

**COMMERCIAL LAWS OF  
KYRGYZ REPUBLIC**  
**September 2011**  
**AN ASSESSMENT BY THE EBRD**

**Office of the General Counsel**



**European Bank**  
for Reconstruction and Development

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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 2011 EBRD Strategy for Kyrgyz Republic, 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 Kyrgyz Republic and does not constitute legal advice. For further information please contact [ltt@ebrd.com](mailto:ltt@ebrd.com).

## **1. Overall Assessment**

Fundamental changes have taken place in the Kyrgyz Republic following the change of regime in 2010. Anti-government demonstrations led to the ousting of President Kurmanbek Bakiyev and the formation of an interim government headed by Roza Otunbayeva. One of the most important outcomes was the creation of a new constitution that transfers political powers from the presidential office to the parliament. The new Constitution also introduced some important changes in the judicial system by dismantling the Constitutional Court and creating new institutions, such as the Constitutional Chamber of the Supreme Court.

In many legal areas (including pledge law, insolvency and corporate governance), the EBRD assessments reveal that the laws on the books have reached at least medium compliance with international standards of best practice, which by regional standards is a significant achievement. However, as is often the case in early transition countries, implementation of laws remains highly problematic and investor confidence in the judiciary to enforce laws on the books remains weak.

Additionally, over the years, the investment climate had been hampered by the lack of investor confidence in the judiciary. For that reason, the EBRD has been collaborating with the Kyrgyz authorities since 2006 to increase capacity in the local commercial courts, with a focus on training judges already in place. The outcome of the collaboration has been positive so far; however it is crucial that the Kyrgyz government ensures sustainability of the newly established training structures. In addition, improving the concession and public procurement legislation would also help improve the investment climate as the concession legislation is not comprehensive enough and the Public Procurement law provides a number of domestic preferences and is in many ways too bureaucratic and cumbersome.

In order for the Kyrgyz Republic to achieve its full potential the government must continue its reform of the commercial law framework in order to bring it in full conformity with international standards. The government must also improve the practical implementation of the legislation. Currently, one of the biggest challenges of the government is to develop the investment climate and restore investor confidence, which significantly deteriorated in the aftermath of the 2010 crisis.

## 2. The Legal System

### 2.1 *Constitution and courts*

Despite severe unrest due to inter-ethnic clashes in the southern region of the Kyrgyz Republic, a new Constitution was approved by national referendum on 27 June 2010. The new Constitution shifts the balance of executive power from a highly centralised presidential system to a parliamentary one, aiming to establish the first parliamentary democracy in the countries of the former Soviet Central Asia.

The Parliament (Jogorku Kenesh) is a unicameral chamber and is elected for a five-year term. Based on the results of the 2010 Referendum, the number of seats in the parliament has been raised from 90 to 120. Furthermore, a party that holds more than one-half of the seats in the parliament has the right to nominate the prime minister, who must then be approved by the president (if no party wins a majority, the president will entrust one of the parliamentary parties with forming a coalition).<sup>1</sup>

The new Constitution introduced a number of changes in the judicial system. According to the new Constitution the judicial system of the Kyrgyz Republic consists of the Supreme Court, which is comprised of the Constitutional Chamber and local courts. The courts of first instance consist of district and equivalent courts and the courts of second instance consist of regional and equivalent courts. Furthermore, according to the new constitution the deputy chairs and the chair of the Supreme Court are now elected by the judges for the period of three years. Previously, the Chair and their deputies were elected by the parliament.

The district courts (first instance) review all civil cases, except those coming under the jurisdiction of regional courts. In their turn, regional courts review economic disputes arising among legal entities and/or individual entrepreneurs, and disputes among founders, shareholders and company etc (“Corporate Disputes”) as well as cases on disputes concerning action (omission) or acts of local self-government or state government authorities (“Administrative Cases”).

Courts of second instance are composed of three divisions: division for criminal cases and administrative offence cases, division for civil cases and division for administrative and economic cases. All complaints against decisions of the regional courts are reviewed by the division for administrative and economic cases. In court of second instance the cases are considered by the panel of three judges.

The Supreme Court is the highest judicial body and is responsible for revision of judicial acts of lower instances. The Supreme Court has the same three divisions as courts of second instance. In the Supreme Court, the cases are reviewed by the panel of three judges. A supervisory complaint may be filed within one year from the date of entry into force of the judicial act.<sup>2</sup>

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<sup>1</sup> Economist Intelligence Unit, Country Report – Kyrgyz Republic, May 2011.

<sup>2</sup> Information on the Judicial System in the country is based on the data provided by the EBRD Judicial Decisions Assessment 2010.

The Kyrgyz Republic first adopted a law on Guarantees and Freedom of Access to Information in 1997. Article 16(6) of the 2003 Kyrgyz Constitution also recognises a limited right of access to personal information, unless this is deemed to be a state secret. Although the law did provide a basic framework for access to information, it did not clearly state the exceptions. The law was criticised by international human rights groups and NGOs based in the country. This led to the development of a new law, which was prepared by an expert group composed of media, business, NGO and government representatives. The 'Law on Access to Information held by State Bodies and Local Self-Government Bodies of the Kyrgyz Republic' which came into force in early 2007, represents a significant improvement over the previous law.

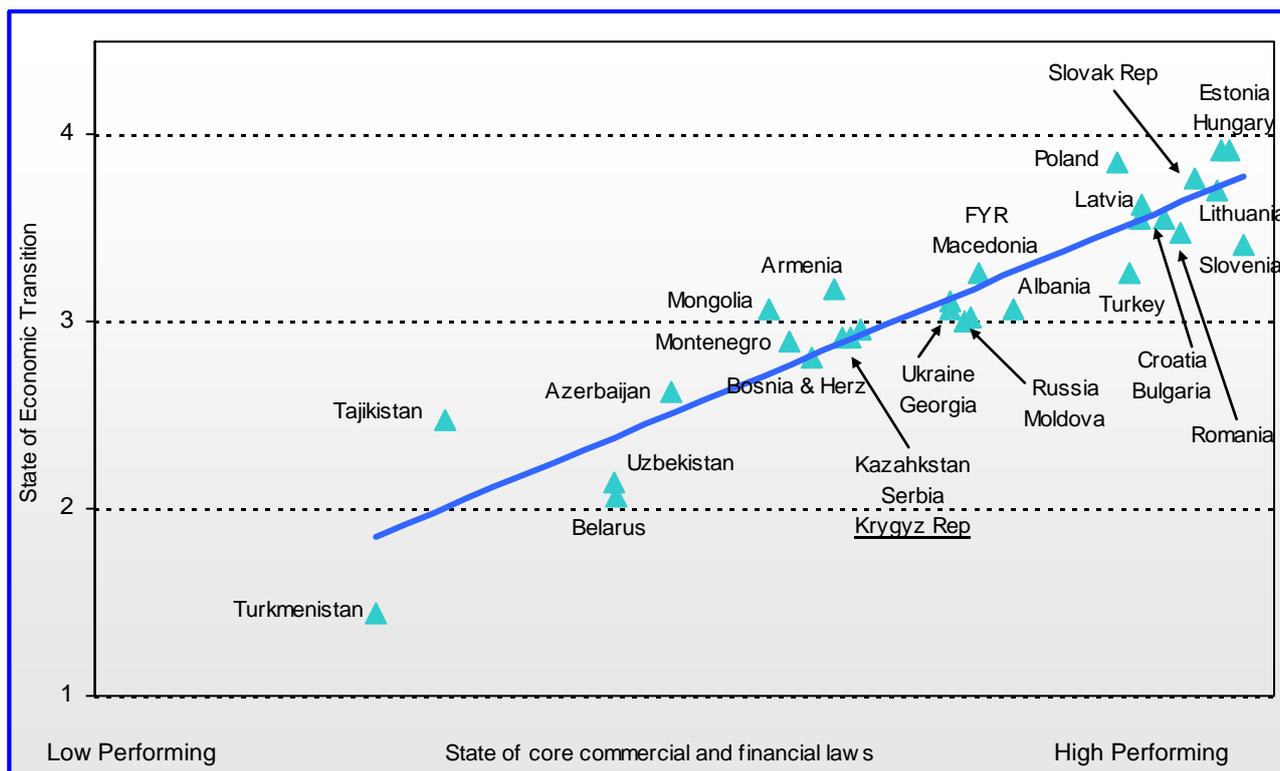
The new law includes very extensive and detailed provisions on the proactive disclosure of information: Articles 16-17 describe various specific types of information that must be published including laws, information about current ministerial decisions and official events, annual reports of public bodies, the assumption of office or resignation of heads of public bodies, adoption of the national and local budgets, changes in rates or taxes, legal acts relating to management of public property, allocation of land or buildings owned by foreigners, the signing of international treaties and emergency measures to address disasters.

Despite this there are some recognised areas of the law that need improvement; implementation of the law has proved problematic as human rights groups have found that only 40% of requests for information made in a two year period were fulfilled, with 23% being refused.

## *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. 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 chart 2 below), the future success of the transition process in Kyrgyz Republic will depend on the government's efforts in developing national legislation and bringing it in line with international standards. Furthermore, the government should consider improving the framework and the capacity of the institutions responsible for effective implementation of the legislation.

