



European Bank
for Reconstruction and Development

Commercial laws of Moldova

An assessment by the EBRD

July 2014

COMMERCIAL LAWS OF MOLDOVA

AN ASSESSMENT BY THE EBRD

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Overview

Over the years, Moldova has carried out extensive reforms of its legal framework and has managed to put in place a comprehensive legislative base for the transition to a market economy. In recent years Moldova adopted several new important laws and regulations, including a new bankruptcy law, new competition law, legislation on payment services and electronic money, regulation on related party transactions and disclosure of beneficial ownership in banks.

However an analysis of key commercial laws that directly contribute to creating a favourable investment climate in Moldova still shows that even relatively good laws suffer from serious implementation problems. A weak judiciary and complex enforcement procedures further undermine investors' confidence. The Public Private Partnership (PPP) law has been found to be a good quality law but poorly enforced. In the energy sector the country has developed its market framework but service provision still needs to be improved. A Renewable Energy Law was first enacted in 2007, however due to structural weaknesses (i.e. the lack of implementing regulations and other secondary legislation) a new draft law is currently being discussed. Public Procurement laws have also improved since the EBRD's 2010 assessment but these have yet to reach international standards. Moldovan legislation for electronic communications is broadly aligned with the European Union (EU), however the EBRD's recent assessment found it be to in low compliance with international standards.

Recent reform efforts also commenced in respect of promotion of alternative dispute resolution procedures with commercial mediation piloted in courts in Chisinau and Balti with EBRD technical support. Moldova's framework for corporate governance has several weaknesses, the Corporate Governance Code, though issued by the National Council for Financial Markets, and has not been implemented. Going forward, Moldova should continue to bring its commercial laws in line with international standards and make those laws fully effective, particularly by strengthening the court system, tackling corruption and implementing appropriate measures to strengthen the rule of law.

Legal system

Constitutional and political system

The Constitution of the Republic of Moldova was adopted on 29 July 1994.¹ It proclaims Moldova a multiparty democracy and stipulates the division of power.

The unicameral parliament consists of 101 members, elected every four years. The electorate votes for a party rather than a candidate. The threshold a party should reach to be entitled to seats in the Parliament has recently been raised from 4 to 6%; upon reaching it, a party is entitled to a proportional number of seats in the Parliament. There has been a recent initiative to introduce a mixed electoral system, whereby 51 members be elected by a proportional closed-list system and 50 members through single-member constituencies. While the suggested amendments have not yet been registered with the Parliament (as of March 2014), the joint Venice Commission-OSCE/ODIHR opinion raised concerns and warned of the risks of moving to a mixed electoral system and called for public discussions prior to adopting such changes.² The next regular Parliamentary election is due to be held in November 2014.

The President is the head of state, elected for a term of four years. The President is elected by the Parliament, by a majority of 3/5 of the votes of the elected members. The President can dissolve the Parliament if the Government cannot be formed or the adoption of laws has been blocked for three months; the current President also dissolves the Parliament if the latter was not able to elect the President during the designated two rounds.

Upon consultation and approval of the Parliament, the President designates the Prime Minister, who requests the vote of confidence from the Parliament regarding the composition and the program of the Government. Based on the Parliamentary vote of confidence, the President appoints the Government. Any changes to the Government are made by the President upon a proposal by the Prime Minister. The incumbent Government is dismissed upon the new Parliamentary election being deemed valid. The Parliament can express the vote of no confidence to the Government upon a proposal of ¼ of the elected members.

¹ <http://lex.justice.md/viewdoc.php?id=311496&lang=2> ;
<http://www.presedinte.md/titul7>

² <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282014%29003-e>

Judicial system

Moldova's judicial system comprises a Constitutional Court and three tiers of courts of general jurisdiction vested with general authority to hear criminal and civil matters, as well as certain specialised courts. The Constitutional Court is tasked, inter alia, with interpreting the Constitution and controlling the constitutionality of laws and Parliamentary regulations, Presidential decrees and legal instruments issued by the Government, as well as international agreements Moldova is a party to.

The courts of general jurisdiction comprise the first instance courts, appeals from which lie to one of the appellate courts. The Constitution permits the establishment of specialised courts, and pursuant to this provision, specialised economic courts have been established. The Economic Court of Circumscription acts as the first-instance court of the specialised economic judiciary and generally hears all economic disputes. Appeals over its decisions are heard by the Appellate Economic Court, which also hears certain economic disputes as the court of first instance. The Supreme Court of Justice acts as the court of final review for the courts of general jurisdiction and specialised courts.

The Superior Council of Magistrates is responsible for general improvement of the judicial system, in particular professional development and qualification of judges. Currently, the Council consists of 11 members, including the President of the Supreme Court of Justice and the General Prosecutor. Representatives of the Parliament also sit on the Council, and the number of judges in proportion to non-judges (the latter often considered political appointees) has decreased over years, which undermines the Council's independence. The Council also has authority to recommend judicial appointments, however the ultimate responsibility for appointing judges lies with the President of Moldova. The Constitutionally determined initial term of judicial appointment is five years, upon which judges are reappointed to serve until they reach the mandatory retirement age.

The EBRD Judicial Decisions Assessment 2010 found that the court judgments in commercial law matters in Moldova were of moderate quality and predictability. As with other countries in the region, lower court judges tended to apply general principles of laws and civil code provisions with which they are more familiar, rather than relevant provisions of commercial legislation. With commercial laws in the country still in need of modernisation, inadequacy of the legislative framework is one of the major factors contributing to the low quality of court judgments. Lack of a

well-developed system of judicial education combined with judges' lack of experience with commercial law and practice is another major factor affecting the quality of judgments. Guidance notes issued by the Supreme Court of Justice are aimed to address the issue but the effect is limited by their non-binding nature.

Courts continue to experience significant case backlogs, which affects the speed of proceedings. Introduction of fast track procedures for small claims in relatively simple cases such as collection of receivables where there is no evidence of dispute has been considered quite a successful tool in improving the situation. However, according to the data from the EBRD / World Bank Business Environment and Enterprise Performance Survey, only 24% of Moldovan respondents considered that the court system was quick.

In addition, the impartiality of courts in Moldova is considered questionable. This is also consistent with data from the EBRD / World Bank Business Environment and Enterprise Performance Survey, where only 32% of Moldovan respondents considered that the courts were fair, impartial and uncorrupted, and data from other sources, such as Transparency International. In their judgments, courts are sometimes believed to show particular deference to the government and entities in which the state has a substantial interest.

Enforcement of court judgments remains one problematic feature of the country's judiciary, which, however, appears to improve with the introduction of the private enforcement system. Moldova's exclusively private enforcement system commenced operation in 2010, which removed enforcement functions from public officials to private-type professionals licensed on the basis of a competitive selection procedure and vested with appropriate personal motivation. According to the EBRD Enforcement Agents Assessment 2013, the enforcement framework and practice showed relatively good results, which are among the best in the region.

Recent developments in the investment climate

The authorities are working towards improving the business environment in the country, focusing their efforts in particular on further reducing the regulatory burden on the economy. In addition, the ratification of the EU-Moldova Association Agreement appears to be a very positive development towards improving business climate. Political instability, corruption and unreliable judiciary are considered to be major disincentives for investment.

A law on state control over business, passed in 2012, reduces the number of state bodies controlling business and generally decreases the amount of state control measures over businesses. Previously existing privatisation prohibitions for large enterprises were lifted in 2013. Legislative amendments related to the financial sector are also seen as a positive development, and the 2011 competition law is also deemed compliant with EU practices.

Moldova has been promoting closer ties with the EU, with a landmark in their relationship reached in June 2014 when the Association Agreement, including the Deep and Comprehensive Free Trade Area (DCFTA) trade agreement, was signed between Moldova and the EU. Prior to that, in May 2014 the European Commission approved a support programme targeting competitiveness of small businesses, development of national legislation in line with the EU standards and promotion of export and investment opportunities, communication and information campaigns on the DCFTA trade agreement. In September 2014 Moldova also became the first country of the Eastern Partnership to join the EU Competitiveness of Enterprises and Small and Medium-Sized Enterprises Programme (COSME). The Programme improves access to finance for SMEs and aims at improving competitiveness of enterprises, in particular SMEs.

The 2014 IHS Economics and Country Risk Country Report on Moldova states that *“[t]he [...] government is keen to attract foreign investment, and sees European integration as the primary means to achieve this goal. The implementation of the EU-Moldova Association Agreement, which was ratified by the Moldovan parliament in July 2014 and includes a free trade agreement, would improve the business environment substantially in the long term. The primary risks in the short and medium term are political instability and corruption.”*

Lack of judicial experience in modern business law and political influence over the judiciary, as well as rundown infrastructure are among other potential impediments to investments.

There are certain instability risks also looming as regards the November 2014 Parliamentary election, which is expected to result in rivalry

between pro-European and pro-Russian parties (the latter favouring joining the Russia-led Customs Union, which would contradict the direction of EU integration).

Freedom of information

The Constitution (Article 34) requires the authorities to provide the people with information on public affairs and personal questions.

