

**COMMERCIAL LAWS OF
TAJIKISTAN**
April 2012
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) and was last updated during the preparation of the 2012 EBRD Strategy for Tajikistan, 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 Tajikistan and does not constitute legal advice. For further information please contact ltt@ebrd.com.

1. Overall Assessment

The Bank's recent assessments of commercial and financial laws in Tajikistan reveal some persistent gaps in the country's legislative framework. On the implementation side, there is a degree of uncertainty as to the judiciary's ability to enforce contracts and protect investor rights generally. Sustained efforts by the Tajik authorities will be needed to improve commercial legislation and increase capacity in the judiciary.

The EBRD's concessions sector assessment found Tajikistan to be in low compliance with international standards. The assessment revealed that the law is too superficial and vague as far as the majority of core areas are concerned. Additionally, the assessment concluded that since the current law does not constitute a sufficiently solid legal basis for the development of PPP in Tajikistan serious reform should be contemplated.

The EBRD Corporate Governance Assessment showed Tajikistan being in very low compliance with the OECD Principles of Corporate Governance. Even though the Joint Stock Company Law has been amended the authorities should further 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 Bankruptcy law was also amended in 2009 and introduced additional steps to the insolvency procedures. Despite the amendments, however, the Insolvency Law still lacks many basic qualities recognised as essential to an effective and efficient insolvency system under international standards.

Further, the EBRD Judicial Decisions Assessment found the quality and predictability of commercial law decisions in Tajikistan to be well below the regional average and concluded that Tajik judges should receive practical, professionally-oriented commercial law training.

The EBRD Public Procurement Assessment revealed that the public procurement law is in low to medium compliance with international standards. The Assessment showed that there is no independent regulatory authority and that the remedies body has not been established. In addition, the local procurement practice in Tajikistan is rather irregular and inconsistent.

According to the latest Securities Markets Legislation Assessment the country was found to be in very low compliance with the Objectives and Principles of Securities Regulation published by the International Organisation of Securities Commissions (IOSCO) – showing a legal framework in critical need of reform. Shortcomings in the legislation can be observed in all of the areas under consideration: the regulator is not independent, the regulation of collective investment schemes is not yet contemplated by the law and money laundering provisions are weak.

Moreover, the communications law fails to meet the requirements of applicable best practice for the sector giving rise to conflicting interpretations of duties and obligations for various stakeholders, creating confusion and detracting from the development of the sector.

Improvements in the commercial legislative framework can be expected as a result of Tajikistan's aspiration to become a full member of the World Trade Organisation (WTO), at present the country has observer status.

2. The Legal System

2.1 Constitution and courts

The Constitution of the Republic of Tajikistan was enacted on 6 November 1994. According to the Constitution governmental power is based upon its division into legislative, executive, and judicial powers. The supreme legislative body is Majlisi Oli (parliament) elected for a period of five years. The executive power is vested in the President whose term of office is seven years. An extension, approved by national referendum on 22 June 2003, has enabled the limit to be increased by two terms. The President appoints the Prime Minister and other government ministers.

Parliament is the highest representative and legislative organ of the Republic. Parliament consists of two chambers - a 63-seat lower house, the Council of Representatives, and a 33-seat upper chamber, the National Council. Parliamentarians are elected for a 5-year term. The laws of Tajikistan and resolutions of Parliament are adopted by a majority vote. Constitutional laws are adopted by the positive vote of no less than 2/3 of the total number of people's deputies. Laws are presented to the President for signature. If the President does not agree with the law, then she or he returns the laws with her or his objections to the Parliament within 15 days. If 2/3 of Parliament votes to affirm Parliament's previously adopted decision, the President must sign the law. If the President does not return the law within the established time period, then she or he is required to sign that law.

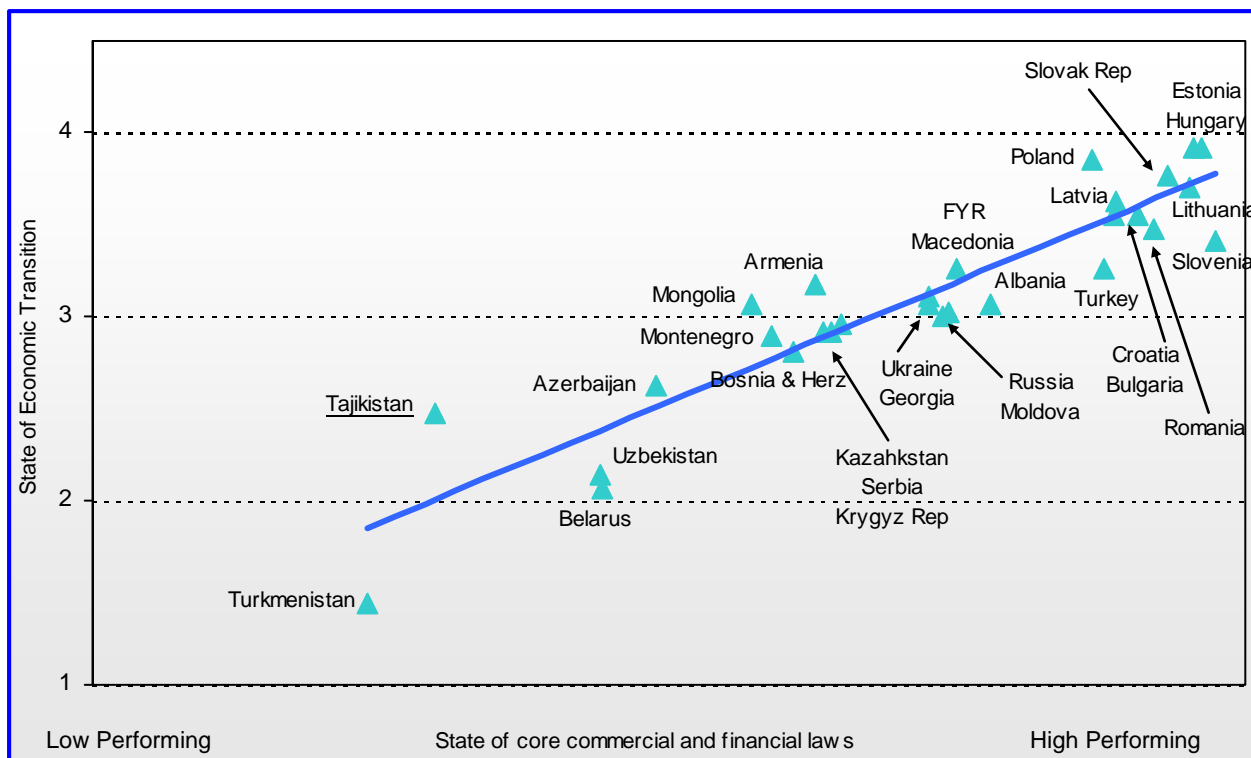
According to the Constitution, every person is guaranteed judicial protection, has a right to seek judicial relief and to have counsel. The judiciary includes a Constitutional Court, Supreme Court, Supreme Economic Court, Military Court, Court of the Gorno-Badakhshan Autonomous region, regional courts, Dushanbe Court, city courts and district courts, Economic Court of the Gorno-Badakhshan Autonomous region, regional economic courts and Dushanbe Economic Court. Judges sit for a term of five years. The Constitutional Court decides on the constitutionality of laws, legislative acts of the President, the Government, the decisions of the Supreme Court and the Supreme Economic Court. Following the model of most other CIS states, a general procurator supervises the correct and uniform enforcement of laws.

The Government of the Republic consists of the Prime Minister, her or his First Assistant and Assistants, Ministers and the Chairs of governmental committees. Code of Ethics of the Government Official introduced by Law No 932 dated 15 September 2010. The Code of Ethics was adopted for the purposes of removal of the bureaucratic barriers and regulation of the activity of the government officials. The Code has set general principles and rules of behaviour of government officials while performing their official duties.

2.2 Relationship between legal transition and economic progress

Given the positive correlation throughout the Bank's countries of operations of respect for the rule of law, on the one hand, and overall economic progress, on the other hand, it is reasonable to expect that the future success of the transition process in Tajikistan will be dependent, at least in part, on improving the commercial law framework and the quality of the country's courts. (See Chart 1 for Tajikistan's position compared to that of other countries of operation).