**Chart 1– Rule of law and progress in transition in the EBRD countries of operations**



*Source: EBRD Transition Report 2010 Table 1.1; EBRD Composite Country Law Index, July 2011*

*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 2010 with 1 referring to very early transition stages, and 4 referring to an advanced transition level.*

### 2.3 Recent developments in the investment climate

During the last few years, the Government has made a number of efforts to improve the investment climate in the country. The Investment Council was established in early 2007 and has been providing local and international business representatives (representing the mining, industry, agro-processing and tourism sectors) with a forum to discuss the main barriers to doing business with top officials in the government. Following the political events and subsequent changes in 2010, the new government acknowledged its commitment to improve the investment climate in the country and renamed the council as the Council for Business Development and Investment.

Furthermore, according to the World Bank’s Report Doing Business 2011, the Kyrgyz Republic ranks 44<sup>th</sup> out of 183 countries in terms of the ease of doing business. This ranking is a major improvement from 2008, when the country ranked 94<sup>th</sup> out of 178 countries. One of the reasons for the aforementioned improvement might be the one-stop shop registration procedure that came into force in 2008 in order to facilitate the procedure for registration of business entities. The procedure simplified the process by requiring only three documents for registration and reduced the time to 3 days.

Under the umbrella of its extensive reform program to streamline the investment climate and promote entrepreneurship in the country, several laws were either adopted or amended in recent years. Some of the most relevant legislation includes the Law on Investments (2003) and the Law on Foreign Investments (1997). The Law on Investments applies equally to both domestic and foreign investors and provides for guarantees against undue government interference in investor affairs, sets out detailed anti-discrimination measures, clarifies the guarantees against unwarranted expropriation and naturalisation, and introduces explicit measures on the right to repatriate funds. Despite the advances, one of the biggest drawbacks of the system is poor implementation capacity. Despite the fact that the laws are good on paper, they are not always implemented consistently. Such an outcome has been evident in almost all EBRD assessments.

Another serious shortcoming is the issue of corruption in the country. Despite the government's efforts to combat corruption, the Kyrgyz Republic ranked 164 out of 178 countries in the 2010 Transparency International Corruption Perceptions Index, which is two places lower than the 2009 results.

In addition, low energy tariffs as well as a weak legal and institutional framework for sustainable energy create an unfavourable investment climate for energy efficiency and renewables. However, the Government is taking steps to improve the situation. In 2008, the Kyrgyz Small and Medium Scale Energy Programme was approved for a 4 year period. One of the tasks of the Programme is to create a favorable investment climate in small and medium scale energy. The outcomes of the Programme are yet to be seen.

In order to improve the investment climate, the EBRD has been collaborating with the Kyrgyz authorities<sup>3</sup> since 2006 to increase capacity in the local commercial courts, with a focus on training judges already in place. Technical cooperation has included assistance to the local Judicial Training Centre (JTC) with financial, personnel and technical matters. The programme also included classroom training on the main topics of commercial and financial law for up to 270 judges. A new commercial law library for judges was created in the Supreme Court building. A number of junior judges with leadership potential were sent on internships to Kazakhstan and Russia. Finally, a bench book was prepared for commercial judges in Kyrgyz and Russian languages. An independent evaluation of this project noted in 2009 that some improvements have been noticed in the perception of judicial performance by local court users.

In 2011, the Bank launched a new phase of this project to create a training programme for *candidate* judges and help establish a fair and transparent selection process for new judges. This new phase will last until early 2012 and will train the first batch of 30 candidate judges on key judicial skills and competencies, and on judicial ethics.

Going forward, it will be crucial that the Kyrgyz government ensures sustainability of the newly established training structures by granting appropriate budget resources to the JTC. Thanks to the knowledge acquired during the EBRD project implementation, the JTC should thus be able to continue training activities and further improve the quality of the commercial judiciary in the Kyrgyz Republic.

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<sup>3</sup> This project was developed by the Bank in collaboration with the International Development Law Organization (IDLO).

### **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, judicial capacity, public procurement, 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](http://www.ebrd.com/law).

#### *3.1 Concessions*

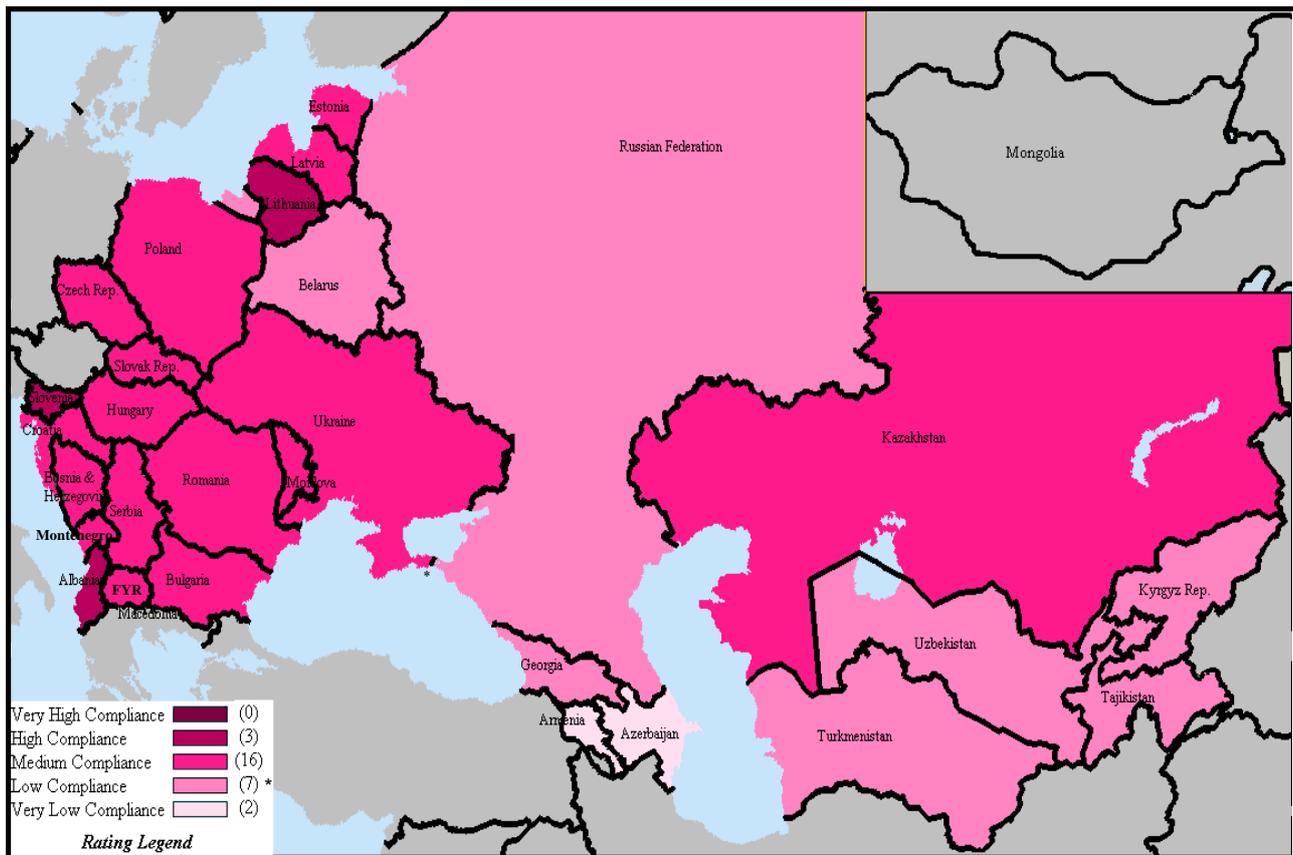
The 1992 Law on Concessions and Foreign Concessionaire Entities in the Kyrgyz Republic, as amended (the “Concessions Law”) is the main act regulating the legal framework for concessions. Several important amendments have been made to the Concessions Law since 1992. For example, one of the 2004 amendments removed the discrimination against domestic investors/concessionaires.

The Concessions Law has a certain number of positive elements: clear reference to compensation in case of unilateral termination, including lost profit, to compensation for “inseparable improvements” of concession object and reference to international arbitration.

The Concessions Law is, however, too vague as far as the majority of the concession regime’s core areas are concerned. Its scope of application requires significant improvement in some fundamental areas, e.g. the definition of a concession, which is too narrow; the sectors involved are not clearly defined, etc. In particular, the Law provides for the adoption of a list of objects that can or cannot be subject to concessions, yet no such list could be identified. Moreover, the selection procedure is not detailed. The Concessions Law states that such a procedure as well as the list of necessary documents to be attached to a bid is to be defined by the Government; again, no such document could be identified. In addition, it is not clear whether such documents have general application or are particular to each concession.

Even though the Concessions Law contains provisions on the project agreement, these do not contribute to the creation of a flexible environment for the negotiation of such agreements (e.g. restrictions on concession assignment, the possibility for the government to withdraw the decision on the assets included in the list of concessionable objects “due to provisions in the concession agreement which are contrary to the interests of the Kyrgyz Republic”).