The Law on Access to Information was adopted in 2000. It allows free public access to official information, and, according to the 2013 US State Department Human Rights Report, the government has made progress regarding its implementation of the law. According to the Report, the Law on Access to Information provides for an appropriately narrow list of grounds for nondisclosure, including cases where the information constitutes a state secret, a commercial secret, personally identifiable data etc.

Under the Law on Access to Information, the authorities have 15 days to present the requested information. This timeline can be extended by five days in cases when the request refers to a large volume of data or when additional consultations are necessary for the release of the information. Depending on the requested information, institutions establish processing fees that cover copying, translation, and delivery costs.

Requesters can challenge denials of access to information through legal means. Courts have established criminal and administrative sanctions for noncompliance.

Past shortcomings in implementation of the access to information framework included a lack of transparency in the decision making process, reluctance of the authorities to provide information and limited penalties for restricting access to information.

In 2013 the e-government centre launched several new services that included the use of digital signatures, a new web portal with free access to public government data, and open data on public procurement announcements, however, with limited success.

Commercial legislation

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. These relate to investment in infrastructure and energy (concessions and PPPs, energy regulation and energy efficiency, public procurement, and telecommunications) as well as to private-sector support (corporate governance, insolvency, judicial capacity and secured transactions).

Detailed results of these assessments are presented below starting with infrastructure and energy and going into private sector development topics.

The completed assessment tools can be found at www.ebrd.com/law.

Infrastructure and Energy

Concessions and PPPs

PPP in Moldova is governed by the Public-Private Partnership Law of 10 July 2008 (the “PPP Law”) complemented recently with the Government Decision 245/2012 on National Council for Public-Private Partnership and Government Decision 476/2012 on private partner selection. Concessions are governed by the Concessions Law 534/1995. In addition The Law on Administration and Privatisation of Public Property 121/2007 and a range of other pieces of legislation, including laws and Government Resolutions.

The PPP Law is a framework law which allows the public authorities to develop projects in nearly all types of PPP models as, although it provides for BOT and related forms, it does not restrict the application of any other form of PPP. It regulates the tender process, negotiating the PPP contract and monitoring its implementation. The PPP Law refers to the Concession Law for PPPs in the form of concession agreements and to Public Procurement Law for procedures involving public funds.

During the 2011-2012 EBRD PPP/Concessions Laws Assessment the quality of PPP/Concessions legal framework of Moldova was rated as being in “High compliance” with international best practices (see Chart 1). At the same time, the practical implementation of the legal framework received a “Very low effectiveness” rating largely due to its underdeveloped institutional infrastructure (see Chart 2).

The Government seems to be willing to depart from traditional concessions and focus on the improvement of various public projects or public

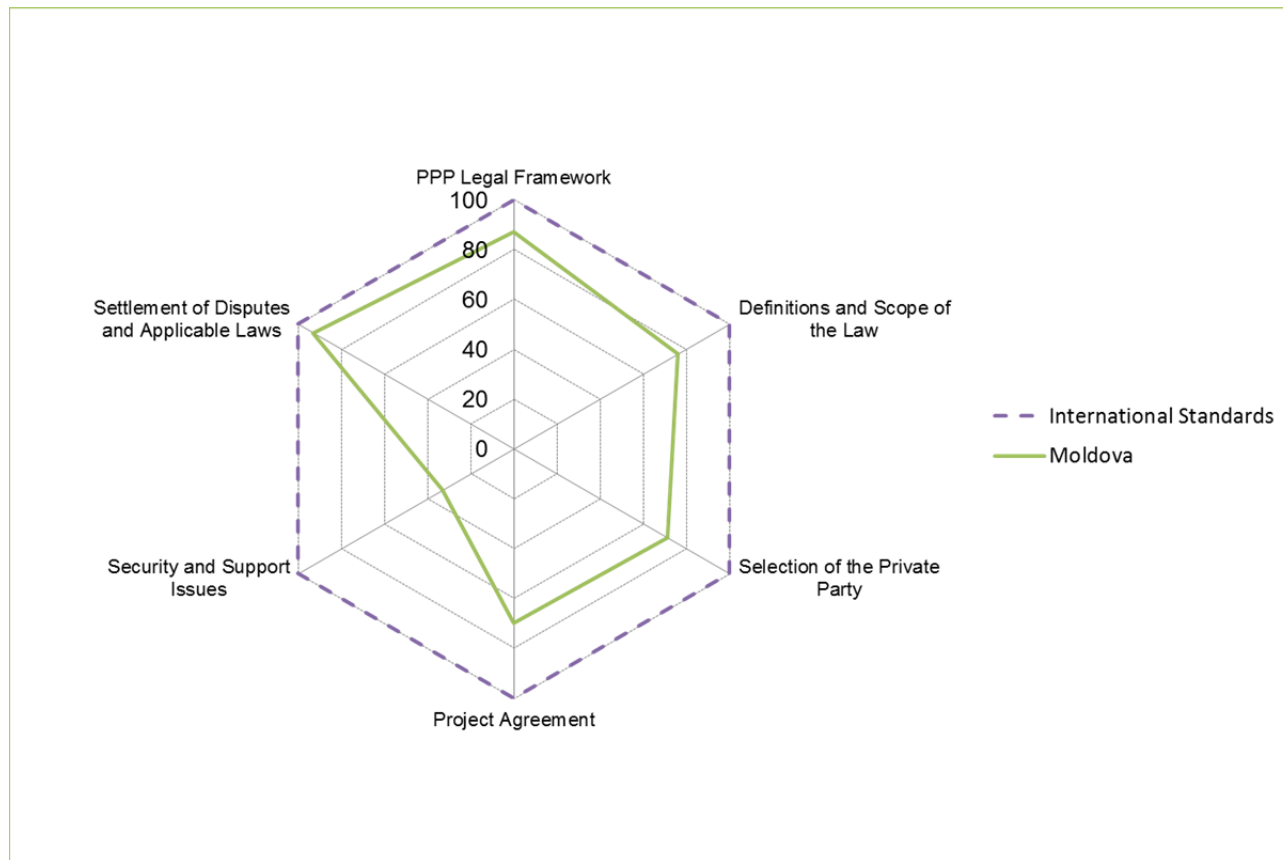
services via more flexible and modern PPP arrangements. Since 2011 a few of the first PPP projects have started being developed – in healthcare and transport – and are in different stages of preparation. As the PPP Law is a fairly recent document it took time to complement it with the necessary infrastructure, importantly, with secondary legislation dealing with templates, methodologies and institutional setup, as referred to above. However, concessions are still being awarded, including in the municipal utilities sector.

A practical challenge that international bidders face is the short duration of the tender process: the law inflexibly allows for a fixed, only 60 calendar days' period from the publication of the request for proposals to designation of the winning bidder. An additional 30 days' period is granted for contract negotiation with the winning bidder.

Another sensible issue, to which the PPP law gives no clear solution, is the amount of compensation which the public authority should pay to the private partner in case of early termination of the PPP contract (for either party's fault; or for external reasons, like change of laws or force majeure).

Arbitration clauses are allowed in the PPP contract but so far public authorities had resisted them mainly for two reasons: (1) high perceived cost of international arbitration; (2) the fact that an arbitral procedure would not give immediate relief to public authorities, e.g. they will not have immediate access to the local law mechanism of application of interim measures (such as “step-in rights”) in order to avoid the disruption of a core public service.

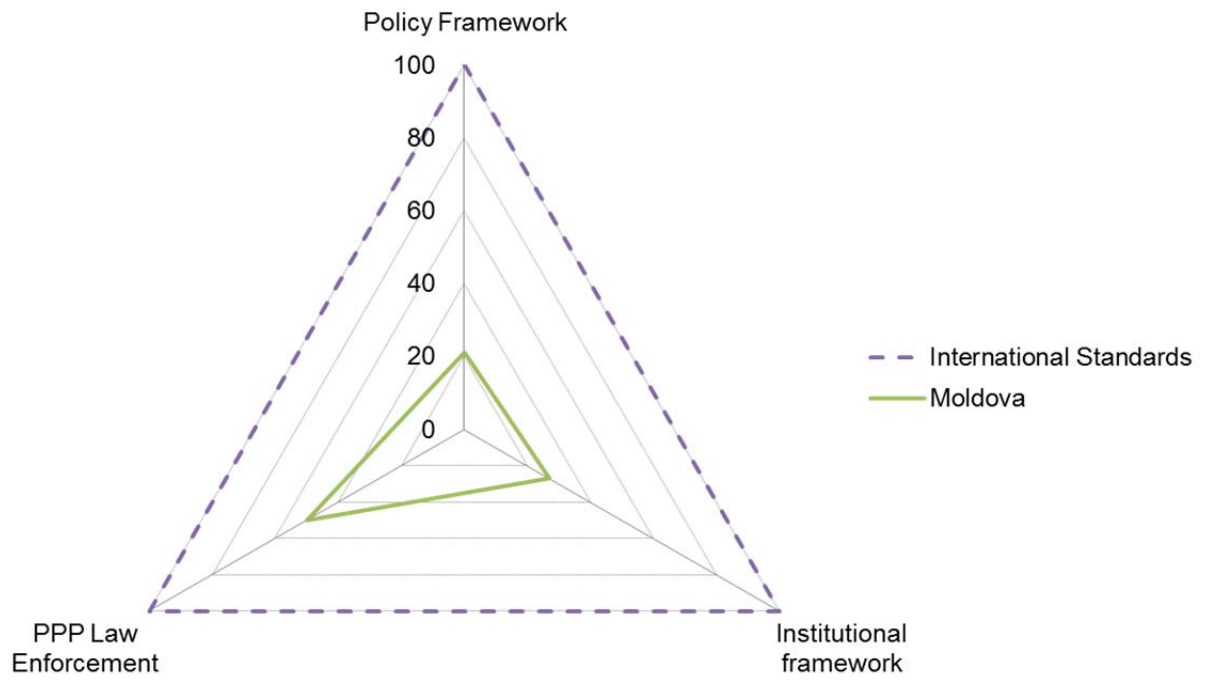
Chart 1 – Quality of the PPP legislative framework in Moldova



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.