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*

The government of Tajikistan is generally favourable to foreign investment. Nevertheless, despite some progress in various areas of economic reform the overall business environment is underdeveloped and is yet to improve. Some of the biggest impediments for the investors are a weak judiciary and widespread corruption. The judiciary is politically dependent and the possibility of winning a case against the government is barely non-existent. For several years now Tajikistan has been ranked very low on the Transparency International Corruption Perceptions Indexes. In 2011 it scored 2.3 out of 10 and was placed 152 out of 183 countries evaluated.

On the other hand, in the World Bank Doing Business 2011 Report, Tajikistan gained 10 places from 149th in 2010 to 139th in 2011, putting it among the top 10 most improved countries. However, this improved score was mainly due to changes in legislation, simplified procedures to start up a business, simplified operation requirements and greater investor protection, while implementation remains weak. Areas where Tajikistan continues to score poorly include paying taxes (reflecting overly complex tax laws and a weak tax administration), trading across borders, construction permits and access to finance. Overall, the business environment remains difficult with excessive state intervention in the corporate and banking sectors, a lack of competition and many formal and informal administrative barriers.

Despite the fact that the government has amended the 1992 Law on Foreign Investments several times, the legislative framework remains to be the least developed in the CIS region. The amended laws give foreign companies substantial incentives and tax breaks, however in order to receive any of the incentives businesses have to overcome bureaucratic red tape.

Nevertheless, some improvements in the commercial legislative framework can be expected due to Tajikistan's aspiration to become a full member of the World Trade Organisation (WTO). Tajikistan initially made its application in 2001, when The Working Party on the accession of Tajikistan was established by the WTO General Council on 18 July 2001. Currently, the Working Party is in the process of examining Tajikistan's foreign trade regime and developing a Working Party Report. This revised report will then be considered in detail at the next meeting of the Working Party. Any decisions with regards to the accession of Tajikistan are to be taken by a Ministerial Conference, at which a two thirds majority decision needs to be made.

2.4 *Freedom of Information*

The Freedom of information (FOI) environment is governed by the Constitution (Article 25) and *The Law of the Republic of Tajikistan on the right to access to information*, signed by the President in 2008.

Article 25 of the Constitution states Governmental agencies, social associations, and officials are required to provide each person with the possibility of receiving and becoming acquainted with documents that affect her or his rights and interests, except in cases anticipated by law.

The FOI law is the key legal instrument when it comes to shaping the legal environment for accessing information of public interest online.

There has been a recent marked increase in the amount of information available online for internet users within the country. Despite this, a low level of content development has been one of the main challenges faced by the country since ICT access became more widespread. According to market data almost 50% of internet users access content via a mobile device, this is partly due to the poor IT infrastructure and the prohibitive cost of PCs. A developed fixed and mobile communications

infrastructure could enable more people to have access to online information. What is also now needed is a mechanism to enable the FOI law to be fully implemented

However a recent worrying development is the adoption of a decree '*On approval of the order of reimbursement of costs related to provision of information*' that took effect on January 1, 2010. According to the decree, all state institutions will be able to charge fees for providing any kind of information to journalists and members of the public. The decree states that one page of information provided should cost up to 35 Somoni (US\$8 / £5). Considering that the annual minimum wage in Tajikistan was estimated at \$477 (in 2009) this would represent yet another barrier to accessing information for the citizens of Tajikistan.

The decree enables state officials to charge for photocopying official documents or extracts of official documents and for obtaining information from government officials in writing. Moreover, payment can be collected not only for the supply of printed information, but also for verbal information and clarification of legislative acts, decrees and regulations.

Human rights observers, lawyers and journalists emphasise that the decree is in conflict with the Constitution and the FOI law, both of which guarantee citizens free access to information. Implementation of this decree will result in a less transparent and less predictable 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, judicial capacity, public procurement, secured transactions, securities markets and telecommunications (electronic communications). 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

On 26 December 2011 the President of the Republic of Tajikistan signed a new Law on Concessions. The Law provides transfer of state objects into concession without tender in exceptional cases. The Law regulates relations between participants of the concession, defines competence of the authorised state agency, terms and conditions of concession and transfer of objects, rights and obligation of concessionaire and other questions related to transfer of state object to concession.

The results of the 2007/08 EBRD concessions sector assessment are based on the legislation that was in force during the time of the assessment (Concessions Law of 1997, as supplemented by the Regulations on Concession Agreements and on Auctions and Tenders). The Assessment found Tajikistan to be in low compliance with international standards (see Chart 2 below). There were however, some positive features aimed at adding fairness and transparency in that the Law provided for notification to all participants of the tender results and for the right to challenge them. The Law also provided for the registration of project agreements. The unilateral termination of an agreement

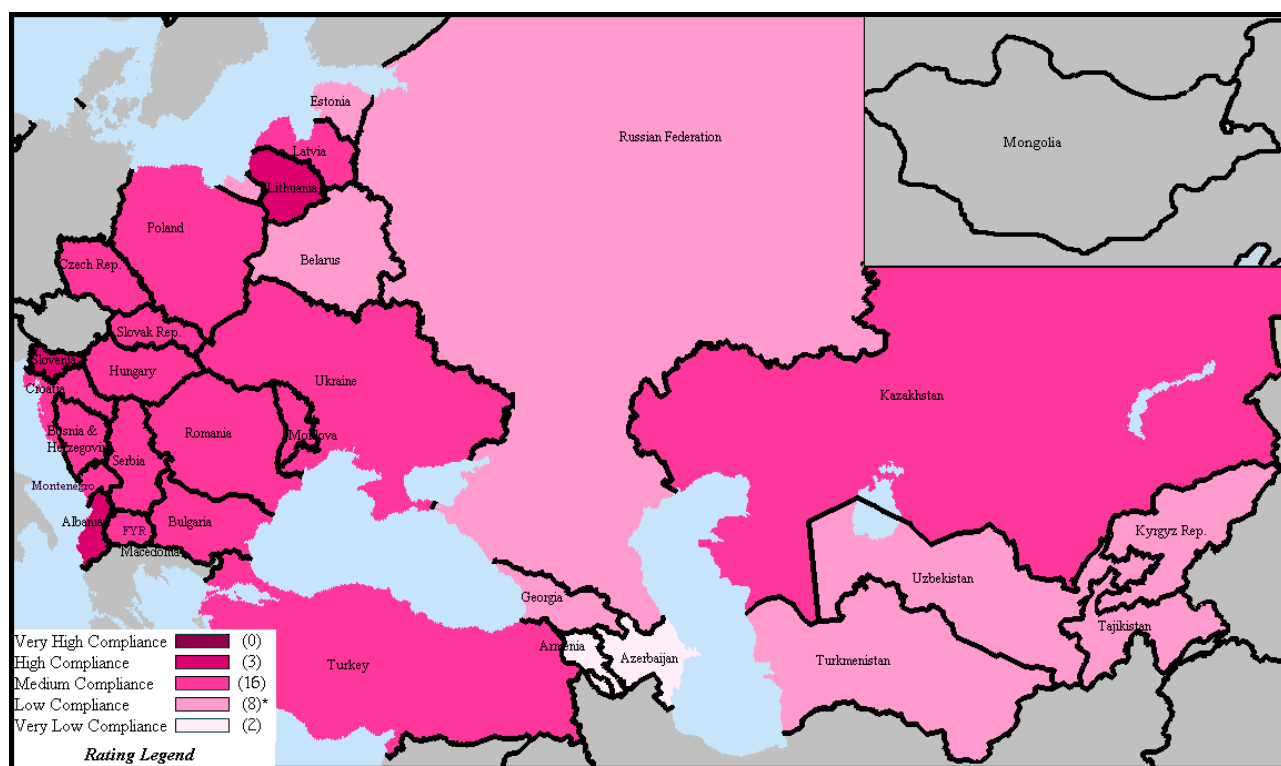
by the Contracting Authority was limited to the event of misrepresentation by the concessionaire. The Law provided a reference to the "mutual advantage", and a declaration of "non interference in economic activity of the concessionaire".