**Chart 2 – Quality of concessions legislation in the EBRD countries of operations**



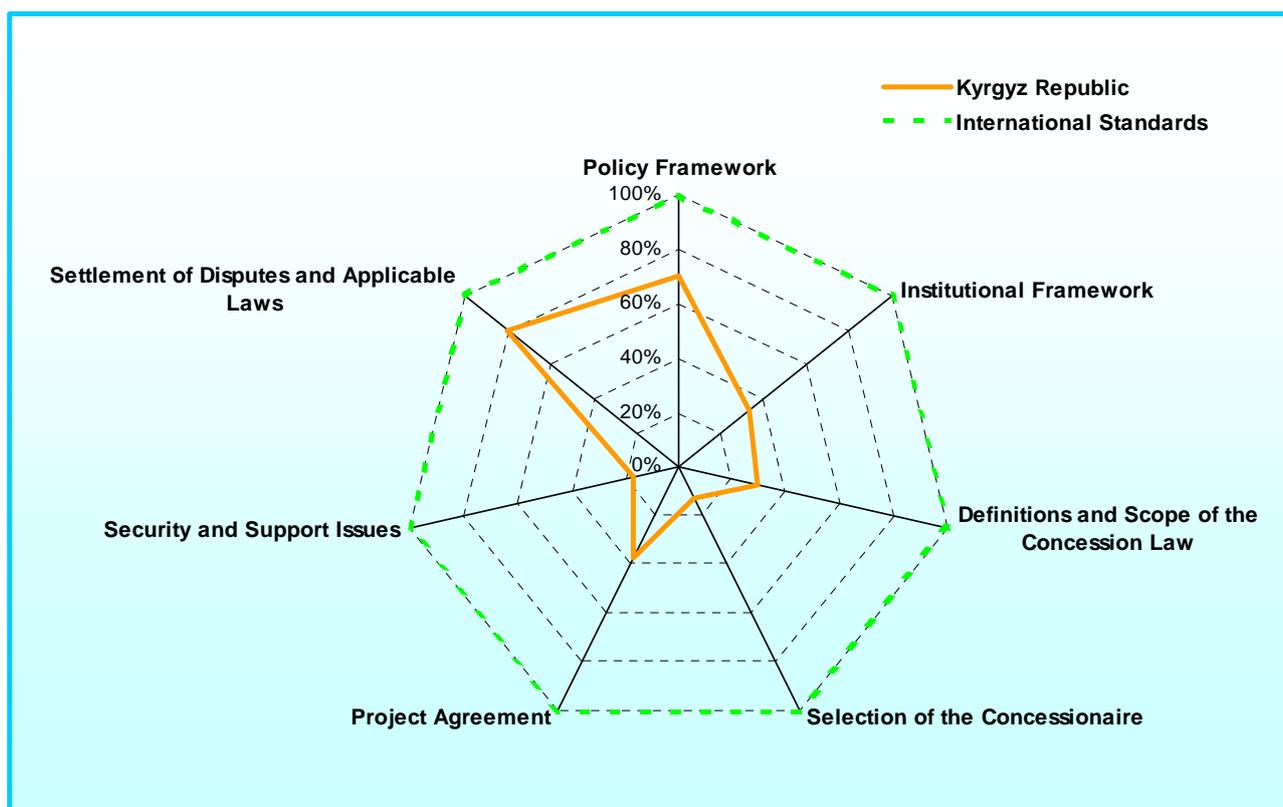
*Source: EBRD Concessions Sector Assessment 2007/08*

**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 Kyrgyz Republic ranks.

Finally, the Concessions Law is largely silent as far as government support and financial securities are concerned (there is a reference to eventual tax benefits only). These findings were confirmed by the results of the EBRD Concession Sector Assessment in 2007/08 that found the concession legislation to be in low compliance with international standards (chart 3 below).

Despite certain positive elements, the Concessions Law does not constitute a sufficiently solid legal basis for the development of infrastructure and utility services with private sector participation, hence, presenting scope for the improvement of the legislative/regulatory environment (see chart 3).

Chart 3 – Quality of concessions legislation – Kyrgyz Republic (2007/8)



Source: EBRD Concessions Sector Assessment 2007/8

*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

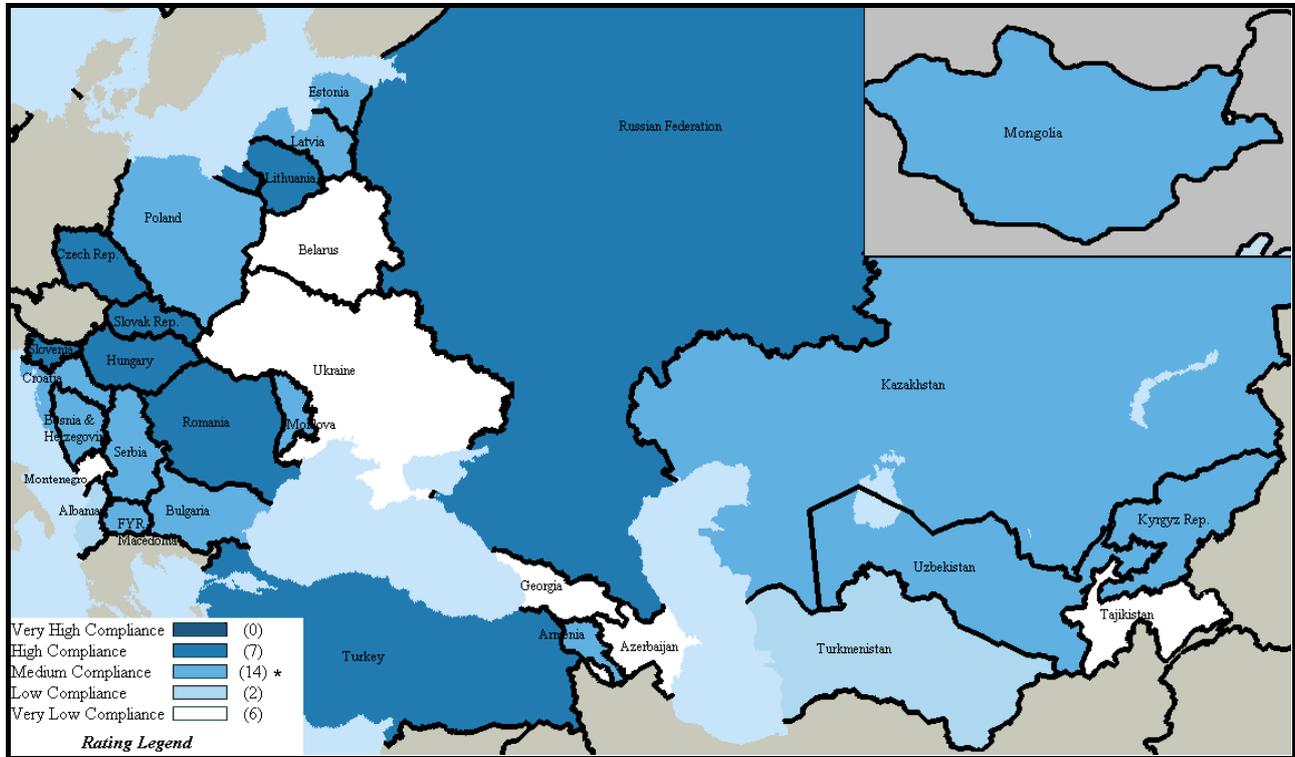
The Law on Joint Stock Companies (the “JSC Law”) enacted in 2003 and amended in December 2004 is the principal legislation governing corporate governance. Moreover, the Civil Code of the Kyrgyz Republic (dated 8 May 1996) also contains relevant provisions to corporate governance.

In 2007, the EBRD benchmarked the relevant Kyrgyz corporate governance legislation with the Principles of Corporate Governance published by the OECD and the results demonstrated that the national legislation is in “Medium Compliance” with international standards (see chart 5 below). However, major shortcomings were identified in how the legislation is implemented. The following issues can be mentioned:

- Under the law, all joint stock companies with more than 500 shareholders and all listed joint stock companies must publicise their annual financial reports in the media. However, only a limited number of companies comply with this requirement. Although Kyrgyz law imposes administrative liability for failing to publicise their annual financial reports, these requirements are not being adequately enforced.
- The legal requirements regarding the timing, notice and holding of general meetings are often violated by the management.
- Shareholders face problems in exercising their right of access to information about the company's financial performance, including financial statements and auditor's or audit committee reports.
- Under the law, notice of a general meeting must be publicised in the press. However, the law does not expressly prescribe which particular newspaper must be used and sometimes companies publicise their notices of general meetings of shareholders in local newspapers with limited circulation.
- It is not uncommon for the management of a joint stock company to omit from the minutes of the general meeting of shareholders issues raised by minority shareholders.
- Management often refuse to address questions raised by minority shareholders and side with the majority shareholders.
- It is often the case in many Kyrgyz joint stock companies that a general meeting is required to consider items which are not included on the agenda. The Joint Stock Companies Law should be amended to allow the management board and shareholders holding a qualified majority of the voting shares to introduce changes to the agenda at a general meeting and such changes should be subject to full disclosure in the same manner as for the other items included in the agenda prior to the general meeting.
- Under the Joint Stock Companies Law, shareholders have a pre-emptive right to purchase shares in a new issue. However, the Joint Stock Companies Law establishes no specific procedure by which shareholders can exercise their pre-emptive rights. No provision in law requires issuers to notify their shareholders of their respective rights or establish a time period for the exercise of pre-emptive rights.
- Shares are often paid for by in-kind contributions which are not valued by an independent appraiser.
- The Law On Joint Stock Companies requires a Revision Commission to be established, but the practical use of such a body is minimal.
- There is a lack of understanding of the nature of internal audit.
- Finally, the Law On Joint Stock Companies is in many respects contradictory. The norms are not aligned and there are numerous inaccuracies.

Authorities should carefully assess the compliance of national legislation with international standards and consider improving both the framework and the capacity of institutions in effectively implementing the legislation. The quality of legislation needs to be coupled with effectiveness of the implementing bodies and the latter seems to be the major problem in the country.