Source: EBRD 2012 PPP Legislative Framework Assessment (LFA)

Chart2 – How the PPP law is implemented in practice in Moldova



Note: The extremity of each axis represents an ideal score, that is, a fully effective legal framework for PPPs.

Source: EBRD 2012 PPP Legal Indicator Survey (LIS).

Energy

Electricity

Moldova has developed its regulatory framework, restructured its markets with disaggregation of its former vertical monopoly, and achieved partial privatisation, and appears positioned to continue its path toward best practices with transition from observer to Energy Community member. The challenges it faces include resource limitations and few infrastructure and technical links towards the west, including a lack of synchronisation with its neighbour, Romania.

The market structure is as follows: transmission and dispatch in one government-owned entity; five separate distribution companies; four separate generation capacities and 17 suppliers. Full market opening occurred, at least on paper, in March 2005. The wholesale power market is based on a number of bilateral contracts among distribution companies, customers, generators and other power suppliers (traders). Moldova does not have a spot market.

The 2010-2011 energy law reform dimensions assessment carried out by the EBRD showed that regulatory independence and autonomy, transparency and tariff structure are the key strengths of the country's electricity framework, whereas public service obligations and private sector investment appear to be its key weaknesses (see Chart 3).

The power sector was unbundled in 1997 (and implemented by the Government), prior to the establishment of the National Energy Regulatory Agency (ANRE). Legal, functional and accounting unbundling resulted in a separate state-owned enterprise that serves as the TSO (Transmission System Operator), provides transmission services, and is restricted from engaging in any supply activity. The TSO, Moldelectrica, is a state-owned company managing the assets of the power transmission system and the dispatch centre. Moldelectrica holds two licences issued by ANRE — a licence for electricity transmission services and another for central dispatch services. Within the TSO, there is limited accounting and functional

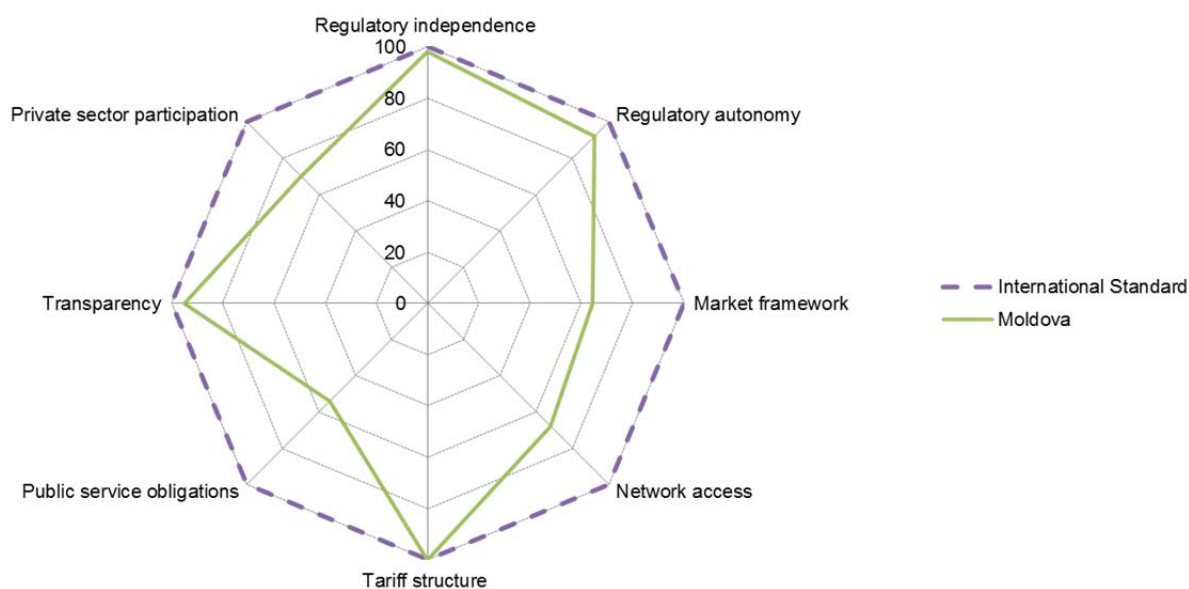
unbundling between transmission and dispatch services. There are three distribution companies, one of which is privatised and owned and managed by Spanish energy group, Union Fenosa.

The generation market is not regulated, except with regard to three Combined Heat and Power plants (CHP) and one hydro plant (the Power Market Rules limit regulated electricity generation sources to CHP-1, CHP-2, CHP-North and the Costesti hydro plant, which means that any other CHP or hydro plant will not be regulated by ANRE).

ANRE drafts and adopts the tariff methodologies and has the power to fix tariffs (balancing services do not yet apply), after review of the licensee's proposal. ANRE has adopted an end-user methodology that establishes a single electricity tariff entitled "tariff for electricity supply to end customers," which is calculated on an annual basis and covers the actual costs related to (i) energy acquisition and (ii) expenses for transmission, distribution and supply services. ANRE has set a price for transmission and dispatch service, though an average end-user tariff model is adopted. ANRE has the authority to reduce a future tariff for noncompliance with the electric supply service performance standards, which fall under the rule-making authority of ANRE.

For Moldova, security of supply presents an ongoing problem, with repeated supply crises in the winter months. It is a net energy importer and has weak energy infrastructure. It does not operate synchronously with Romania or, by extension, with the South European System. As a consequence, it is critical that security of supply is closely monitored. The Ministry of Economy is responsible for energy security and strategy for long term supply. ANRE also monitors short and medium term supply and demand.

Chart 3 – Quality of energy (electricity) legislation in Moldova



Note: The spider diagram presents the sector results for Moldova in accordance with the benchmarks and indicators identified in an assessment model. The extremity of each axis represents an optimum score of 100 that is full compliance with international best practices. The fuller the “web”, the closer the overall regulatory and market framework approximates international best practices. The results for Moldova are represented by the green area in the centre of the web.

Source: EBRD 2011 Energy Sector Assessment

Gas

The gas sector structure is dominated by MoldovaGaz, a corporate entity owned 50% plus one “golden share” by Gazprom (with 35.3% owned by the Government of Moldova), with all gas imported (virtually all of it from Russia). MoldovaGaz acts as the supplier for most customers, with a small amount served by small distributors. The regulatory framework for the gas sector is less developed than the electricity sector, with no provision for third party access or storage. The challenges faced in this sector include security of supply, the price increases imposed by Gazprom, and Gazprom’s reluctance to permit access to the existing pipelines from other suppliers.

The Gas Market Rules, adopted by ANRE in 2005, designate MoldovaGaz the system operator, mandate bilateral contracts, identify the rights and obligations of the dispatch centre, and specify that ANRE is the body empowered to resolve disputes that arise from application of the market rules. The Market Rules include no unbundling of MoldovaGaz, nor do they include provisions on Third Party Access or storage.

ANRE approves tariffs for natural gas supply, electricity and thermal energy production, and electricity and thermal energy supply, adjusting them in response to the volatility of gas import prices. There is an ongoing effort by ANRE to reduce the amount of cross-subsidisation in the tariff structure.

The 2010-2011 energy law reform dimensions assessment carried out by the EBRD has shown that regulatory independence, regulatory autonomy and transparency are the key strengths of the country's electricity framework, with market framework, network access and public service obligations and private sector investment appear to be its key weaknesses (see Chart 4).