The 1997 Law was too superficial and vague as far as the majority of core areas are concerned (Chart 3). Its scope of application and definitions needed serious improvements: a concession was defined as "transfer of temporary exploitation of enterprises (associations) belonging to the state, land with right of extraction of minerals, construction of infrastructure, water resources (...) and other natural resources not forbidden by the Republic of Tajikistan"; the rules discriminated against domestic investors, there was a lack of clarity with the sectors where concessions are applicable. The selection procedure in both the Law and the Regulations would also benefit from a further clarification. These were largely repetitive, the pre-selection was neither required nor referred to at all, the grounds for "exceptional cases" for direct negotiations were not specified leaving room for subjective interpretation, there were no rules regulating unsolicited proposals.

The provisions governing project agreements did not really facilitate creating a flexible environment for the negotiation of such agreements (e.g. priority of the State to purchase concession production, non assignment of concessionaires' rights). The Law was very thin on the issues of public support and financial securities. The application of international arbitration was restricted.

As the new Law is a relatively new piece of legislation its application in practice is yet to be analysed.

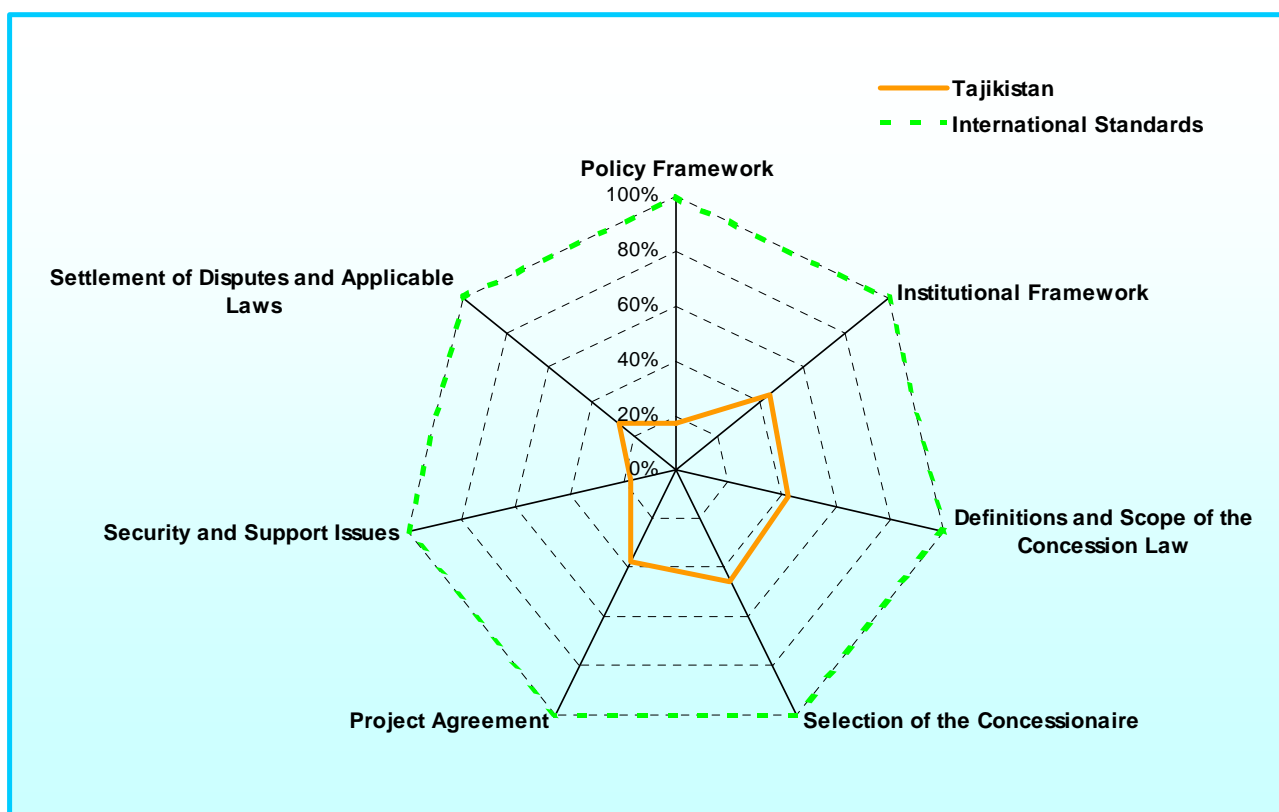
Chart 2 – Quality of concessions legislation in the EBRD countries of operations



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 Tajikistan ranks.

Chart 3 – Quality of concessions legislation – Tajikistan (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 basic legislation on corporate governance in Tajikistan is contained in the Law on Joint Stock Companies (the “Law”), which entered into force on 5 March 2007. The Law was last amended by Law No 585 “On Amendments and Addendums to the Law on Joint-Stock Companies” on 12 January 2010. The Law regulates the governance structure of joint stock companies and comprises key responsibilities of governance bodies. The Law also provides basic elements of key director duties and prescribes a framework for conflicts of interest.

With specific reference to corporate governance of banks, the Law on Banking Activity (adopted 19 May 2009) details the terms and procedures for granting banking licenses, sets forth the legal framework for banking activities, supervision and winding-up of credit institutions. Furthermore, Ordinance No. 176 on Regulating Credit Institutions Activity (9 October 2009, as amended) sets forth prudent banking requirements towards banks, describes capital reserves for various types of risks and instruments, includes limits on amounts extended to related parties and reporting to the supervisory authority. In addition, the Principles of corporate governance in commercial banks and other credit institutions, licensed by the National Bank of Tajikistan (25 February 2005) includes a list of principles of corporate governance for Tajik banks.

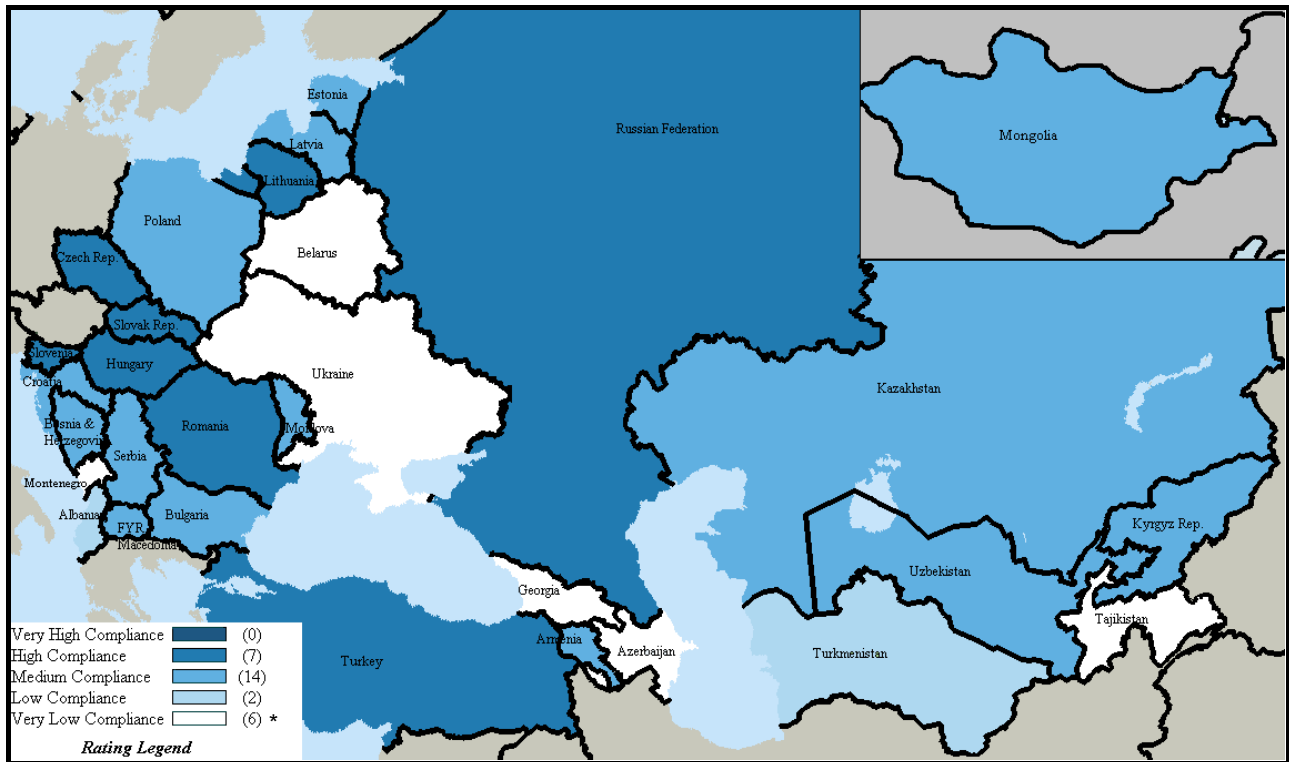
The 2007 EBRD assessment on corporate governance showed Tajikistan being in “Very Low Compliance” with the OECD Principles of Corporate Governance (see Chart 4), with a number of major shortcomings especially in the sections on “ensuring the basis for an effective corporate governance framework”, “disclosure and transparency” and “the responsibilities of the boards” (see Chart 5 below). Since the 2007 assessment, the Joint Stock Company Law has been amended and some improvements were enacted.