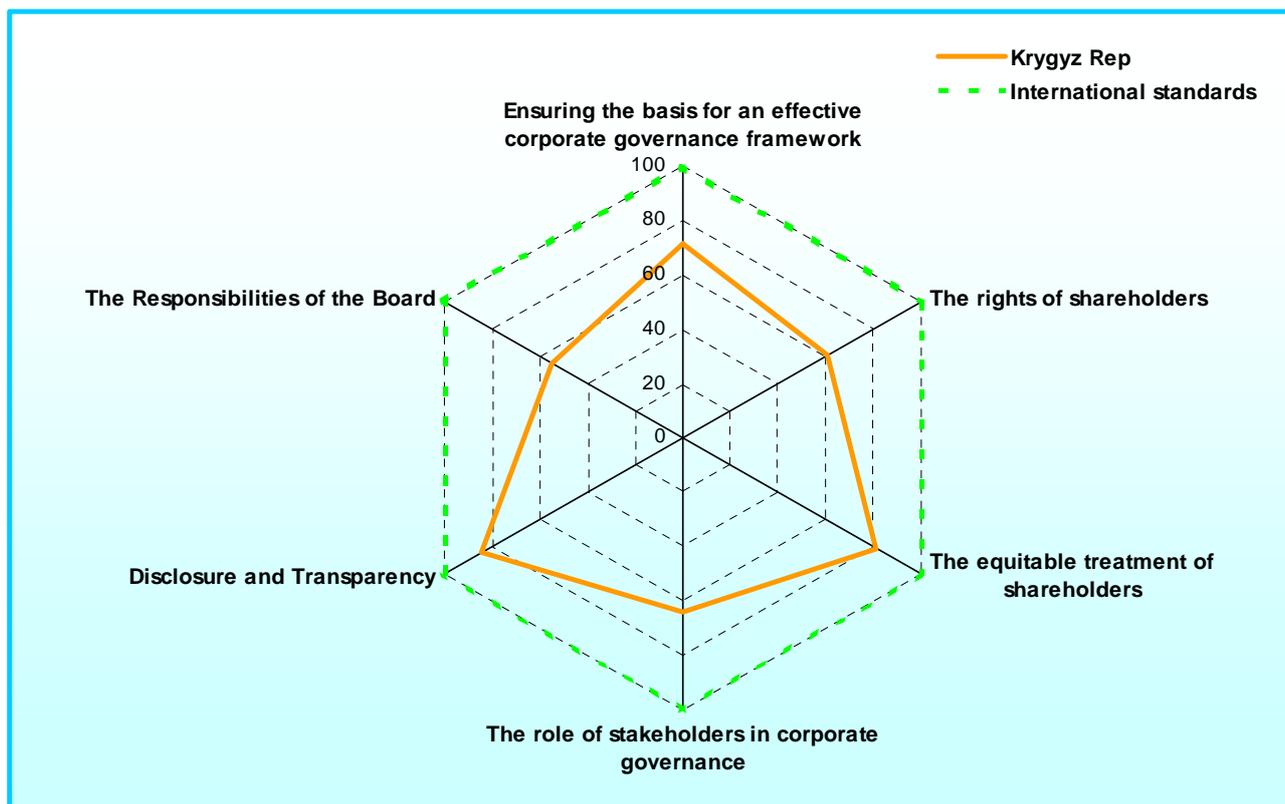
**Chart 4– Quality of corporate governance legislation in the EBRD countries of operations**



*Source: EBRD Corporate Governance Sector Assessment 2007*

**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 Kyrgyz Republic ranks.

Chart 5 – Quality of corporate governance legislation in Kyrgyz Republic (2007)



Source: EBRD Corporate Governance Sector Assessment 2007

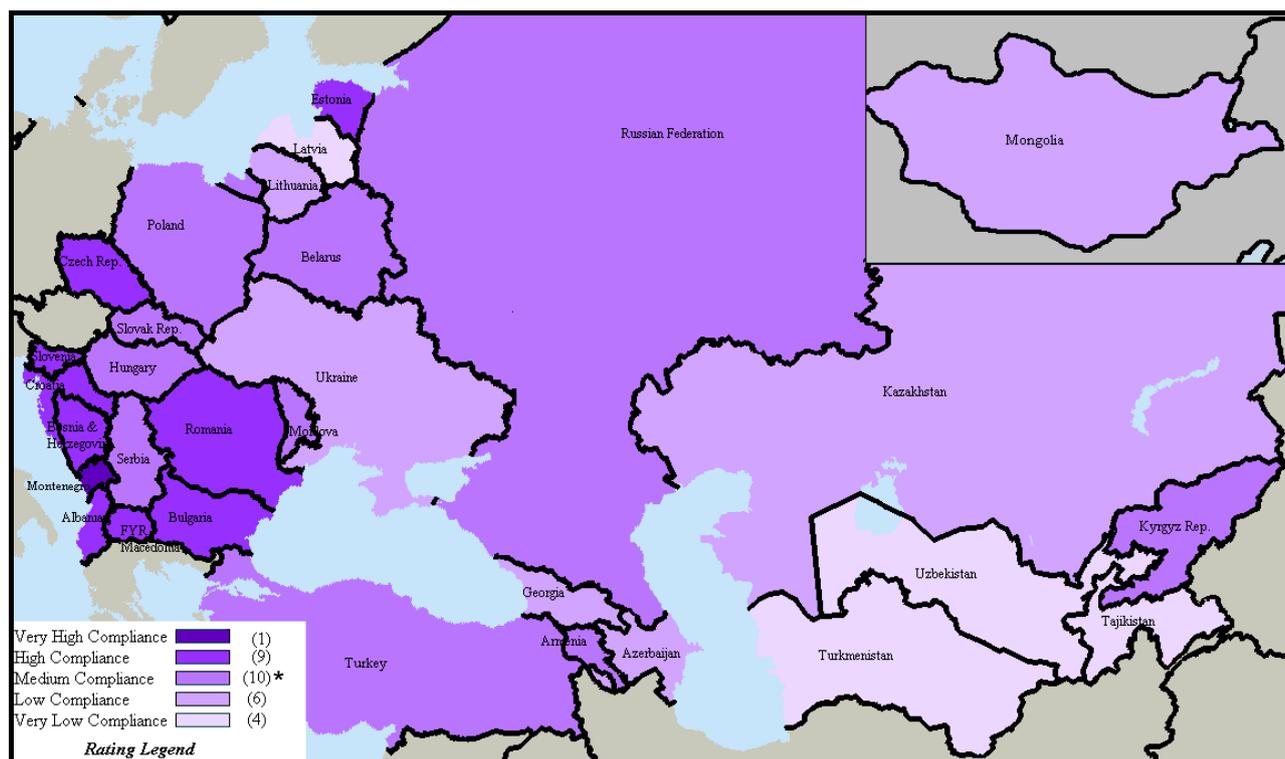
*Note:* The extremity of each axis represents an ideal score, i.e., corresponding to OECD Principles of Corporate Governance. The fuller the ‘web’, the more closely the corporate governance laws of the country approximate these principles.

### 3.3 Insolvency

The main law governing bankruptcy and insolvency is the Law on Bankruptcy (Insolvency) (the “Insolvency Law”) of 1998. The last recorded amendment of the law took place in June 13, 2007.

The 2009 Insolvency Law Assessment rated the general insolvency law as being at the upper end of the “Medium Compliance” scale, with a score of 79% (see chart 7 below).

Chart 6– Quality of insolvency legislation in the EBRD countries of operations



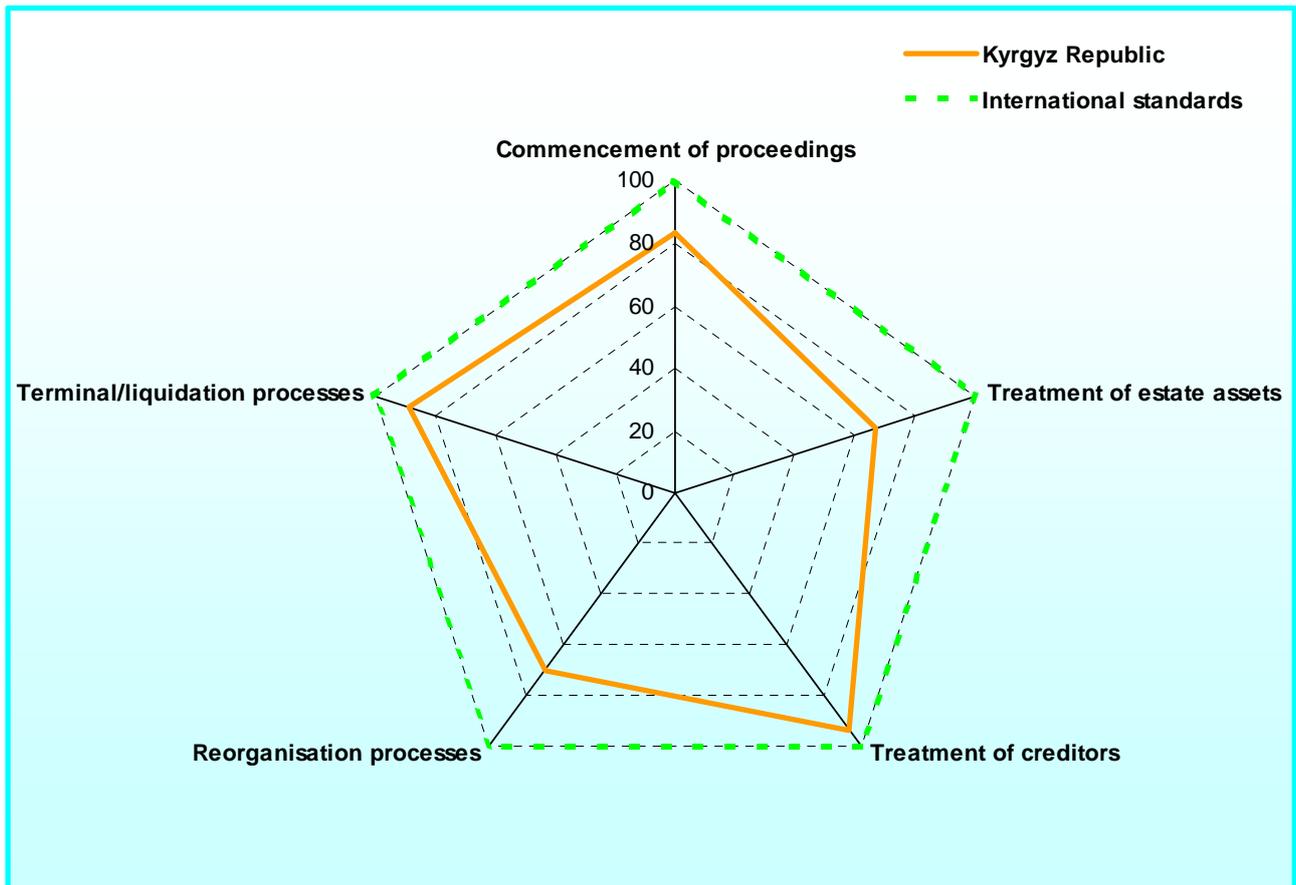
Source: EBRD Insolvency Sector Assessment 2009