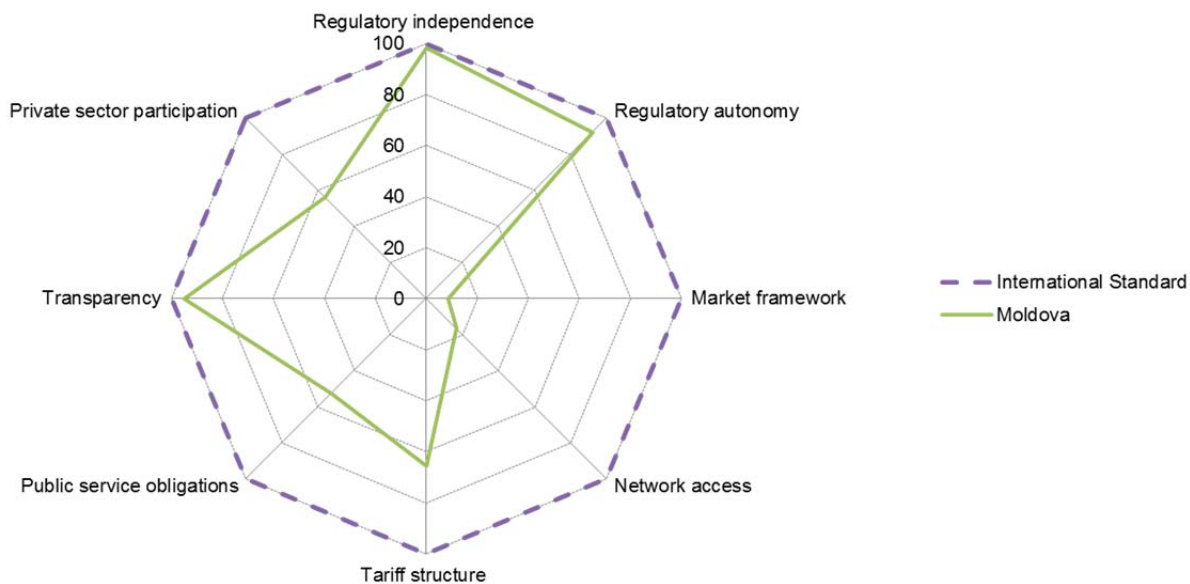
While the existing Gas Law provides that every licensee or customer has the right to access the gas transmission and distribution networks without discrimination, the law does not specifically provide for regulated Third Party Access. As in the electricity sector, the Government establishes the general conditions for import-export of gas, but does not expressly define the scope of these general conditions. The Gas Law does provide, however, that customers are entitled to conclude individual contracts for gas supply with any supplier including the suppliers outside the borders of Moldova, leaving some question as to the scope of possible government imposed conditions.

While the market is technically open, the gas sector, like the electricity sector, faces limitations

on sources of supply. Competition on the supply level is possible only in the context of additional sources of supply. Even in the event that the Government could contract gas supplies from other sources, such as Central Asia, Gazprom has proven reluctant to give access to its network to these countries (or requires a high transit price, leading to the same result).

Traditionally, MoldovaGaz buys its gas from Gazprom, although there have been some instances where gas has been purchased from other countries, most notably Ukraine. The country is crossed (only for 100 km) by a Gazprom upstream pipeline that goes to Bulgaria and Turkey. The pipeline crosses Transnistria which coupled with the fact that Transnistria's gas debt to Gazprom is growing, raises security of supply concerns for the rest of Moldova and neighbouring countries further down the pipeline. Some smaller pipelines inside Moldova are connected to the Gazprom pipeline, the rest are connected to the main pipelines crossing Ukraine.

Chart4 – Quality of energy (gas) legislation in Moldova



Note: The spider diagram presents the sector results for Moldova in accordance with the benchmarks and indicators identified in an assessment model. The extremity of each axis represents an optimum score of 100 that is full compliance with international best practices. The fuller the “web”, the closer the overall regulatory and market framework approximates international best practices. The results for Moldova are represented by the green area in the centre of the web.

Source: EBRD 2011 Energy Sector Assessment

Energy efficiency/renewable energy

The key legislative acts governing energy efficiency and renewable energy sectors in Moldova include Law “On Energy” (19 February 1998) (as amended), Law “On Renewable Energy” (12 July 2007) (as amended) and Law “On Energy Efficiency” (2 July 2010) (as amended). In addition, the National Program on Energy Efficiency 2011-2020, National Renewable Energy Action Plan for 2013-2020³ and Energy Strategy till 2030 were adopted.

Renewable Energy

Moldova lacks domestic fossil energy resources and imports most of the energy supplies it needs. Increasing the country’s energy independence is one of the main policy objectives and accordingly the government has committed to supporting renewable energy (RE) development. Moldova has a good RE potential (estimated at 2.7 million tonnes) for biomass, hydro, and less so to solar and wind RE. The current RE generation (approx. 2%) comes primarily from small scale hydropower plants.

The current policy framework in the RE sector has been recently upgraded with a comprehensive Energy Strategy till 2030 (the “Strategy”) and the first National Renewable Energy Action Plan (the “NREAP”) for 2013-2020, both adopted in 2013. Among the key priorities of the government set out by the Strategy is an increase in the use of renewable sources of energy and more specifically establishing a sector-specific national institutional framework, integration of the RE sector into the existing energy infrastructure as well as harmonisation of the sector legislation with that of the Energy Community. The Strategy also sets the goal of 20% of RES share in the total internal gross consumption by 2020, with an intermediate goal of 10% by 2015. The Strategy further sets forth the goal of a 10% share of biofuels in total fuels by 2020. The NREAP defines sector targets towards achievement of the 20% RES in 2020 and sets up required legislative, regularity and administrative actions to achieve these targets.

The absence of an appropriate regulatory framework until recently has been a major barrier to sector development. In July 2007, the first Renewable Energy Law supporting the development of energy produced from renewable energy sources (RES) was enacted. The Law introduced preferential tariff methodology, a system of origin certification, mandatory purchase

obligations and non-discriminatory access to the transmission and distribution network, and provided for the establishment of an Energy Efficiency Fund (the “EE Fund”) with the main objective of raising and managing financial resources in order to support development and implementation of sustainable energy projects in accordance with strategies and programmes developed by the government. Few implementing regulations have been adopted, such as those detailing certificate of origin requirements or tariff calculation methodology.

The policy goals formulated in the Strategy and supported by the NREAP call for an upgrade of the legal and regulatory framework, and the new Law on Renewables is being developed. The new law is expected to enhance tariff mechanisms and introduce other support tools for the RES producers. International donors support various programmes aimed at developing the RE sector and attracting investment. Such projects include assistance received from EU (EuropeAid) and UNDP aimed at exploring the country’s biomass fuel potential. EBRD has also provided technical assistance to the government with tariff development for RES.

Energy Efficiency

Residential buildings are currently the largest energy end-user in Moldova and consume more than 38% of all national energy consumption. At the same time, the residential building sector is understood to have a 61% energy saving potential. Conservative estimates of investment opportunities to address this energy saving potential are approximately €3.85 billion, with investment opportunities in the urban housing stock estimated at approximately €600 to 700 million.

The Energy Strategy till 2013 adopted in 2013 sets forth policy objectives in the energy efficiency (EE) sector for Moldova, among which the aims are a reduction in energy use by 20% by 2020. The Energy Efficiency Law provides the basic legal framework for the sector, containing basic requirements to conduct energy audits, to set EE standards for equipment, and to provide necessary programmes in the EE sector. However, the sector regulation remains scarce and insufficient for efficient development and implementation of the EE measures. The EE Fund has been set up with the objective of providing adequate support for the EE projects but lack of technical capabilities along with insufficient capacity building activities

³ <http://www.energy-community.org/pls/portal/docs/3044025.PDF>

continues to be an obstacle to the growth of the project pipeline.

Recognising the need to increase EE performance standards in buildings, the government has developed a draft law on Energy Performance of Buildings with the technical assistance of the EBRD and has submitted it to the Parliament in September 2013. Further work on the housing legislation, including the Condominium Law, has been ongoing with a view to facilitate EE investments in residential buildings. EBRD supports the process with technical assistance and credit lines.

In line with its mandate to promote EE through sound banking mechanisms, EBRD has launched the Moldovan Sustainable Energy Financing Facility (“MoSEFF”) whereby the EBRD provides, through local banks, financing to the EE projects

Public procurement

Public procurement in Moldova is regulated by the Law on Public Procurements No. 96-XVI of 13 April 2007 (hereinafter PPL).

Moldova is planning to become a signatory to the Agreement on Government Procurement (GPA) of the World Trade Organisation in 2013. The PPL in Moldova requires a comprehensive update and modernisation in order to meet the 2011 WTO GPA requirements and comply with the EU public procurement policies. Although efforts have been made to strengthen the transparency of procurement in Moldova, a weak institutional and enforcement framework leads to problems in implementing procurement policies and local procurement practice is still not in line with international standards.

In the 2010 EBRD Public Procurement Assessment, the legal framework in Moldova scored low to medium compliance with international best practice. Since then, some changes have improved the legislation, which is set to achieve medium to high compliance in the forthcoming EBRD Regional Self-Assessment of Public Procurement Legislation. The laws improved in terms of transparency, but compliance with international standards is yet to be achieved.

The PPL covers both national and local government procurement so long as the value of the contract exceeds the minimum thresholds (MDL 20,000 for goods contracts; MDL 25,000 for works and services contracts). A government regulation of low-value public procurements applies to contracts below the thresholds. The PPL covers some aspects of the pre-tendering process, such as procurement planning, but lacks important features such as provisions requiring a contract

based on the established eligibility criteria. Current partners to the initiative include the EU and its EE portal, INOGATE. At the same time, recognising that the existing legal framework does not provide sufficient incentives and guarantees to investors for development and implementation of EE projects in the residential sector, the Bank continues its technical assistance programme to support improvement of the framework, including in the field of energy performance of buildings and housing. The project is being developed in cooperation with the Ministry of Construction and Regional Development of Moldova. The most immediate objectives of the project are adoption of a new Condominium Law and the entire legislative package for harmonisation of the Moldovan legislation on energy performance of buildings with the EU.

profile and budgetary authorisation before launching the process. While it is more comprehensive in its regulation of the tendering process, it also fails to regulate important aspects of the post-tendering process, such as public contract management.

