 2007, RS legislation was in “medium compliance” with the OECD Principles of Corporate Governance, showing results similar to those of the FBiH.

3.3 Insolvency

Bankruptcy and insolvency in BiH are governed by the “Law on Bankruptcy of the Federation of BiH and the Republic of Srpska” of 2005 (the “Insolvency Law”). The Insolvency Law contains many of the elements that international insolvency standards and best practices recognise as critical to a well-functioning insolvency legal regime. As reflected in the graph below, the EBRD’s 2009 Insolvency Sector Assessment found that the Insolvency Law is in “high compliance” with international standards, based on five core areas most relevant to the sector.

Chart 7 – Quality of insolvency legislation in the EBRD countries of operations
The various categories indicate the level of compliance of each country’s legislation (the “laws on the books”) with international standards, such as the World Bank’s Principles and Guidelines for Effective Insolvency and Creditor Rights Systems, the UNCITRAL Working Group on Legislative Guidelines for Insolvency Law, and others.

Three core areas of the Insolvency Law performed exceedingly well when compared with international standards: assets of the estate, commencement of proceedings and treatment of creditors. In the area of estate assets, comprehensive legislation for the avoidance of pre-bankruptcy transactions remains the most impressive feature. In this regard, the Insolvency Law provides for identification of avoidable transactions and for avoidance of preferential transfers. Moreover, the Insolvency Law requires the debtor and third parties to provide an insolvency administrator (sometimes known as a trustee) with all relevant information concerning the assets and financial affairs of the debtor. However, while the law requires debtors to deliver or make available all estate assets to the administrator, there is no corresponding requirement for third parties with estate assets in their possession to do the same. This is an area which would benefit from reform.

In the areas of commencement of proceedings and treatment of creditors, the Insolvency Law is similarly very strong. The financial condition precedent to commencing an insolvency case is clear, and the law applies to natural persons, legal entities and state-owned enterprises. Alternative remedies of liquidation and reorganisation are contemplated and an automatic stay of actions against the debtor applies upon commencement of proceedings. Creditors enjoy adequate opportunity to participate in insolvency proceedings and the law contains provisions to keep them informed as the case progresses. Furthermore, the Insolvency Law sets adequate procedures for submitting and determining allowable claims and treats claims within the same class equally.

Chart 8 – Quality of insolvency legislation in Bosnia & Herzegovina (2009)
Although these core areas performed exceptionally well, the EBRD’s assessment reveals that there is still some room for improvement of the Insolvency Law (see chart 8 above). In particular, the law is generally weak in the area of reorganisation proceedings. Specifically, the law should be reformed to include provisions for independent analysis of a proposed reorganisation plan to ensure that it meets minimum requirements. The Insolvency Law also currently lacks provisions for reorganisation financing and fails to prohibit the termination of essential services to a debtor attempting reorganisation. Additionally, the law currently does not contain any restrictions on voting by connected parties or any provisions that allow post-approval modification of a plan.

The results of the 2009 EBRD Assessment also reveal that the legislative framework relating to insolvency administrators is weak and should be improved. The 2009 Assessment revealed that this particular aspect of the Insolvency Law is in “low compliance” with internationally recognised standards. The provisions in the Insolvency Law regarding the bases for appointment and replacement of insolvency administrators are fair but could be considerably improved. Currently, there are no provisions for the resignation, retirement or death of an insolvency administrator. Furthermore, there are no provisions for professional standards or ethical codes of conduct for insolvency administrators.

3.4 Public procurement
Public procurement ("PP") in BiH is regulated by the Public Procurement Law (the PPL), adopted in 2004, which covers national and local government public procurement. Utilities contracting rules are covered only in the water, electricity, transport and telecommunications sectors.

The PP legal framework in BiH has been partially modelled on older EU public procurement directives and has not yet been updated to incorporate directives such as 2004/17/EC or international best practice. The PP framework provides for four procurement procedures: (a) open tendering; (b) restricted tendering; (c) negotiation with or without prior publication of a contract notice and (d) direct agreement. The PPL also embraces framework agreements, but these are not utilised in practice due to the regulation’s restrictiveness. Open tendering is the default procurement method. The award criteria are both lowest price and most economically advantageous tender.

The eligibility rules and qualification criteria would have been in line with international best practice if not for the domestic preferences. The public procurement contract notices and tender documents are not available on the Internet. Publication of both the contract notice and the tender documents comes at a price, which is reportedly quite high. Tenders can be submitted only in the three official languages of BiH (Bosnian, Serbian and Croatian).