*Note:* 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.

Despite the sound rating overall, there remain some material gaps in the law. In particular, the stay on enforcement action on the opening of bankruptcy proceedings does not cover secured creditors. Furthermore, the reorganisation process could be improved by inclusion of provisions which ensure creditors are fully informed of material information in respect of a proposed plan and which provide for the ability to obtain ongoing financing. We also note that the Kyrgyz Republic does not yet have specialist bankruptcy or commercial courts. The Insolvency Officer Holder Assessment (part of the general insolvency law assessment) indicated “High Compliance” with the EBRD Office Holder Principles, with a score of 85%. We note that this could be further improved by introducing formal professional standards and rules of ethics. There are also some material shortcomings in the Bankruptcy law which are likely to hinder the work of insolvency administrators. In particular, the law with respect to avoidance of pre-bankruptcy transactions is vague and likely to be ineffectual. In addition, insolvency administrators have limited powers to obtain information and recover assets from third parties.

The current Bankruptcy law could be improved in a number of ways: ensure a comprehensive stay on all creditor actions upon the opening of bankruptcy proceedings; develop a capacity for specialised commercial/bankruptcy courts; introduce provisions which provide for financing in a reorganisation; introduce a code of formal professional standards and ethics for the insolvency profession; increase the scope of the anti-avoidance provisions in the Law; and enhance insolvency administrator’s powers to obtain information and company assets from third parties.

**Chart 7 – Quality of insolvency legislation in Kyrgyz Republic (2009)**



*Source: EBRD Insolvency Sector Assessment 2009*

*Note: The extremity of each axis represents an ideal score, i.e. corresponding to international standards such as the World Bank’s Principles and Guidelines for Effective Insolvency and Creditor Rights Systems, the UNCITRAL Working Group’s “Legislative Guidelines for Insolvency Law”, and others*

### *3.4 Judicial Capacity*

The functioning of the Kyrgyz courts in dealing with commercial matters has improved in recent years. The 2010 EBRD Judicial Decisions Assessment found that overall Kyrgyz Courts rated above the regional CIS average in terms of quality of decisions, predictability, speed, cost, enforcement and impartiality. However, challenges persist: the standard of judicial decisions remains variable; allegations of corruption are common; proceedings can be slow due to heavy caseloads; and effective enforcement mechanisms are often found wanting. Courts also suffer from limited financial resources, which is evident in the quality of court premises and equipment in many areas.

In collaboration with the Legal Transition Programme's Commercial Law Judicial Capacity Building Project, court management has made a substantial effort to improve judicial performance in the commercial law sphere. Under the project, all judges hearing commercial law matters have received formal training in substantive and practically-oriented modules of commercial law. Further, a new system of initial training of candidate judges has been adopted, which for the first time will provide comprehensive professional tuition for judges at the outset of their judicial career. Qualifying judicial exams will facilitate a more objective, transparent judicial selection process. Reforms planned for the near future include simplifying procedures for enforcing judgements, improving public access to court files and decisions, and a new system of randomly allocating new cases to judges.

Some of the recommendations in the sphere of judicial capacity include ensuring continued ongoing judicial training in commercial law, using the resources produced by the Commercial Law Judicial Capacity Building Project; considering developing alternative methods of dispute resolution (mediation, arbitration) in order to ease the caseload burden on the judicial system, and strengthening provisions in the Civil Procedure Code (CPC) relating to the transparency of judicial proceedings. In particular, enabling parties to immediately (on an interlocutory basis) appeal judges' decisions on refusal applications; and remove the current CPC requirement that a party obtain the court's consent before making a sound recording of court proceedings.

### *3.5 Public procurement*

Public procurement law ("PPL") is regulated by law № 69 of May 24th, 2004, with later amendments № 172 of July 28th, 2008 and № 236 of July 20th, 2009. The PPL provides specific procurement rules for government procurement and public institutions, including state – owned companies. There is no specific separate regulation for public procurement in the utilities sector.

The PPL is based on the 1994 UNCITRAL model law, so the PPL's basic features are sound but the regulation is now only medium compliant with modern international standards.

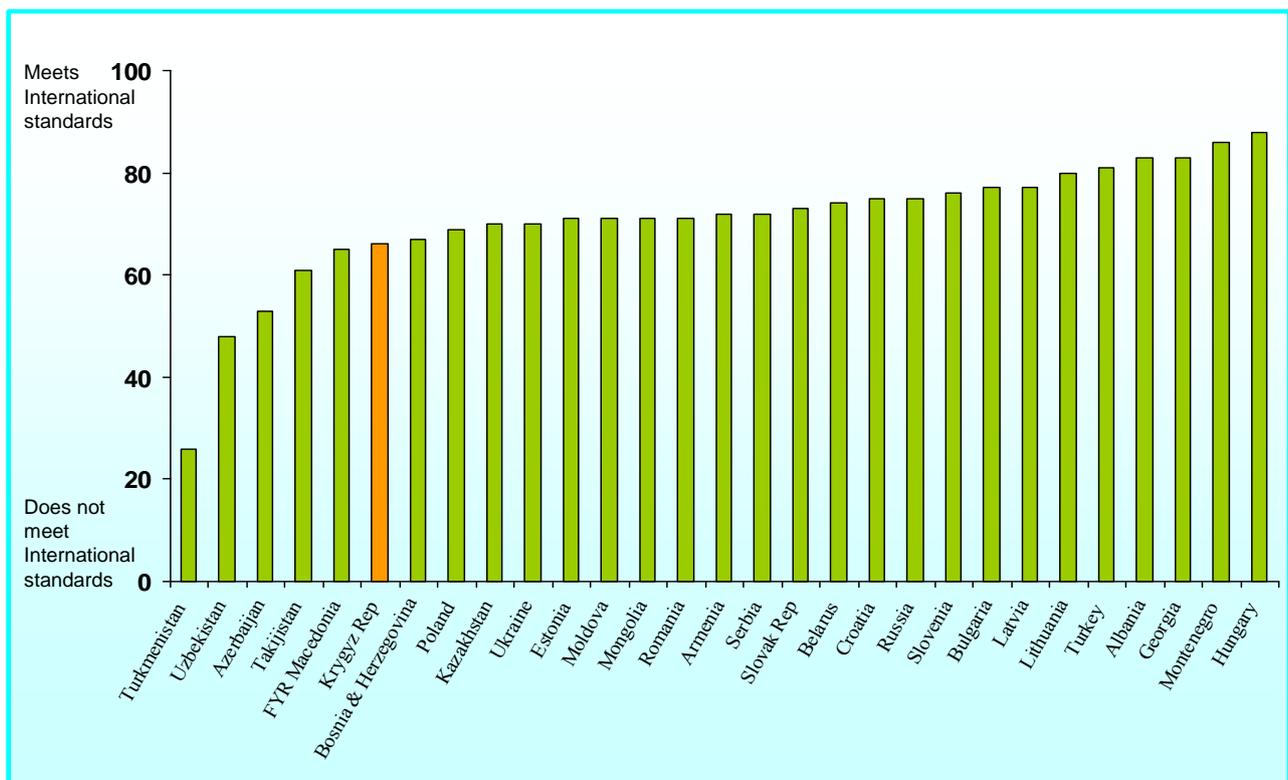
Procurement procedures include (a) open tender, (b) restricted tender, (c) two-stage tender, (d) request for quotation and (e) direct contracting. Open tender is the default procedure. The PPL regulates eligibility and qualification criteria for public procurement procedures. The law determines specific deadlines for some stages in the PP procedure; however an appropriate estimation of the typical or standard length of the procurement process is not possible.

In the EBRD 2010 Public Procurement Assessment, the Kyrgyz PPL got a score of low to medium compliance compared to other countries in the EBRD region (see Chart 8 below). It did not

demonstrate any specific strengths; enforcement, with a score of 85% compliance, is the strongest point of the local framework, due to a dedicated and independent regulatory body and availability of the administrative complaints review procedure (see Chart 9 for detailed scores of the quality of legislation).