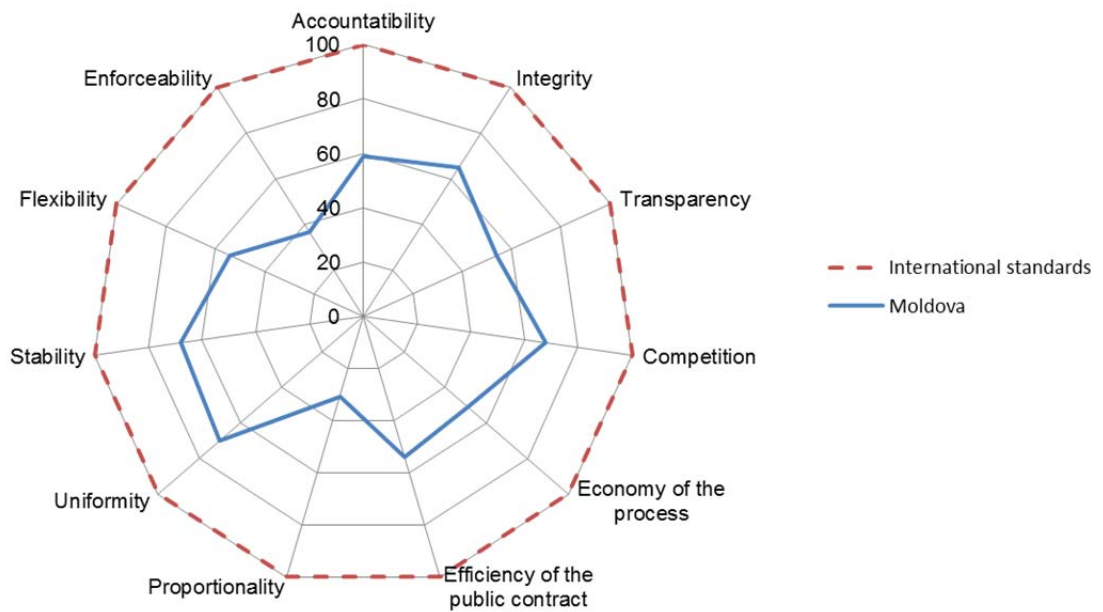
The PPL establishes primary eligibility rules compliant with the UNCITRAL standards, meaning tenderers are considered ineligible in cases of bankruptcy, recent application of any disciplinary, administrative or penal sanctions, and failure to pay taxes. The PPL provides for several procurement procedures, including open tender, closed tender, negotiated procedures, procurement from a single source, dynamic procurement system, framework contract, and electronic auction/tender; however not all procedures have been implemented in practice. Open tender is the default procedure, and there are clear tests as to when to use other procedures. Still, the PPL allows for preferential treatment of domestic bids which decreases competition in public tenders.

In the case of complaints, the PPL provides for appeals to be submitted to the Agency for Material Resources, Public Procurement and Humanitarian Assistance, the national regulatory body responsible for procurement; however there is no independent review body to hear appeals in an impartial or independent manner.

The EBRD assessment conducted in 2011 shows intermediate compliance, with particular issues related to enforceability and proportionality (see Chart 7). The practical implementation scored better overall (in particular as regards flexibility

and uniformity), however, even lower as regards proportionality (see Chart 8).

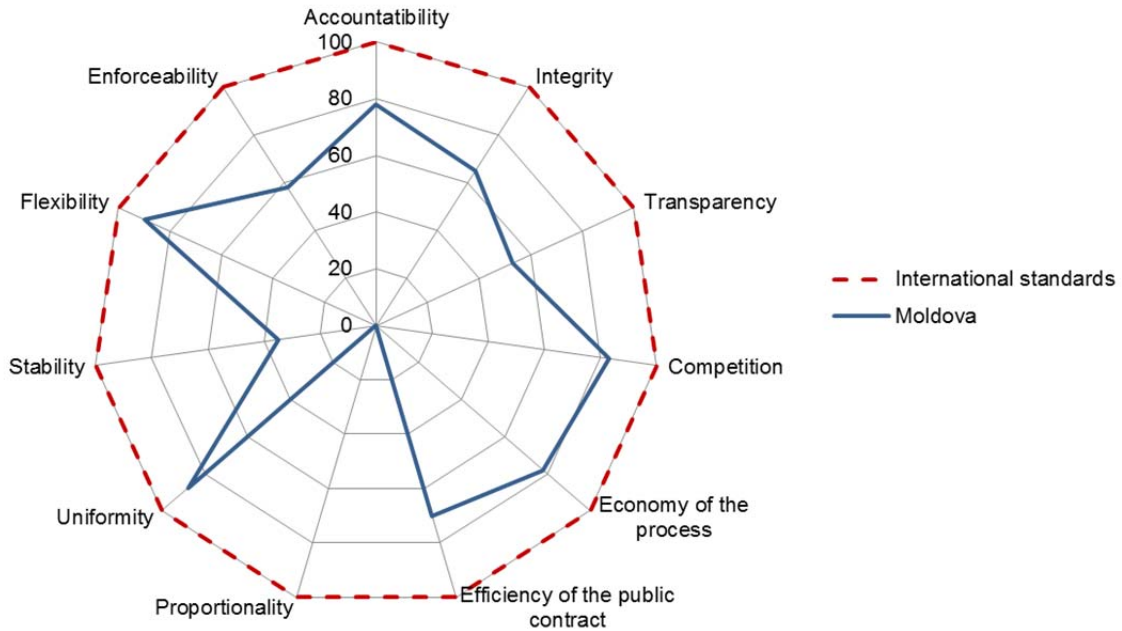
Chart 7 - Moldova's quality of public procurement legislation



Note: The chart shows the score for the effectiveness of the national public procurement laws. The scores have been calculated on the basis of a questionnaire on legislation that is developed from the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each Core Principles benchmark indicator. The bigger the “web” the higher the quality of legislation.

Source: EBRD 2011 Public Procurement Assessment

Chart 8 - Quality of public procurement practice in Moldova



Note: The chart shows the score for the extensiveness of the national public procurement laws. The scores have been calculated on the basis of a questionnaire on legislation that is developed from the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each Core Principles benchmark indicator. The bigger the “web” the higher the quality of legislation.

Source: EBRD 2011. Public Procurement Assessment

Electronic Communications

Moldova has made significant progress in developing a modern framework for a competitive marketplace for the electronic communications sector in the country in recent years, predominantly due to harmonisation of the domestic framework with that of the EU and its on-going implementation

The main legal basis for electronic communications regulation in Moldova is the Electronic Communications Act of 2008. A range of multi-sector laws including administrative procedures, licensing, consumer protection and criminal law also impact the sector. Moldovan legislation for electronic communications is broadly aligned with the European Union (EU) 2003 framework, and there are also plans to adopt the 2009 framework, particularly in the area of implementation of competitive safeguards.

The 2012 EBRD Electronic Communication Sector Comparative Assessment showed a rather high compliance of the legal framework for telecommunications in Moldova with international practice, with the most significant issues being in the area of universal service and spectrum management (see Chart 5).

While the law nominally provides for separation of the policy functions, carried out by the Ministry of Information Technology and Communications (MITC), and regulatory functions, carried out by the National Regulatory Agency for Electronic Communications and Information Technology (ANRCETI), in practice there is commonly the perception that ANRCETI's independence and authority is negatively impacted by external influence on its work, from both MITC and other external parties.

ANRCETI's authority is also limited by deficiencies in its enforcement powers, including its inability in the majority of cases to bring enforcement action in its own name and the lack of meaningful penalties. In practice, the Court is disposed to intervene too early and there is no provision for ANRCETI's decisions to remain in force during an appeal, with the result that operators can use appeals to courts to delay implementation of ANRCETI's decisions.

On the positive side, the authorisation regime in Moldova is aligned with the EU framework and makes it simple for any undertaking entering the market to provide networks or services by notification to ANRCETI 7 days prior to start of service. However, the Law on Regulation of

Licensing Activity contains provisions that conflict with the Electronic Communications Act, including provisions with respect to automatic issuance of licences, breaches of licence conditions, licence withdrawal and penalties.

The 2012 EBRD Electronic Communication Sector Comparative Assessment in its study of the overall legal and regulatory risk for telecommunications revealed low compliance with international practice as regards market conditions for wireless and wired services (see Chart 6).

Lack of clarity in the roles of the MITC and ANRCETI in spectrum management and regulation, as well as limits to the technical capacity of the MITC, have resulted in the absence of substantial progress on key spectrum priorities, including implementation of spectrum trading and re-farming resulting from switchover to digital broadcasting. However, though somewhat delayed, MITC has begun taking steps to advance the implementation of the digital switchover.