The 2010-2011 assessment on corporate governance of banks highlighted a number of recommendations on how to improve corporate governance of banks. Among those, it is worth mentioning the following:

- The banking sector regulation should apply to state banks in the same manner as to private banks, including regarding governance structure, board composition, internal control mechanism and risk management, as well as remuneration systems and disclosure of information;
- The law should require audit committees to include only supervisory board members, with the majority being independent and at least one having accounting/auditing experience;
- The law should include a comprehensive framework for internal control systems in order to guide banks in setting up their internal mechanisms in a consistent order.

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. Quality of legislation needs to be coupled with effectiveness and the latter seems to be the major problem in the country.

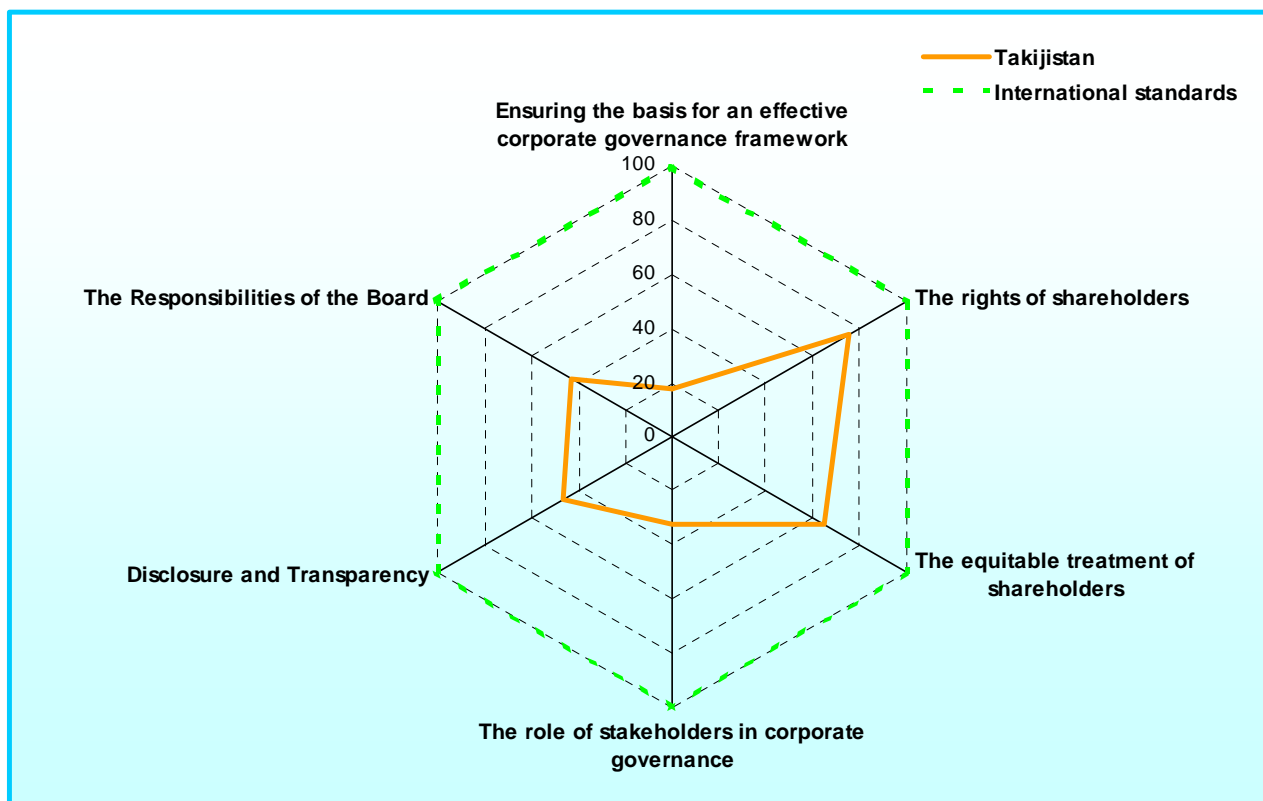
Chart 4 – Quality of corporate governance legislation in the EBRD countries of operations



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 Tajikistan ranks.

Chart 5 – Quality of corporate governance legislation in Tajikistan (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.

3.2 Insolvency

Liquidation, bankruptcy, and reorganisation in Tajikistan is governed by the Law on Bankruptcy of Enterprises, which was adopted in 2003 (the "Insolvency Law"), along with the Law on Joint Stock Companies and the Law on Limited Liability Companies. The Insolvency Law replaced the Law on Bankruptcy of Enterprises of 1992, and represents an improvement over the former insolvency regime. Under these regulations, reorganisation of a legal entity may be initiated by the decision of its shareholders or by its authorised board, and liquidation may be commenced either at the behest of its shareholders or the court.

The Bankruptcy law was amended in May 2009 by the Law No 509 “On amendments and addendums to the Law of the Republic of Tajikistan” (the “Amendment Law No 509”). Amendment Law No 509 introduced additional steps in insolvency procedures depending on the size of the business. Consequently, there now exist distinct insolvency procedures, timelines, and claim minimums to initiate a bankruptcy case depending on the scale of the legal entity.

Despite these amendments, however, the Insolvency Law still lacks many basic qualities recognised as essential to an effective and efficient insolvency system under international standards.

3.4 Judicial Capacity

Tajikistan's judiciary comprises courts of general jurisdiction, which hear most first instance applications including commercial matters, as well as separate Economic Courts, which function as appeal courts for commercial matters at regional and Supreme Court level. The judiciary is not well resourced, a fact manifested in low judicial salaries, poor infrastructure, limited technological support and virtually no system of access to judicial decisions. The Economic Courts do not have a keen specialisation in commercial matters, and training for judges in commercial law areas has been at best ad hoc.

Accordingly, implementation of commercial laws by the courts in Tajikistan remains fraught with uncertainties and inefficiencies. This reality deters investors from participating in those countries' markets for fear that they will not have effective recourse to the courts in the event of a dispute. The EBRD Judicial Decisions Assessment 2010, which studied commercial law decisions in the courts of selected CIS countries and Mongolia, found the quality and predictability of commercial law decisions in Tajikistan to be well below the regional average, substantially behind Kyrgyzstan and Kazakhstan. Other indicators studied in the assessment, such as implementation of decisions and perceived impartiality of judges, also fared poorly. One conclusion to emerge from the assessment was that Tajik judges should receive practical, professionally-oriented commercial law training.

Throughout 2010 the EBRD conducted policy dialogue with the Judicial Training Centre (JTC) and the Council of Justice of Tajikistan (COJ). This culminated in an official request for EBRD assistance to design a commercial law judicial training programme for Tajik judges. The Bank worked with the JTC and the COJ to conduct a formal analytical assessment of the training needs of judges hearing commercial cases, as well as the institutional support required by the JTC to meet these needs. The EBRD recommended a 10 module course of training, together with a programme of institutional support to the JTC, regional apprenticeships for young judges with leadership potential, and a study on how to make judicial decisions accessible to the public. A project to implement these recommendations commenced in October 2011.

Whilst the challenges facing the Tajik judiciary are substantial, there is open recognition of this on the part of the authorities. In early 2011, the President of Tajikistan issued a decree on a Programme of Judicial – Legal Reform for 2011-13, which among other things identifies improvement of the judicial system and enhancing judicial capacity as key priorities for 2011. There is thus high level political support for judicial reform in the context of a broader reform agenda for the sector. Further, a conference on commercial law judicial capacity organised by EBRD in June 2011 was attended by judges from all over Tajikistan and the region, as well as by the business community, whose representatives felt free to express candid views about the current limitations of judicial capacity in commercial law. Such openness about the current problems bodes well for the success of the new project.