The assessment of local procurement practice revealed that transparency and economy of procurements are the weakest fields of practice in the Kyrgyz Republic (50 – 55 %). According to local practitioners, the PPL is not properly implemented and the local procurement authority is perceived as corrupt (see Chart 11 for detailed scores of the quality of legislation).

**Chart 8 - Quality of Public Procurement legal framework in Kyrgyz Republic as compared to other EBRD countries of operation**



**Source:** EBRD Public Procurement Assessment 2010

**Note:** The score represents the level of compliance of the country’s legal framework with international standards such as the revised UNCITRAL Model Law on Public Procurements. The Kyrgyz Republic is highlighted in comparison with other countries.

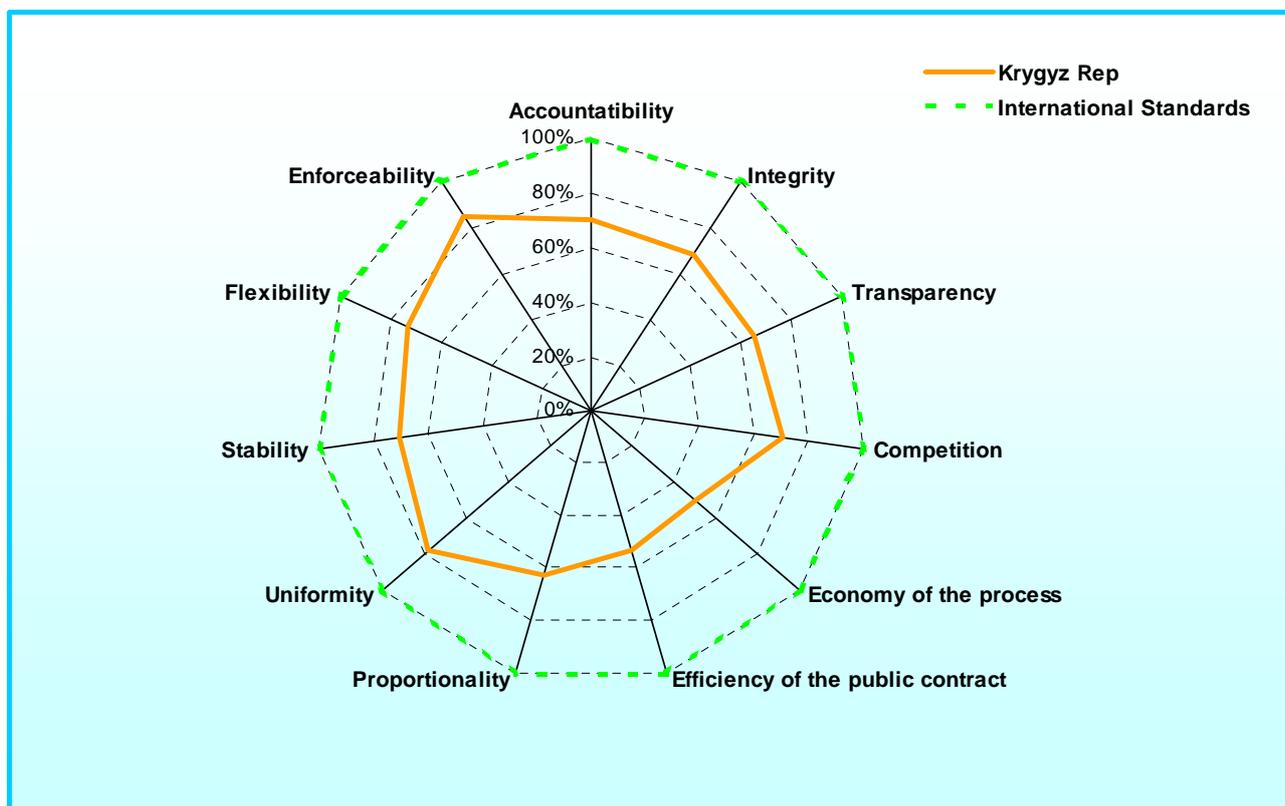
The most apparent shortcoming of Kyrgyz procurement laws are the domestic preferences and the inefficiency and lack of competition in local public procurement. In addition, outdated regulation leads to unnecessary bureaucracy in procurement procedures.

Domestic preferences may be applied to any kind of procurement contract. The contracting entity is entitled to apply a 20% discount to the offer of any tenderer, who offers products of domestic origin, or 10% for local tenderers in the procurement of works.

The PPL does not require a procurement procedure to be accomplished within a reasonable time. No competitive negotiated procedures are available. There is no regulation ensuring the simplicity or the reasonable participation costs. The PPL does not require contract terms and conditions to reflect the best available business practice. Electronic communication is available only when written confirmation is submitted.

The PPL also does not provide for the difference between a public procurement contract and concessions.

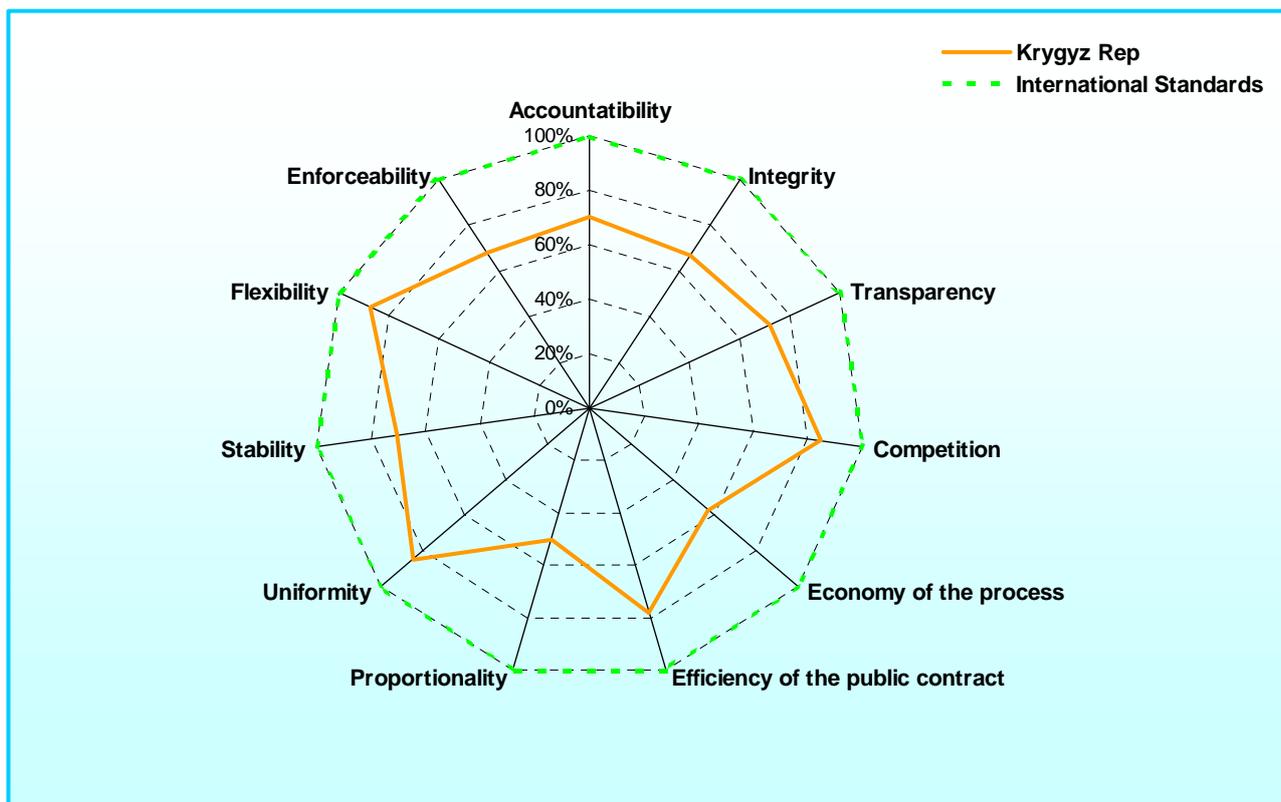
**Chart 9 - Quality of Public Procurement legislation – Kyrgyz Republic (2010)**



*Source: EBRD Public Procurement Assessment 2010*

**Note:** The extremity of each axis represents an ideal score in line with international standards such as the revised UNCITRAL Model Law on Public Procurement. The fuller the ‘web’, the more closely the public procurement laws of the country approximate these standards.

Chart 10 - Kyrgyz Republic - Quality of local procurement practice (2010).



Source: EBRD Public Procurement Assessment 2010

*Note: The extremity of each axis represents an ideal score in line with international standards such as the revised UNCITRAL Model Law on Public Procurement. The fuller the ‘web’, the more closely the public procurement practices of the country approximate these standards.*

### 3.6 Secured transactions

The primary legislation governing secured transactions includes the Law on Pledge adopted by Government Decree No. 49 on 12 March 2005. This law has repealed and replaced the 1997 Pledge Law and the 1999 Mortgage Law. A number changes have been made to the law since 2005. One of the most significant amendments provided for extrajudicial enforcement of creditor rights. The civil code provisions on pledge were amended in February 2007 to reflect the new law. More recent reforms took place in 2008-09 when the Kyrgyz Republic amended its civil code and pledge law to make secured lending more flexible by allowing general descriptions of encumbered assets and of debts and obligations. Technical amendments have been made multiple times since 2007, most recently by the provisional government in July 2010.

When it was adopted the current Pledge Law was seen as a modern law that comprised sound concepts and appropriate details. Although certain issues remain, the law appears to provide the necessary framework for the development and enhancement of primary and secondary mortgage markets. Market participants have not indicated that the law has presented any problems. Amendments to the Civil Code have eliminated some of the confusion surrounding the original legislation.