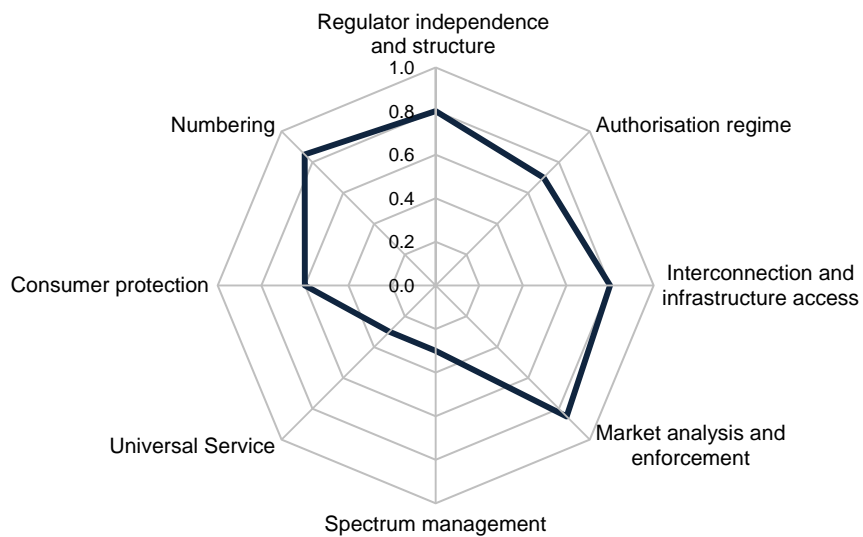
Universal service provisions generally align with the 2003 EU framework; however, the MITC has not yet developed or adopted the required universal service programme for ANRCETI to implement.

Consumer protection provisions are aligned with the 2003 EU framework, though not yet the substantially higher standards of the 2009 EU framework. For example, there is no limitation on long-term contracts and no strict requirements for consumer contracts by operators. Legislation on consumer protection is understood to currently be under amendment.

As identified above, the impediments are the less than robust institutional independence of ANRCETI, weak regulatory enforcement powers, remaining conflicts in legal provisions and the need to adopt more modern spectrum administration policies and practices.

While electronic communications is an important contributor to the Moldovan economy in itself, it is the sector's role as an engine of growth and development across all sectors of the economy that makes harmonisation of the domestic regulatory framework with that of the EU critical as a means of attracting the investment necessary to install next generation technologies.

Chart 5 – Comparison of the legal framework for telecommunications in Moldova with international practice

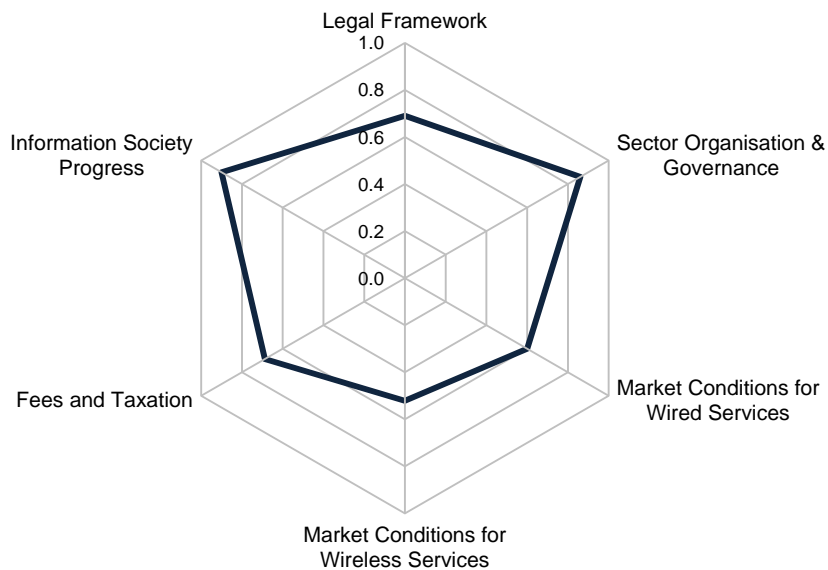


Key: Extremities of the chart = International best practice

Note: The diagram shows the quality of the legal framework as benchmarked against international standards (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 legal framework of the country approximates these standards.

Source: EBRD 2012 Electronic Communications Comparative Assessment.

Chart 6: Comparison of the overall legal/regulatory risk for telecommunications in Moldova with international practice



Key: Extremities of the chart = International best practice

Note: The diagram shows the quality of the legal framework as benchmarked against international standards (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 legal framework of the country approximates these standards.

Source: EBRD 2012 Electronic Communications Comparative Assessment.

Private Sector Support

Access to finance

The key legal instruments comprising the framework for access to finance include the Law on Pledge No. 449-XV of 30 July 2001, Regulation on the Registry of pledge of movable property, No. 849 of 27 June 2002, Law on Mortgage No. 165-166/603 dated 02 September 2008, Law on Leasing No. 59-XVI of 28 April 2005, Law on Credit History Bureaus, No. 122-XVI of 29 May 2008.

Pledge

Security over movable assets is governed by the Law on Pledge of 30 July 2001, which entered into force on 1 November 2001. It was partly prepared with the assistance of the EBRD, GtZ and others, and was aimed at dealing with a number of concerns and deficiencies identified through the use of the 1996 Law.

The law seems well drafted and adopted to facilitate modern financial practices. Any tangible or intangible property or a body of property may be pledged, except for inalienable property and property on which execution may not be levied. Any property right or money claim, including the pledger's right of claim to the pledgee, may be the subject of pledge. The pledgee is entitled to priority indemnification from insurance recovery for destruction, loss, or damage of the pledged property, regardless of in whose favour the pledged property was insured. Pledge extends to the accessories of the pledged property, unless the contract stipulates otherwise, however fruits, revenue, and products, received as a result of use of pledged property are subject of pledge only in cases, expressly provided for in a contract. One or several obligations may be secured by pledge and the secured obligation may be future or contingent as well. Pledge covers the principal, interest, expenses related to enforcement, and maintenance expenses on the pledged property. The parties may establish under a contract that the security should extend to the penalties and damage caused by non-fulfilment or improper fulfilment. A pledge contract needs to be in writing, and a pledge is created at the moment of its registration in the relevant registry.

The Regulation on the Registry of pledge of movable property provides detailed rules on the functioning of a register and the registration procedure. The registry is operated by the Ministry of Justice through the Legal Information Centre and entries are made at notary offices. Pledge over general movables and rights is registered in the Register of Pledged Movable Assets, while specific registries exist for some specific assets

(pledge over dematerialised securities is registered in the Registry of owners of registered securities, over state securities in the Registry of owners of state securities, and intellectual property in the Intellectual Property Registry). The registration seems to be working in practice and users are generally satisfied.

The biggest drawback seems to be the enforcement of security. The time needed to enforce the security and the return on proceeds and steps involved are reported to be unsatisfactory. It seems that courts and bailiff system are not well equipped for handling the process.

Mortgage

Security over immovable assets is governed by the Law on Mortgage of 2 September 2008, which was developed by the Ministry of Economy and Commerce with EBRD assistance. The main goal of the reform was to consolidate under one single law all provisions concerning mortgage, which often resulted in contradictory, unclear and incomplete provisions. The reform also aimed to remove the numerous impediments to the development of the primary mortgage market and to establish the basic framework for the refinancing of mortgage creditors, including issuing mortgage securities (secondary mortgage market) as and when the international markets will stabilise and a critical mass of mortgages will be accumulated in the Moldovan banking sector. The Law provides that mortgage lending can be undertaken by any institution, as long as it is properly regulated and significantly expands the range of obligations that can be secured by a mortgage (including future loans). The Law established a new regime for mortgage over future and unfinished buildings that should contribute to expanding the financing possibilities for property developers, as well as individual property buyers and removed the technical impediment preventing the simultaneous/subsequent registration in the Cadastre of title transfer and mortgage right over the same property, which will facilitate the financing of property purchase.

The mortgage enforcement procedure was amended in 2012 by allowing the parties to include an execution clause in the mortgage agreement and avoid court litigation before the start of the enforcement procedure. The law is generally streamlined to offer security to both mortgagor and mortgagee. The parties also may agree on voluntary enforcement of mortgage (as opposed to a court-led process), saving time and money for

both parties. The Law requires the property that is to be mortgaged to be independently evaluated and fully insured for the length of the mortgage, in accordance with international practice in this industry and contains a set of consumer protections provisions, based on the EU Voluntary Code of Conduct for Mortgage Lending, applicable when the borrower is a consumer. In addition the confidentiality of the borrower's personal data is protected. Unfortunately, the adoption of the Law coincided with the on-set of the credit crisis, which has resulted in the mortgage market coming to a stand-still. Therefore the Law has not been tested and used as much as it was expected.

Leasing

Financial leasing is regulated by the Law on Leasing of 28 April 2005. The law provides a good legislative framework for undertaking financial leasing transactions. Object of leasing can be any movable or immovable asset except agricultural land. Leasing companies are not regulated by the Law. Leasing remains neither licensed nor supervised and it is recommended to expand the authority of the non-banking financial market regulator (NCFM – the National Commission of Financial Markets) to supervise leasing.