3.5 *Public procurement*

Public procurement in Tajikistan is regulated by the Law of the Republic of Tajikistan on Public Procurement of Goods, Works and Services, adopted in March 2006 (PPL). In the 2010 assessment PPL scored low to medium on compliance with international standards, as compared to other countries in the EBRD region (Chart 8).

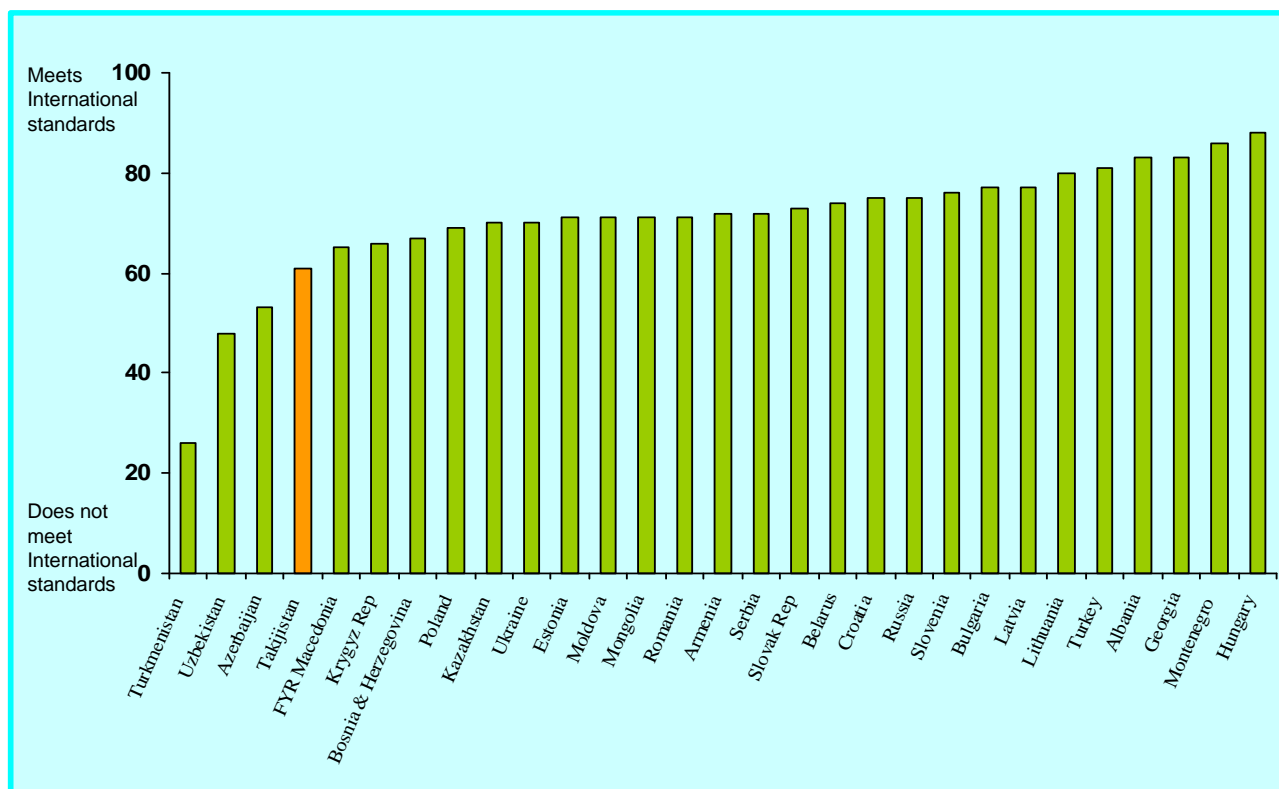
The Tajik legal framework, originally based on the 1994 UNCITRAL Model Law, provides for basic features of public procurement policy but is inadequate when evaluated against current international standards. PPL includes some instruments promoting competition and transparency in procurements but does not provide sufficient regulation of public procurement processes (chart 9). PPL provides for open tender as a default procurement procedure and establishes rules for tender solicitation and evaluation; still public procurement planning and contract management are not regulated. There are no negotiated procedures available for complex projects and there are no special policies for concession projects. Also, the PPL allows for domestic preferences. There is no independent regulatory authority and the remedies body has not been established. Based on the 2010 assessment local procurement practice in Tajikistan is rather irregular and inconsistent. Although the procurement planning and contract administration seem to be well regulated by internal policies adopted by contracting entities, the survey reported that generally public contracts are not completed within the budget or on schedule (chart 9).

PPL in Tajikistan does not incorporate several integrity safeguards and efficiency instruments recommended by current international public procurement standards. With domestic preferences allowed, the public procurement sector in Tajikistan is generally closed to international trade. The major weakness proves to be preferential treatment of domestic tenderers, bureaucratic and time-consuming procedures, and lack of independent regulatory and review institutions.

The Tajik legal and institutional framework in public procurement is basic and of medium compliance with international standards. Local contracting entities are reported to commonly supplement the existing regulatory framework with internal procedures and rules, which diminish uniformity and regularity of the local practice. Finally, sustainability policies for public procurement are not being implemented.

As several policy and implementation problems were identified, especially in the area of public procurement efficiency, a general overhaul of the legislative framework is strongly recommended.

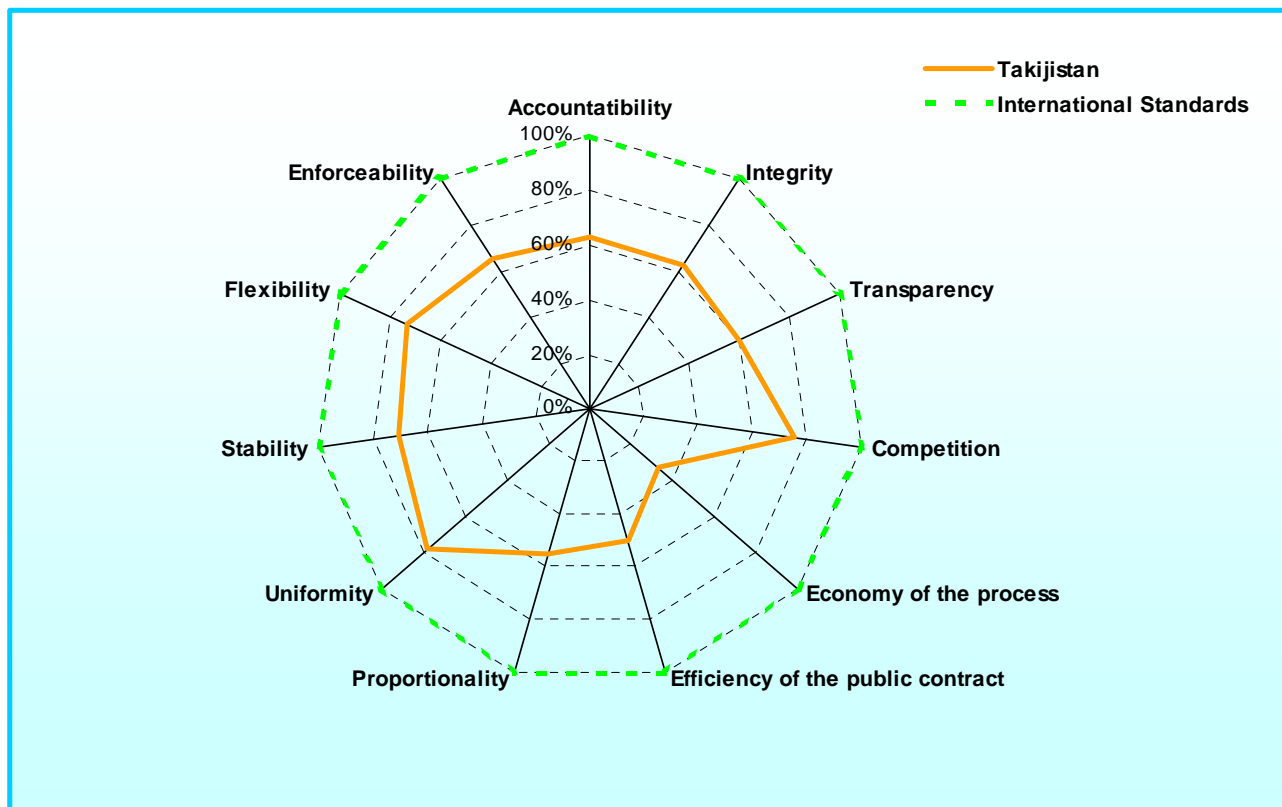
Chart 8 - Quality of Public Procurement legal framework in Tajikistan as compared to other EBRD countries of operation



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. Tajikistan is highlighted in comparison with other countries.