The PPL makes little distinction between the rules for lower and higher-value procurement, which leads to excessive delays and increased costs of procurement. The public procurement procedures are complex and inflexible, with technical specifications and awarding criteria set in ways that advantage domestic bidders. Tenderers are also required to submit an extensive list of qualification documents, which is costly and time-consuming to produce. The PP framework does not mention the efficiency or economy of such process issues. The review and remedies system is considered the weakest point of the framework. In general, the public procurement legal framework in BiH is bureaucratic, but unaccountable.

### 3.5 Secured transactions

Bosnia and Herzegovina is equipped with a modern legal framework for secured transactions. The 2004 Framework Pledge Law adopts a so-called “functional” approach to security, providing the same regime for possessory pledges (when the debtor must transfer the collateral to the creditor or a third party), non-possessory pledges, liens, leases and other security rights. A pledge can encompass tangible property, bank accounts, account receivables, or shares in a company with limited liability. The law leaves the parties with great freedom to define both the object of the security (specifically or generally, including as a pool of fluctuating assets) and also the secured debt (including revolving loans, credit lines, etc).

A pledge is constituted if (1) the parties have concluded a pledge agreement; (2) the pledgor is the owner or will acquire ownership over the pledged property; (3) the pledgee (or a third party in accordance with the pledge agreement) has given a loan to the pledgor (or a third party in accordance with the pledge agreement); and (4) the pledge has been registered at the Pledge Registry. The Registry is a centrally held register operated by the Ministry of Justice and is available electronically (upon subscription) at www.reg-zaloga-bih.gov.ba.

A pledge must be described with enough specificity in the pledge agreement to enable a subsequent determination of the nature and extent of the pledge. The description of the pledge in the Pledge Registry does not have to be detailed, but in the case of a pledge of specific property, the serial number of the pledged property must be entered into the Register.

In case of default, the pledged property must be sold through a private sale (if so provided in the pledge agreement) or a public auction. The secured creditor will have the right to settle its claim.
from the proceeds of the sale. The pledge agreement cannot provide that the creditor would acquire ownership over the pledged property upon default.

In practice, enforcement may be the weakest link of the new regime because the judicial system has difficulty coping with the regime’s demands, in particular in terms of speed. Debtors are thus often able to obstruct enforcement process.

3.6 Securities markets

Securities markets in BiH are mostly regulated at the Entity level. Each of the Entities has its own legal system, a separate Securities Commission and a stock exchange.

Chart 9 – Quality of securities market legislation in the EBRD countries of operations

![Chart 9](http://www.feas.org/Member.cfm?MemberID=32)

Source: EBRD Securities Markets Sector Assessment 2007

**Note:** The various categories represent the level of compliance of a given country’s legislation (the “laws on the books”) with international standards such as the IOSCO Principles. The asterisk indicates in which category Bosnia & Herzegovina ranks.

**Federation of Bosnia and Herzegovina (“FBiH”)**

In the FBiH the basic legislation on the securities market is set out in the Law on Securities Markets, enacted in December 2008. The law regulates trading and issuance of securities and aims to align legislation with the EU *acquis communautaire*.

The securities markets regulator is the Securities Commission of the FBiH, while the Banking Agency in FBiH is responsible for the banking sector. The only stock exchange in the FBiH is the Sarajevo Stock Exchange. At the end of 2009, the market capitalisation of that exchange was about USD 5.26 billion with 529 listed companies.3

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3 Data from the website of the Federation of Euro-Asian Stock Exchanges (http://www.feas.org/Member.cfm?MemberID=32), last accessed on April 8, 2010.
In 2007, the EBRD benchmarked the securities markets legislation of the FBiH against the “Objectives and Principles of Securities Regulation” published by IOSCO. The assessment showed that the legislation is in “medium compliance” with international standards. Flaws worth noting are the lack of comprehensive legislation on bonds and derivatives and a number of weaknesses in the “secondary market” sector. In order to understand how securities markets legislation works in practice, in the same year the EBRD conducted a Legal Indicator Survey, which asked practitioners in the region to comment on a hypothetical case study. The Survey concentrated on the effectiveness of prospectus disclosure requirements, private and public enforcement mechanisms and the authority of the market regulator. The Survey revealed that IPOs are not common in the FBiH and the prospectus is not considered a proper tool for identifying the risks of a proposed investment. Private enforcement mechanisms are generally lengthy and burdensome. The regulator is deemed independent and has the necessary authority to protect investors, but in practice its action has been limited.

Republika Srpska (“RS”)

In the RS, the basic legislation on securities markets is for the most part set out in the Securities Market Law, redrafted in 2006 and then amended in 2009. This Law regulates market transparency, investor protection, issuance and trading of securities, the conduct of participants in the securities market, the functions of the stock exchange and the central registry of securities.