Factoring

There is no special legislation for factoring apart from a general “assignment of claim by contract”; these are provisions of the Civil Code which provide the basis for assigning accounts receivables. As a result there is no definition of factoring services or types of factoring transactions which can help increase legal certainty of the factoring transactions and hence reduce inherent costs and risks of re-characterisation of transactions. Traditional or reverse factoring is almost non-existent in Moldova.

Credit Bureau

The Law on Credit History Bureaus, developed with the support of the World Bank (Under the auspices of the Competitiveness Enhancement

Project 2005 - 2008) and enacted by the Moldovan Parliament in May 2008 provided the framework for establishing private credit bureaus. Under the law, the licensing and prudential supervision of credit bureaus is to be performed by the National Commission for Financial Market (NCFM), which is a regulatory authority of the non-banking financial sector. In March 2010 the first license was issued by the NCFM to the Biroul de credit - a credit bureau founded by 14 Moldovan commercial banks.

The law obliged the commercial banks to furnish all information on their clientele to at least one of the bureaus licensed by the NCFM, while for the non-banking financial institutions the submission of credit history information to the bureaus were left optional (contract-based). The law did not provide for or regulate the access of bureaus to the relevant data of the open public registers kept by local or central public authorities; neither the mechanism to collect information on trade credit, utilities and other non FI credit information. Bureaus collect both positive and negative information on the data subjects and the law provides the right to receive personal reports from the bureaus upon request, and in case of errors to demand their correction. In order for the bureau to fully achieve its function it would be welcome if the data collected would include nonfinancial data as well, e.g. utility bills or trade credit.

Supporting development of factoring services by introducing legislation on factoring might help to improve overall access to finance of SMEs by promoting and giving credibility to the service through supervision, making factoring services more transparent and legally certain. Broadening the scope of information covered by the credit bureau (insurance, trade credit and utilities) would improve the quality of credit referencing and costs of information asymmetry.

Capital Markets

The most important law regulating Moldova's primary and secondary capital market activities is the law on capital markets (the “Capital Market Law”), which came into effect on 14 September 2013. This law replaces the outdated Securities Market Law from 1999. The Capital Market Law has made a notable departure from the legislation which was clearly inspired by other CIS countries, to a law which is aligned with EU legislation. Other relevant laws include the Law on Joint Stock Companies and the Law on the NCFM.

Under the current regulatory and legal framework governing the local debt capital markets of Moldova, the primary regulatory institutions are: the Ministry of Finance (the “MOF”), the National Commission of Financial Market (the “NCFM”) and the Central Bank (the “CBM”). The Bursa de Valori a Moldovei is the only operating stock exchange in Moldova; however, there is no trading or listing actually happening.

The Capital Market Law transposes 11 EU Directives – including MiFID, the Directive on

Takeover Bids, the Investor Compensation Scheme Directive, the Market Abuse Directive, the Capital Adequacy Directive and the UCITS Directive. Comparison to the Securities Market Law from 1999 is attached as an Annex.

The effect of this positive change will only be visible when and if the law is fully implemented by the NCFM and other involved regulators. This law is certainly a very good step in terms of developing

Corporate governance

Corporate governance in Moldova is mainly governed by the Law on Joint Stock Companies (No. 1134-XIII of 2 April 1997); the Law on Securities Market (No. 199-XIV of 18 November 1998), the Law on Business Investment (No. 81-XV of 18 March 2004) and the Law on Entrepreneurship and Enterprises (No. 845-XII of 1 January 1992), all as amended. In general, the quality of legislation and its effectiveness show serious weaknesses that should be targeted by authorities as a matter of priority.

The 2007 EBRD Corporate Governance Assessment showed “medium compliance” of the quality of the corporate governance legislative framework in Moldova compared to the OECD Principles of Corporate Governance, with lowest compliance in the area of disclosure and transparency, responsibility of the board and the rights of shareholders (see Chart 11). The assessment of the practical implementation of the framework indicated suboptimal compliance in the areas of enforceability, speed, simplicity and institutional environment in redress, as well as simplicity and speed in disclosure (see Chart 12).

The Law on Joint Stock Companies regulates the setting up and the functioning of the joint stock companies and sets out most of the corporate governance rules in Moldova; the Law on Securities Market establishes detailed disclosure requirements for the issuers, conflicts of interest rules and transactions with affiliated parties; the Law on Business Investment set out the rights and obligations of investors and provides them with guarantees and the Law on Entrepreneurship and Enterprises provides guarantees for the respect of investors' rights, protection against expropriation, and payment of damages in the event investors' rights are violated.

Corporate governance of banks is principally regulated by the Law on Financial Institutions (No 550-XIII of 21 July 1995) and the Law on the National Bank of Moldova (No.548-XIII of 21 July 1995), both as amended.

the market, however, one needs to remember that Moldova's capital market is rather nascent and for its development other factors like liquidity, institutional investors and issuers are also necessary. There is however a need for adopting secondary legislation in order to allow many of the newly introduced concepts to work. In addition, the legal framework governing enforceability of derivatives and close-out netting is still to be developed.

On June 1st, 2007, a Corporate Governance Code was issued by the NCFM.⁴ The Code includes a voluntary set of rules on corporate governance recommending the “comply or explain” rule. However, the Code has not been implemented.

Joint stock companies with 50 or more shareholders must establish a supervisory board, elected by the general meeting of shareholders. The default rule provided by law is that the general meeting of shareholders appoints both the supervisory board, the CEO and the executive board. This means that in the event the general meeting of shareholders decides to keep the default rule and retain the authority to appoint the CEO and the executive board, the supervisory board has no real leverage for the meaningful oversight over senior management.

Further, in most local companies there is no effective separation between ownership and control. Often, supervisory boards are dominated by the controlling shareholder(s), with few – if any – real independent non-executive directors. The whole concept of an independent director is underdeveloped in Moldova. Transparency is at a low level due to critical disclosure weaknesses vis-à-vis International Financial Reporting Standards (IFRS). Significant shareholder rights protection mechanisms are not in place at the company level, in particular vis-à-vis related party transactions.

The law does not guarantee a level playing field with respect to the division of powers among corporate bodies; in particular, the default rule on appointment/removal of the supervisory board and executive board members provide little leverage to the supervisory board for its oversight functions. Furthermore, Company law requires companies (and banks) to have an audit commission, which is not a board committee but a separate body appointed by the general meeting of shareholders, whose members cannot be supervisory board members. The Regulation on related party

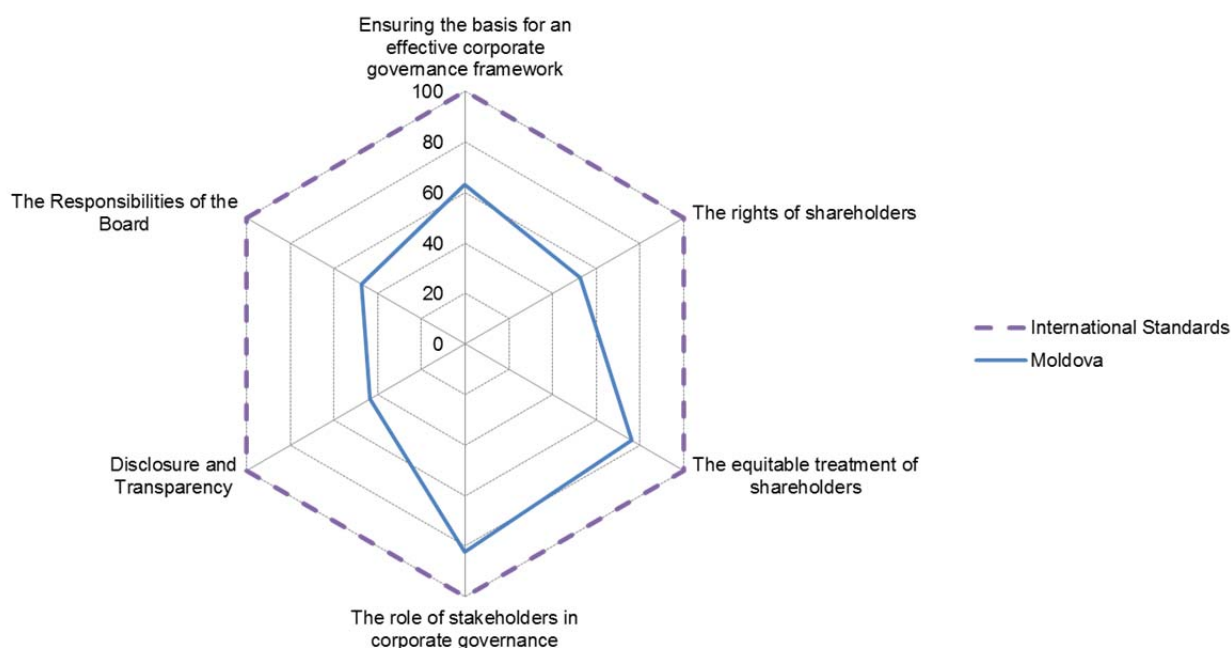
⁴ The Code is available at: http://www.ebrd.com/downloads/legal/corporate/moldova_code.pdf

transaction and disclosure of beneficial ownership are detailed but there are doubts about their effectiveness.