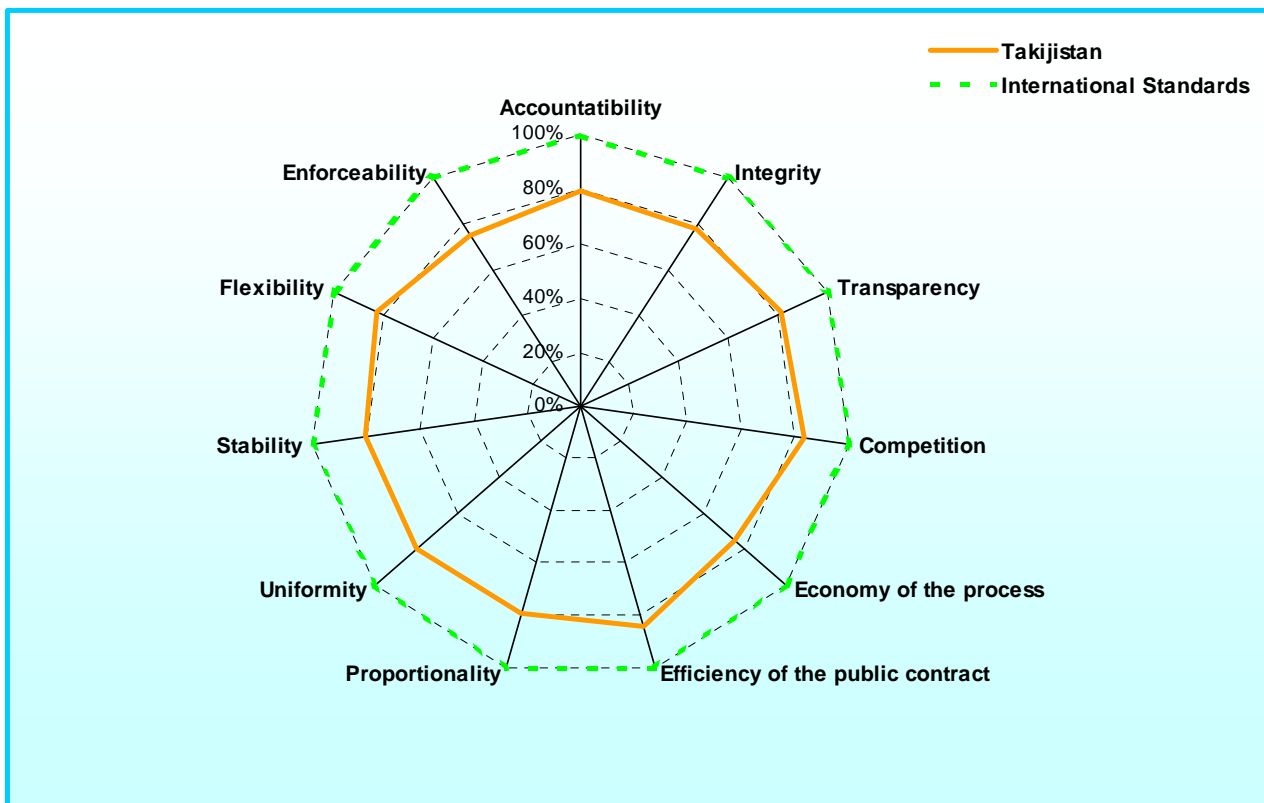
Chart 9 - Quality of Public Procurement legislation – Tajikistan (2010)



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 - Tajikistan - 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

Tajikistan’s legal framework for secured transactions encompasses the following acts: the 2006 Law on Pledge of Movable Property, the 2008 Law on Mortgage and the Civil Code (Part 1) of 30 June 1999, which entered into force on 1 January 2000 and contains provisions directly applicable to secured transactions.

The new Laws were a considerable improvement against the former regime, which was broadly modelled against the Russian regime and comprised many deficiencies.

The Law on Pledge provides a comprehensive and modern system by which movable property can serve as collateral to secure a broad range of obligations, with a priority system based on registration, and which allows a broad range of means of enforcement (including out-of-court). Moreover, considerable efforts were made to implement the Law by creating a brand-new register of pledges system fully centralised and electronic, which has been in operation since the end of 2006.

However, the legal system still contained features which were perceived as strongly limiting access to credit. In particular:

- The law imposed on the parties a number of provisions which are unnecessary or may encourage parties' litigation;
- The law still contained a good deal of ambiguity on key features, such as the type of assets that can be used as collateral or the debt that can be secured;
- The law provided a number of provisions which created uncertainty in lenders' mind as to the outcome of the enforcement process.

The Financial and Private Sector Development Department of the World Bank's Europe and Central Asia Region is currently running a project on 'Improving Access to Credit through Secured Transactions Reform'. The project has delivered a very comprehensive diagnostic report to the Tajik authorities which identified the main issues inhibiting secured lending in Tajikistan. The Report recommended carrying out the following activities:

- a comprehensive legislative reform to address a number of limitations in the Pledge Law that prevent creditors from using some of the most important types of collateral (such as accounts receivable, warehouse receipts and inventory) as collateral, as well as a strengthening of the enforcement mechanisms;
- resolving the inconsistencies between the Law on Pledge and other laws (such as the Civil Code or the Law on Mortgage, but also Insolvency Law). In particular, the protection of secured creditors in the process of the debtor's insolvency should be strengthened, and the priority rules between the Insolvency Law and the Law on Pledge should be harmonized; and
- introducing a modern internet-based filing archive so that entries can be easily searched and filed from anywhere in the country. The collateral registry which was set up back in 2006 seems to have stopped functioning due to a weak information-technology (IT) system.

The project also notes the general lack of local capacity to engage in (moveable) asset-based financing. Creditors generally do not take movable assets as collateral, or if they do, it is usually accompanied by other types of protection (such as security interest over immovable assets). Training financial institutions and creditors, as well as businesses in this type of financing will play a significant role in ensuring that the system is utilized and functions well.

The project is on-going and it is intended that legal reform will take place during 2012, while the implementation (primarily the development of the archive) would be concluded some time in 2013.

3.7 Securities markets

The legal provisions concerning securities markets in Tajikistan are to be found in the following: the Law on Banking Activity of 2009; Ministry of Finance Regulation on Professional Participants in the Securities Market; Ministry of Finance Regulation for Procedure of Issuance of the Licence to Conduct Professional Activities in the Security Market and Stock Exchanges of 1993; Government Investment Funds Regulation of 1997; Ministry of Finance Regulation on the Issue of Securities; Ministry of Finance Regulation on the Central Depository and Government Regulation on Broker-Dealer Activity in the Securities Market of 2000.

The capital market activities and legislation are rather poor and underdeveloped. There is no clearing and settlement system in the country, although the relevant legislation has been adopted. The law on the books differs from the law in practice; some of the concepts specified in the legislation have not been implemented by the regulators and there is a high level of discretion being applied on a case by case basis by the Tajik authorities. Tajikistan's nascent banking sector faces

numerous challenges: insufficient capital, limited banking services, mistrust and fallout from earlier banking system crises.