The securities market regulator is the RS Securities Commission, while the banking regulator is the RS Banking Agency. There is only one stock exchange, the Banja Luka Stock Exchange. At the end of 2009, its market capitalisation was about USD 2.82 billion with 862 listed companies.

In 2007, the EBRD benchmarked the securities markets legislation in the RS against the “Objectives and Principles of Securities Regulation” published by IOSCO. The assessment showed that the legislation is in “medium compliance” with international standards. Similarly to the FBiH, the major flaws are the lack of comprehensive legislation on bonds and derivatives and a number of weaknesses in the “secondary market” category. As far as effectiveness is concerned, the findings of the Legal Indicator Survey revealed a situation similar to that in FBiH.

Chart 10 – Quality of securities markets legislation in Bosnia & Herzegovina (2007)

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5 Data from the website of the Federation of Euro-Asian Stock Exchanges ([http://www.feas.org/Member.cfm?MemberID=31](http://www.feas.org/Member.cfm?MemberID=31)), last accessed on March 23, 2010.
3.7 Telecommunications

The communications sector in BiH is currently regulated by the Communications Regulatory Agency (the “RAK”) and governed by the State Communications Law of 2002 (the “2002 Law”), together with associated legislation. The 2002 Law provides for a state-based model of regulation, vesting power for regulating the sector with state-level BiH authorities. The Council of Ministers is responsible for policymaking. The most recent sector policy was approved in December 2008.

The RAK is a unified regulatory body, responsible for both communications and broadcast regulation (including media content). The specific responsibilities of the RAK include licensing, tariffs, interconnection issues; planning, co-ordinating, allocating and assigning the radio frequency spectrum; and management of the numbering plan and assignment of numbering resources. The RAK is headed by a Director General, who is proposed by the RAK Council and approved by the Council of Ministers. The Parliament has the sole authority to dismiss members of the RAK Council before completion of their mandate. The RAK has its own independent budget financed through fees for authorisations, numbering and spectrum management.

The key to the development of a liberalised and dynamic environment for communications in BiH is the full and continued implementation of a regulatory framework consistent with EU standards. While some inroads have been made, overall progress appears patchy. On the positive side, reference interconnection offers have been available since 2005 (recently updated in 2009) and

Note: The extremity of each axis represents an ideal score in line with international standards such as the IOSCO Principles. The fuller the ‘web,’ the more closely the country’s securities markets laws approximate these standards.
RAK regulations on local loop unbundling (LLU) were adopted in 2008, with the first reference unbundling offer being published in January 2010. The government has also indicated a positive attitude towards further competition in the mobile sector by supporting mobile virtual network operators in the recent policy declarations. On the negative side, tariff rebalancing remains uncompleted; carrier pre-selection (though introduced in 2007) has yet to make an impact in the market; and number portability in fixed and mobile networks has yet to be implemented. Given the slow progress in implementing these key competitive safeguards, there is clearly a need for further reform of the regulatory framework, including more efforts to harmonise the domestic regulations with the EU *acquis communautaire*. The adoption of a new sector policy has given new impetus to this effort and all focus should now be on implementation with the aim of ensuring that meaningful competition takes hold, particularly in the fixed market.

In a 2008 EBRD assessment of the communications sector, the regulatory regime in BiH was deemed to be in “high compliance” with international best practices.⁶

**Chart 11 – Quality of telecommunications regulatory framework in Bosnia & Herzegovina (2008)**

![Chart of quality of telecommunications regulatory framework]

*Source: EBRD Telecommunications Regulatory Assessment 2008*

*Note: The diagram shows the combined quality of institutional framework, market access and operational environment when benchmarked against international standards issued by the WTO and the European Union. The extremity of each axis represents an ideal score of 100 per cent, that is, full compliance with international standards. The fuller the “web”, the closer the overall telecommunications regulatory framework of the country approximates these standards.*

**Chart 12 – Key indicators for Bosnia & Herzegovina (2008)**

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12(a) Fixed Network Penetration

![Fixed network penetration graph]

12(b) Mobile Network Penetration

![Mobile network penetration graph]

12(c) Broadband Network Penetration
Broadband access

% of population

Source: EBRD Telecommunications Regulatory Assessment 2008

Note: Key indicators for Bosnia & Herzegovina provide the fixed network penetration defined as active subscriber lines as a percentage of population, mobile network penetration defined as active pre- and post-paid subscribers as a percentage of population and the broadband network penetration defined as the number of access subscribers with speeds of 144k/.bits or more as a percentage of population (broadband Network Penetration less than 1% is not shown on this chart).