When it comes to banks, risk governance frameworks, risk management, compliance and internal audit remain under-resourced and not well structured. The audit commission, which is a separate body appointed by the general meeting

of shareholders and mandatory for banks, is generally perceived as a dormant body or another layer of internal control reporting directly to the shareholders. The legislation in force does not establish clear mechanisms to provide for the disclosure of beneficial ownership and affiliated parties disclosures.

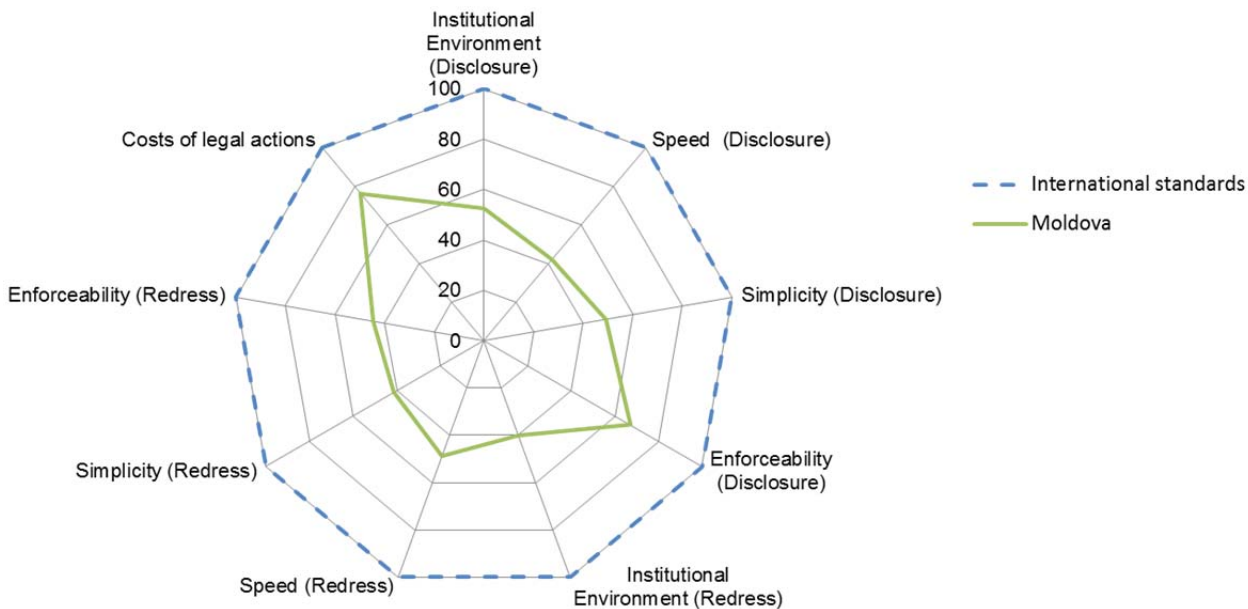
Chart 11 – Quality of the Corporate Governance Legislative Framework in Moldova



Note: the extremity of each axis represents an ideal score, that is, legislation fully in line with the OECD Principles of Corporate Governance; the fuller the 'web', the better the quality of the legislative framework.

Source: EBRD Corporate Governance Assessment 2007

Chart 12 – How the corporate governance framework works in practice in Moldova



Note: the extremity of each axis represents an ideal score: the fuller the 'web', the more effective the corporate governance framework.

Source: EBRD Corporate Governance Assessment 2007

Insolvency

The Insolvency framework in Moldova is governed by the Insolvency Act No. 149 of 29 June 2012 (in force since 14 March 2013) ('Insolvency Law'). The Insolvency Act applies to any type of business entity, including state owned enterprises, insurance companies, investment funds and non-profit organisations. It also applies to individual entrepreneurs, i.e. sole traders.

The EBRD Insolvency Sector Assessment completed in 2009 concluded that Moldovan insolvency legal framework was of "Medium compliance" (76%), with major weaknesses being in the area of reorganisation and liquidation procedures (see Chart 13). Prolonged insolvency proceedings under the former legal framework led to higher costs and lower recovery rates for creditors.

The new Insolvency Law introduces more detailed and rigid rules on timing for fulfilling insolvency procedures. For example, it limits the duration of the bankruptcy procedure, including the sale of debtor's assets, to two years (in most cases) from the initiation of bankruptcy; the timeframe for

executing the restructuring plan is generally limited to three years (capable of extension by a further two years) from the date of confirmation of the restructuring plan by the court. The shortened timeframe may have a positive effect on reducing unnecessary delays. Nevertheless, the timeframe for restructuring could be too prescriptive and reduce the overall flexibility of the restructuring procedure.

The new Insolvency Law also specifies expedited alternatives to existing proceedings. Debtors that meet certain specified criteria are now capable of entering into a simplified bankruptcy procedure. These include individual entrepreneurs, legal entities with no assets or those whose assets cannot cover the costs of the insolvency process and debtors who cannot benefit from the restructuring procedure. Generally, the simplified bankruptcy procedure lasts up to 150 days from initiation of the procedure and is administered by a liquidator. Similarly, the Insolvency Law also incorporates an expedited restructuring procedure, which may be requested by the debtor and allows debtors and creditors to avoid the initial observation phase and proceed directly into the restructuring procedure and the adoption and approval of the restructuring plan. These

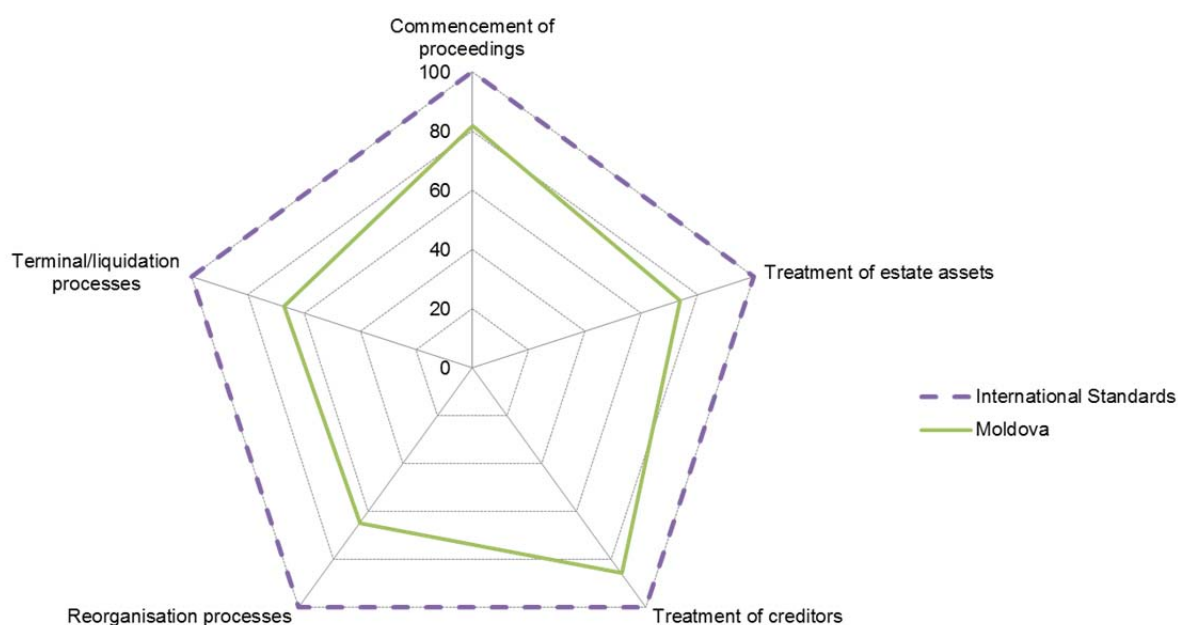
expedited alternatives represent an important development in the insolvency legislation and recognition of the importance of speed and efficiency in insolvency processes. This is often fundamental in a restructuring context if the procedure is to facilitate the rescue of the debtor's business.

Changes to the insolvency legislation also result in new potential liabilities for shareholders and members of their management bodies for failure to file for insolvency in due time; this appears to be aimed at ensuring that parties do not unnecessarily delay the opening of insolvency proceedings.

Compared to the previous insolvency legislation, the new Insolvency Law offers more variety of

procedures, with an emphasis on increased efficiency. Nevertheless, it is not clear whether implementation of the new law will be a success or whether further improvements in the institutions and professionals, in particular the Courts and the insolvency office holders applying the law will be needed. Furthermore, the rights of creditors to initiate insolvency proceedings seem to be unnecessarily restricted: the Insolvency Law requires the applicant creditor to annex to the commencement application a writ of execution regarding its claim against the debtor, which can be issued based on a favourable court decision with regard to the claim. It also remains to be seen if the new Insolvency Law will address significantly the delays and lengthy proceedings that resulted under the old insolvency legislation.

Chart 13 – Quality of insolvency legislation in Moldova



Note: the extremity of each axis represents an ideal score, that is, legislation fully in line with 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. The fuller the 'web', the better the quality of the legislative framework.

Source: EBRD Insolvency Sector Assessment 2009