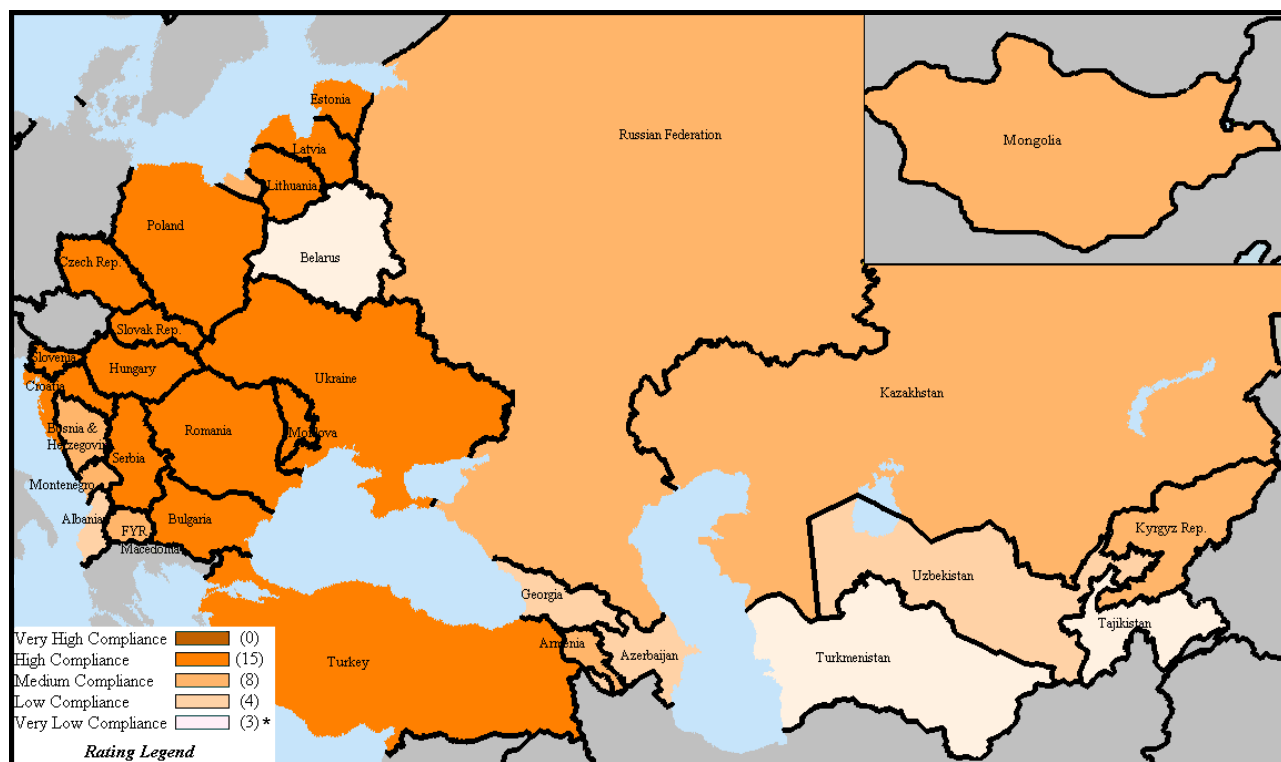
According to the 2007 EBRD Securities Markets Legislation Assessment the country was found to be in very low compliance with the Objectives and Principles of Securities Regulation published by the International Organisation of Securities Commissions (IOSCO) – showing a legal framework in critical need of reform (Chart 11).

Shortcomings in the legislation can be observed in all of the areas under consideration: the regulator is not independent, the regulation of collective investment schemes is not yet contemplated by the law and money laundering provisions are weak (Chart 12).

Tajikistan is now included in the EBRD Local Currency and Local Capital Market Development Initiative (LC2), for the specific purpose of trying to encourage local currency lending. Apart from strengthening the banking sector, no action related to local capital market development is considered, given the immaturity of the market.

Currently an opening of the Tajik Stock exchange with Ministry of Finance participation is envisaged. In this respect, in August 2011, the Iranian Foreign Ministry expressed that Iran is ready to establish a stock exchange in Tajikistan.

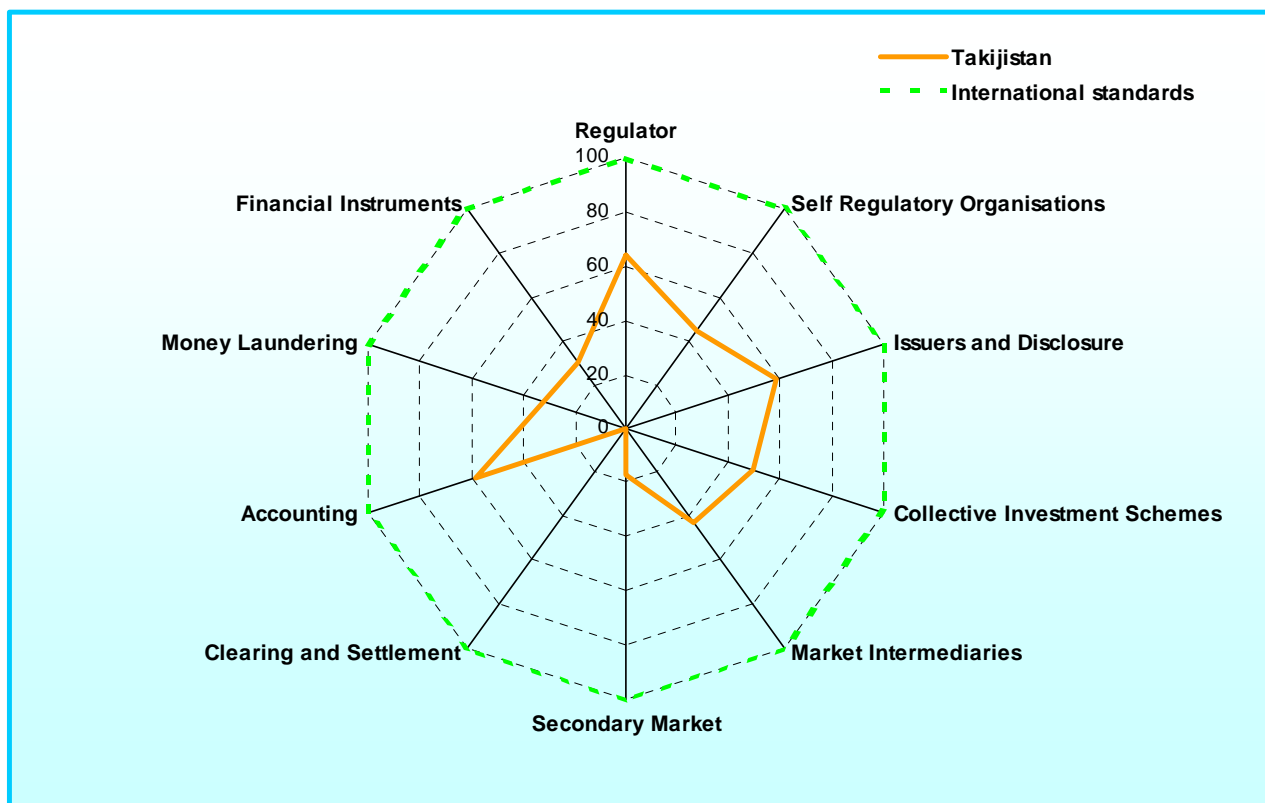
Chart 11 – Quality of securities market legislation in the EBRD countries of operations



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 Tajikistan ranks.

Chart 12 – Quality of securities markets legislation in Tajikistan (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.

3.8 Telecommunications / Electronic Communications

The Government of Tajikistan is the policymaker for the electronic communications sector in Tajikistan and regulation is the responsibility of the newly formed Communications Service under the Government of Tajikistan. The Communications Service is understood to have emerged from a recent reorganisation of the Ministry for Transport and Communications. Broad policy for the sector is quasi-liberalisation: the state-owned incumbent TajikTelecom (TT) continues to hold a monopoly on local, domestic long-distance and international long-distance calling, while both the mobile and internet markets have been opened up to competition.