The socio-political crises in April and June 2010 that led to a regime change and the enactment of a new constitution focused on increased parliamentary power and reduced presidential power has thus far not caused any notable differences in the enforcement of the existing legislation on secured transactions.

The primary residential mortgage market recommendations include: (1) the development of a system allowing for simultaneous registration of a title transfer and mortgage on the same property; (2) improving property appraisal to meet international standards; (3) establishing legal techniques for financing buildings in construction and condominiums; and (4) providing for flexibility in loans that will allow for more sophisticated modes of financing.

The secondary mortgage market recommendations include: (1) simplifying the process for transferring mortgages and (2) reconsidering the costs and potential disincentive impact of the Specialized State Mortgage Agency.

In relation to SME finance and micro-finance (including related to agricultural lending) the system for registration of pledges is the main area for reform regarding security over movable property. Specific improvements that could be made include: (1) making the centralised, electronic pledges register searchable for users; (2) reducing the number of documents that must be produced at registration; (3) connecting different asset registries; and (4) clarifying how creditor priority ranking is determined when an asset may be registered in multiple registers, but the pledge is only registered in one.

However, it must be pointed out that there may exist some reform fatigue in this area and it may not be a priority for the government, who have already gone a long way to provide for a relatively modern secured transactions system.

One related area where there is a possibility of legal reform is in relation to the credit reporting system. There is no specific law on the credit reporting system at present, but a draft law about credit bureaus and credit histories is in development. The credit reporting system is a private credit bureau called CIB Ishenim. There is not a public credit registry in operation in the Kyrgyz Republic. Ishenim was established in 2003 with the financial support of EuropeAid. In 2004 it issued its first credit reports, becoming the first former Soviet state in the Commonwealth of Independent States to do so. It is a non-profit organisation and all its current members are founders. In March 2010 the credit bureau reached the milestone of including 500,000 credit histories, which reflected a coverage rate of 15.6 per cent of the population.

### 3.6 *Securities markets*

The primary legislation governing securities markets includes the Law on the Securities Market dated 24 July, 2009 (entered into force on 11 February, 2010); the Law on State Service for Regulation and Supervision of the Financial Market of the Kyrgyz Republic dated 24 July, 2009; the Law on Investment Funds dated 26 July, 1999 (as amended); the Law on Private Non-State Pension Funds in the Kyrgyz Republic dated 31 July, 2001 (as amended) and the Law on Organization of Insurance in the Kyrgyz Republic dated 23 July, 1998 (as amended).

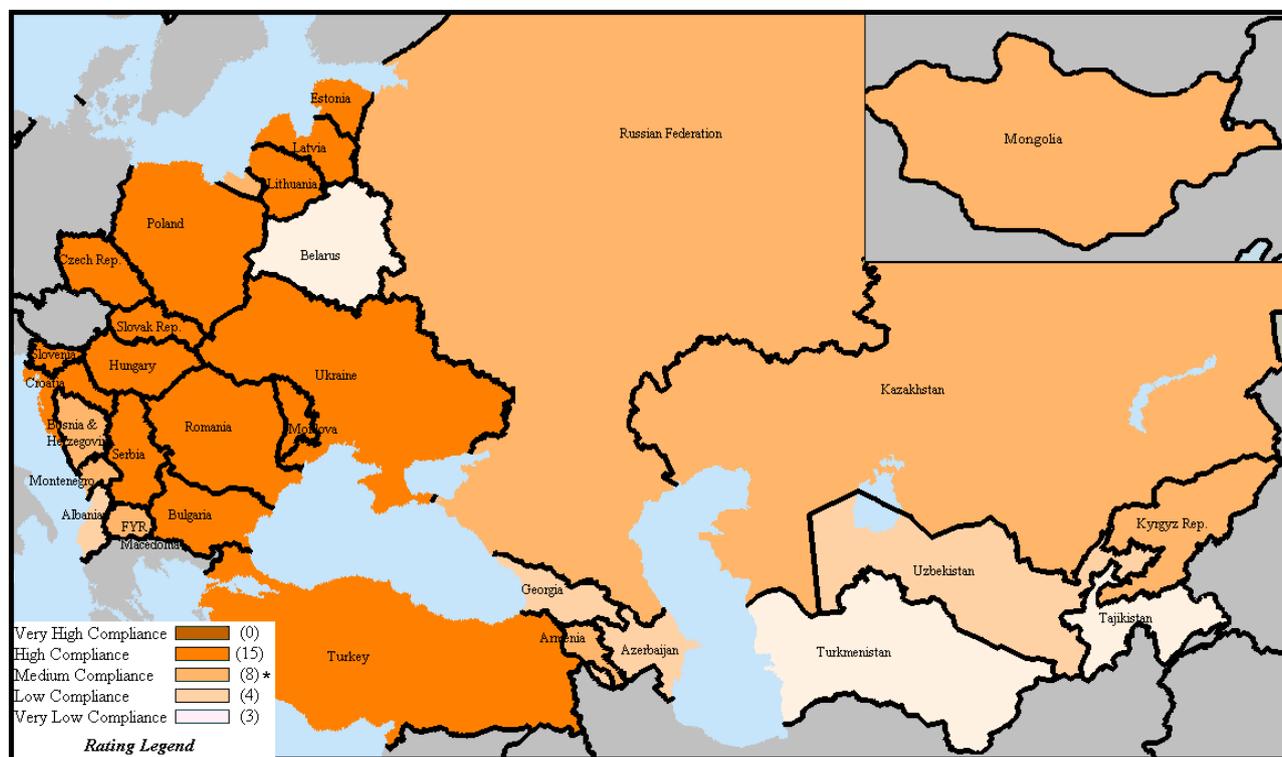
The 2007 EBRD assessment on securities markets showed that the Kyrgyz Republic is in “Medium Compliance” with the IOSCO’s Objectives and Principles of Securities Regulation (see chart 12 below). After the assessment was concluded, two major laws entered into force: the new Law on Securities Market and the Law on State Service for Regulation and Supervision of the Financial Market. These laws brought some improvements to the legal framework on securities markets, but the quality of legislation needs to be coupled with effectiveness and the latter seems to be the major problem in the country.

Among the issues to be tackled as a matter of priority, the following can be mentioned:

- legislation should be amended to introduce minimum listing requirements for listed companies;
- The current level of budgetary funding of the regulator is insufficient to train the regulator's staff and to effectively supervise the securities market participants.
- Kyrgyz law does not require public sector employees, including officers of the regulator, to disclose information about their commercial interests. Employees and officers of the regulator should be forbidden from discharging their duties where they have any commercial interests.
- The level of administrative fines for breach of securities markets legislation is inadequate, and due to ineffective enforcement, offenders often avoid paying administrative fines.
- Although Kyrgyz law imposes administrative and criminal liability for negligent and malfeasant audits, it does not establish clear criteria for the indemnification of losses incurred by investors as a result of such audits.
- Although the country has adopted IFRS, there is no process for official adoption and publication of IFRS as and when standards are amended and new standards issued, and an official translation of IFRS has never been adopted, so it is not clear which “version” of IFRS is applied by Kyrgyz entities.
- Kyrgyz law requires market participants to maintain a minimum amount of capital, a loss recovery reserve fund, and maximum debt to capital and minimum liquidity ratios. However, the compliance of market participants with the debt to capital and liquidity ratios is not properly monitored. The regulator should promote the establishment of a compliance function at securities market intermediaries.
- Stock exchanges should introduce a Delivery Versus Payment system.

The new law on Securities Market and on the on State Service for Regulation and Supervision of the Financial Market brought some improvements to the legal framework on securities markets. However, focus should now be dedicated to the effective implementation of the new provisions. The quality of legislation needs to be coupled with effectiveness and the latter seems to be the major problem in the country.

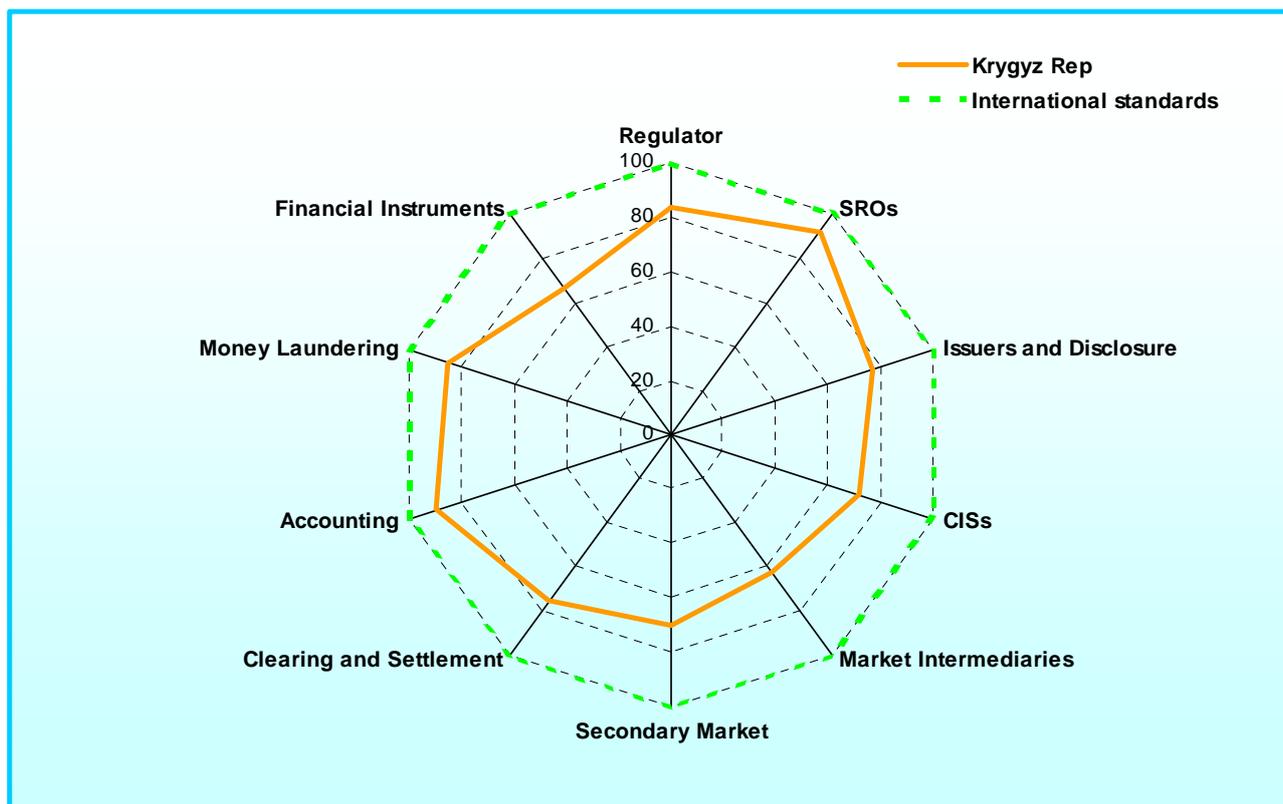
**Chart 11– Quality of securities market legislation in the EBRD countries of operations**



*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 Kyrgyz Republic ranks.

Chart 12 – Quality of securities markets legislation in Kyrgyz Republic (2007)



Source: EBRD Securities Markets Sector Assessment 2007

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.

### 3.7 Telecommunications / Electronic Communications

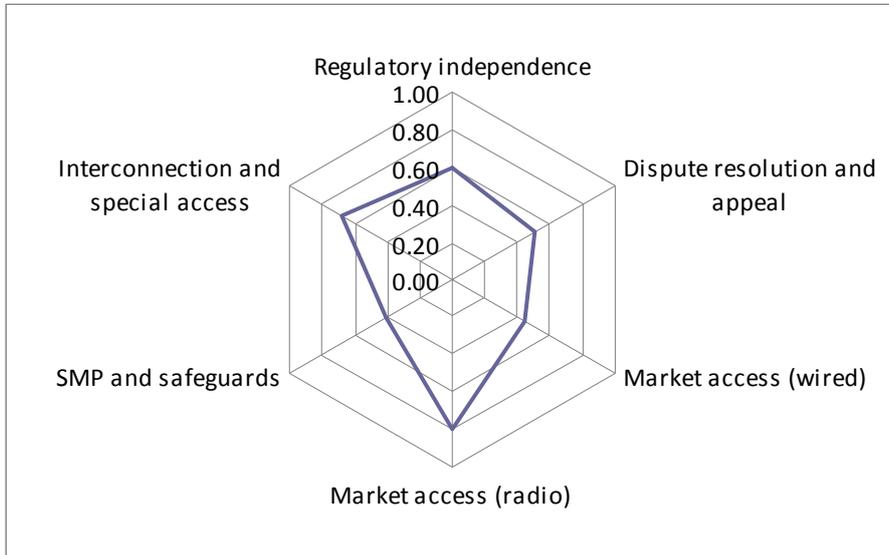
The communications sector (the “Sector”) in the Kyrgyz Republic is governed by the Telecommunications Law of 1998 (the “1998 Law”) which has been amended a number of times. The 1998 Law has been significantly revised to better reflect international best practice with the support of EBRD’s Legal Transition Team, but the draft of the revised law awaits government and parliamentary approval before it can come into effect. The events preceding and subsequent to April 2010 have significantly slowed progress in this area, though the Bank remains engaged.

The sector in general is a dynamic part of the Kyrgyz economy, holding its own through economic, financial and political crises. Institutionally, the sector is presided over by a regulatory agency that has had a reformist agenda with good support from the industry. However, uncertainty as to the future of the legal and regulatory framework and the impact of recent ownership disputes in the mobile sector will impact on investor sentiment and thereby affect the upgrade and extension of network and services, particularly in areas with poor service.

There is a good basis for significant development of the sector: e.g. an established regulatory institution, a vibrant mobile market, modern draft of framework telecom law. The Government should move to swiftly define policy and strategy for development of the sector into the medium and long term. This policy should include speedy approval of the amendments to the telecom law and alignment of existing regulations with this new framework. The Government should support and strengthen the independence of the regulatory authority and the full practical implementation of

a regulatory framework based on the revised law. The Government should also look to adopt policies which encourage investment in high-speed broadband infrastructure, infrastructure fast becoming a pre-requisite for economic competitiveness.

**Chart 13 – Quality of telecommunications regulatory framework in Kyrgyz Republic (2008)**

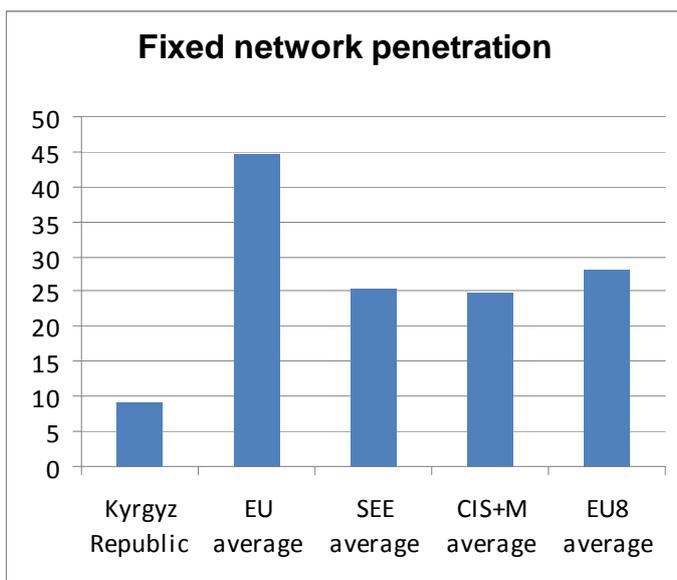


*Source: EBRD Telecommunications Regulatory Assessment 2008*

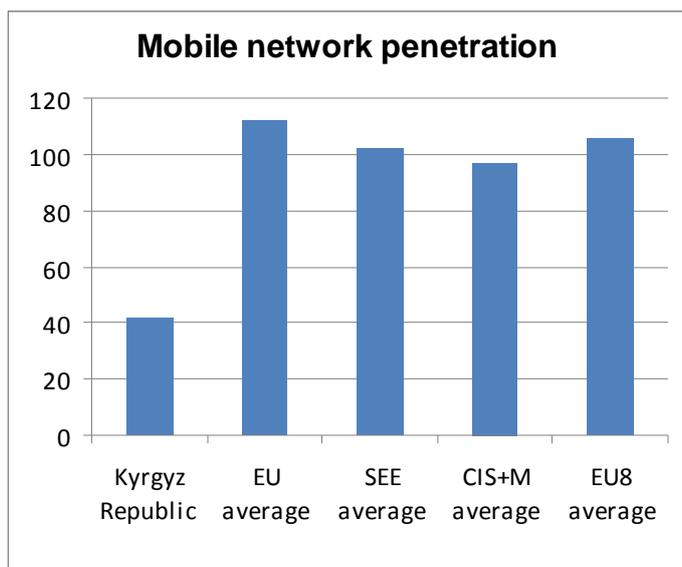
*Note: The diagram shows the combined quality of institutional framework, market access and operational environment when benchmarked against international standards issued by the WTO and the European Union. The extremity of each axis represents an ideal score of 100 per cent, that is, full compliance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

**Chart 14 – Key indicators for Kyrgyz Republic (2008)**

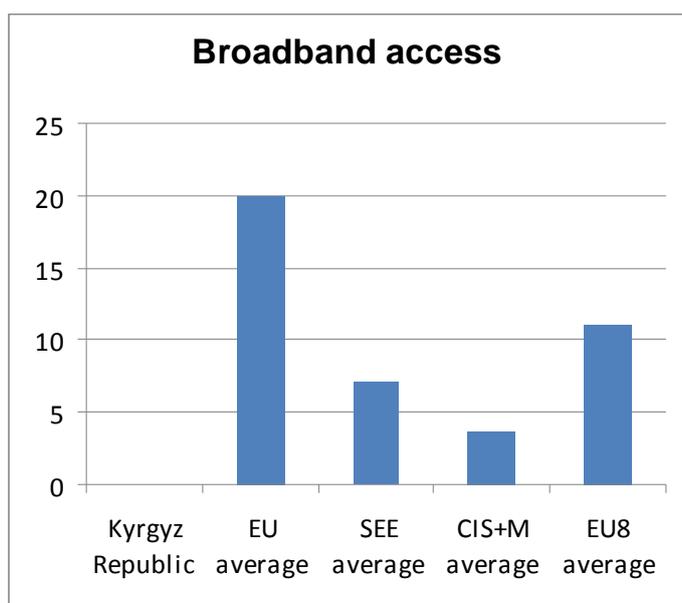
**14(a) Fixed Network Penetration**



#### 14(b) Mobile Network Penetration



#### 14(c) Broadband Network Penetration



Source: EBRD Telecommunications Regulatory Assessment 2008

Note: Key indicators for Kyrgyz Republic 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).