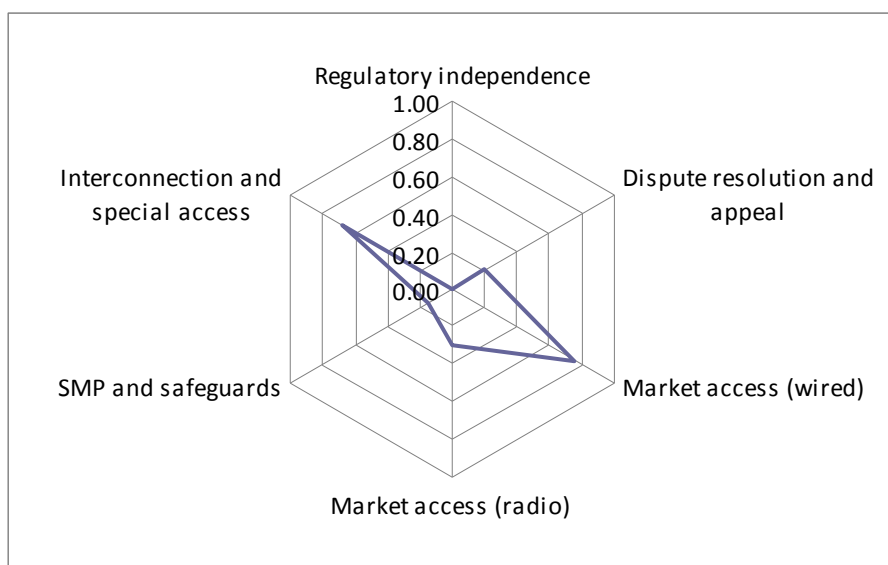
The sector is governed by the Law on Communications, drafted in 2002 and subsequently amended in 2006 and 2008.

At a high-level, the 2002 Communications Law fails to meet the requirements of applicable best practice for the sector, generally understood to mean the World Trade Organisation (WTO) Reference Paper for Telecommunications, in Tajikistan’s case. Among other matters, the WTO Paper requires an independent regulator and transparency in licensing practices and establishes specific requirements for interconnection, all of which the current legal framework fails to adequately provide for. Additionally, the 2002 Law significantly overlaps with other laws/regulations, giving rise to conflicting interpretations of duties and obligations for various stakeholders, creating confusion and detracting from the development of the sector.

The Bank has, through the Legal Transition Programme, provided legal and regulatory reform support to the government during 2002/3 and 2008/9 aimed at overhauling the legal, regulatory and institutional framework for the sector to better harmonise with proven best practice and address the deficiencies highlighted above. Comprehensive and detailed recommendations have been provided to the government in this respect but remain to be acted upon.

Major and meaningful steps towards full liberalisation of the sector and adoption of modern sector regulation is essential if the electronic communications sector is to deliver anything near its potential benefits for Tajikistan and its citizens, both as a sector in its own right and as an engine of modern economic development.

Chart 13 – Quality of telecommunications regulatory framework in Tajikistan (2008)

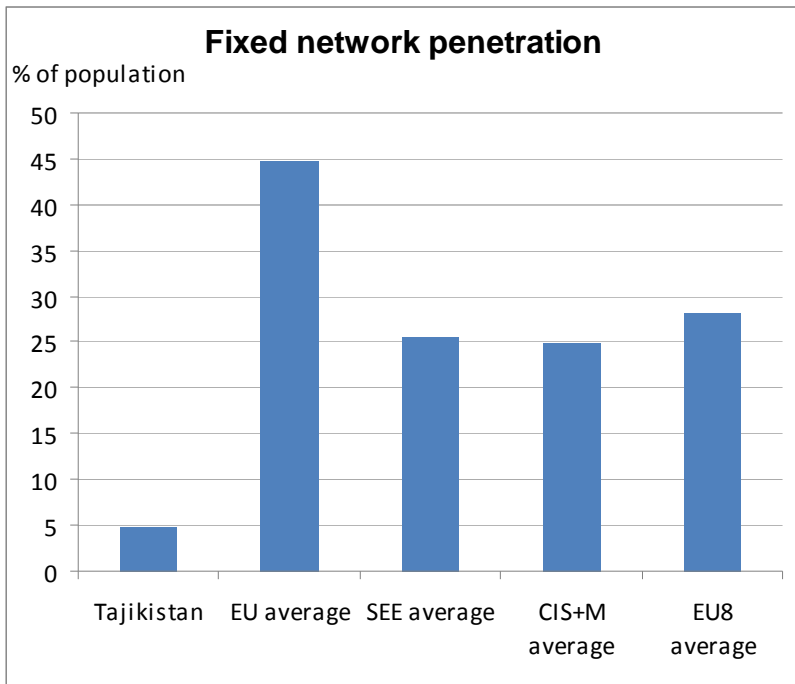


Source: EBRD Telecommunications Regulatory Assessment 2008

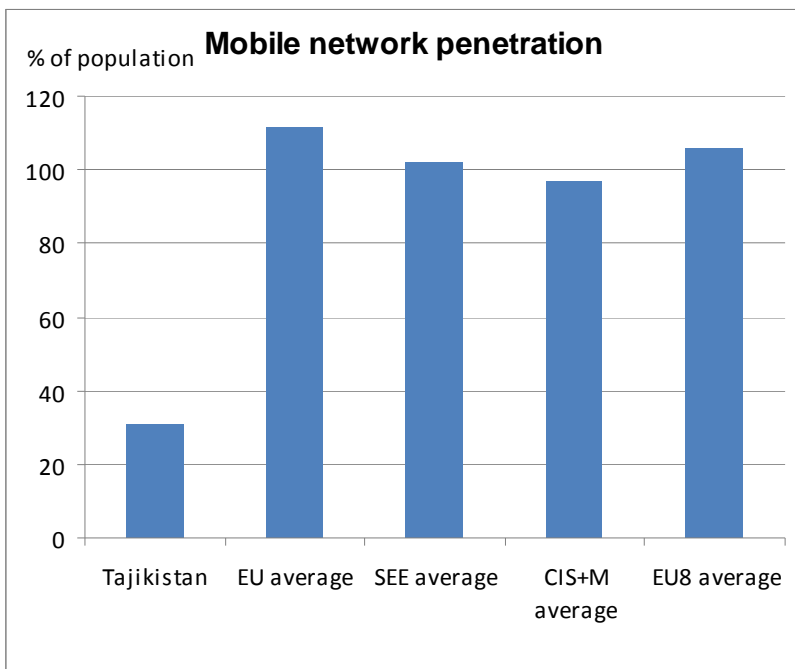
Note: The diagram shows the combined quality of institutional framework, market access and operational environment when benchmarked against international standards issued by the WTO and the European Union. The extremity of each axis represents an ideal score of 100 per cent, that is, full compliance 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 Tajikistan (2008)

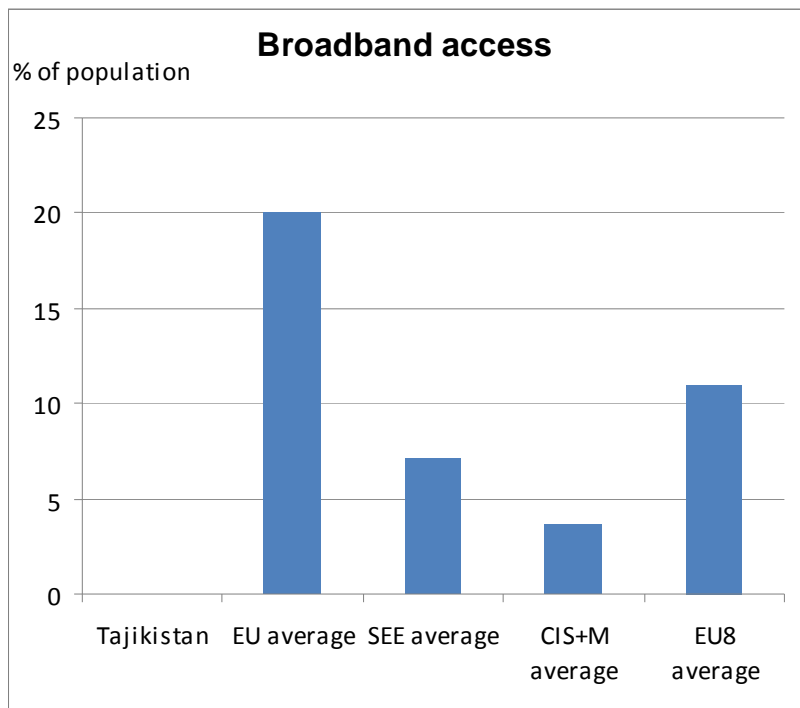
14(a) Fixed Network Penetration



14(b) Mobile Network Penetration



14(c) Broadband Network Penetration



Source: EBRD Telecommunications Regulatory Assessment 2008

Note: Key indicators for Tajikistan 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).