



European Bank
for Reconstruction and Development

Commercial laws of Turkmenistan

An assessment by the EBRD

July 2014

COMMERCIAL LAWS OF TURKMENISTAN

AN ASSESSMENT BY THE EBRD

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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 2014 EBRD Strategy for Turkmenistan, 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 Turkmenistan, it does not constitute legal advice. For further information please contact ltt@ebrd.com.

Overall assessment

While compared to other EBRD countries of operations Turkmenistan transition towards a market-oriented economy is relatively slow, even though recent years have been characterised by a range of progressive reforms. That said, the pace of the reforms is still slow and insufficient to carry out a full transition at this stage.

The executive dominates the judiciary, and the law requires that all judicial decisions be kept confidential. Foreign investment processes are still controlled by the state. The telecommunications sector is considered to be the least developed of all the CIS countries. In the EBRD 2011 Public Procurement Assessment, Turkmenistan's legal framework was found to be in low compliance with international good practice. Despite certain positive components, the Law on Foreign Concessions does not constitute a sufficiently solid legal basis for the development of Public Private Partnerships (PPPs) in infrastructure and utility services in Turkmenistan. The legal framework for secured lending also requires improvement in order to avoid some legal uncertainties and to better facilitate sound lending practices. In the absence of a stock exchange, there is no market for securities. Turkmenistan's corporate governance legislation was found to be in "low compliance" with international good practices, and the same could be said about the national securities markets legislation. The existing bankruptcy legal framework is weak, and insufficient publicly available data makes it difficult to determine whether bankruptcy proceedings are actually being used.

The presidential control of the authorities leaves little possibility for any political instability; at the same time, constitutional reforms announced in 2014 arguably aim at aligning the main law of the country with the accelerating chain of reforms.

On the positive side, in 2014, an anti-corruption law was adopted and the Commission on Privatisation of State Property was established. A state commission on joining the WTO was created in 2013. The 2014 law regulating Internet and Internet Services requires government agencies to provide information on their activities online and respond to public requests for information. The authorities are also undertaking efforts to attract foreign investors into the hydrocarbon industry. Turkmenistan plans to increase its power generation by constructing new plants and modernising the existing generation units. A project on residential energy efficiency with the support of the UN is underway. The international financial reporting standards (IFRS) were introduced in 2014, following a year of IFRS reporting by banks, which is a welcome move to a greater openness and transparency in corporate activities.

Legal system

Constitutional and political system

The Constitution of Turkmenistan was adopted in May 1992 and since then has undergone several rounds of amendments. It proclaims Turkmenistan a secular democratic and presidential republic. The power is allocated between the executive branch (the President and the Cabinet of Ministers), the legislative branch (the Parliament) and the judicial branch.

The Parliament (Mejlis) is composed of 125 members, elected once every five years. The most recent elections to the Mejlis took place in December 2013. The 2008 amendments to the Constitution dissolved the Peoples' Council (Khalk Maslakhaty), the formerly supreme representative body, and transferred its powers to the Mejlis. The Parliament is responsible for enacting legislation, ratification and denunciation of international treaties and other matters. It is entitled to delegate the right to issue laws to the President of Turkmenistan (apart from several exceptions), which are subsequently to be considered and approved by the Parliament. Legislative initiative is vested with the President, the Mejlis members, the Cabinet of Ministers and the Supreme Court.

The President of Turkmenistan is the head of state and the chair of the Cabinet of Ministers. The President is vested with broad powers; approving the programme and basic direction of the political, economic and social development of the country, appointing the Chairman of the Supreme Court, the Prosecutor General, the Minister of Internal Affairs and the Minister of Justice (with the consent of the Mejlis) and a range of other matters. The President is elected by way of direct elections that happen every five years. The most recent Presidential elections took place in February 2012.

The Cabinet of Ministers is an executive and administrative body. Its members are appointed by the President within a month upon assumption of the office by the latter.

A constitutional reform commenced in 2014 and is currently underway, aimed at speeding up and expanding the ongoing economic and social reforms in the country.¹

Judicial system

Turkmenistan has a three-tiered judicial system for general civil and criminal matters. First instance claims are heard by the Etrap (district) courts, with appeals lying to the Velayat (regional) courts, and then to the civil and criminal panels of the Supreme Court respectively. For commercial matters, a two-

tiered system applies. Claims at first instance are heard by the Arbitrazh Court, whose jurisdiction covers some 13 areas, including contractual disputes between enterprises, insolvency and company law matters. Appeals lie to the commercial panel of the Supreme Court. The Arbitrazh Court only sits in Ashgabat, making it more difficult and expensive for those outside the capital to use the court. The Code of Arbitrazh Procedure allows for the possibility of commercial cases being heard in Velayat courts. However, the Law on Establishment of the Arbitrazh Court of 14 February 2000 mandates that the first instance for commercial matters shall be only the Arbitrazh Court.

All judges are appointed by the President for a five year renewable term. The President may also dismiss judges during their term of office, as well as decide on whether criminal charges can be brought against them. Thus, the executive dominates the judiciary, and judges are more akin to civil servants than representatives of a constitutionally independent branch of power. Correspondingly, in disputes in which a government agency is one of the parties, the courts have a pattern of resolving the disputes in the governments favour.

The extent to which the courts are actually used to resolve commercial or other disputes in Turkmenistan is not known, as court decisions, case files and most court data are not publically available, even to lawyers. Turkmenistan was the only country in the Commonwealth of Independent States in which it was not possible for EBRD to conduct its Judicial Decisions Assessment, which examined the quality of judgments in commercial matters in the region. There are no databases or libraries of decisions. The Arbitrazh Court prepares from time to time selections of its decisions, but such publications are classified for government use and are distributed only within the court system and among prosecutors. The law mandates that judicial decisions be kept confidential, and be provided only to the parties. Indeed, after representing a client, a lawyer is obliged to destroy all copies of decisions relevant to the court case.

Arbitration is an alternative to using the courts in Turkmenistan. The country has a permanent arbitration institution, acting under the auspices of the Chamber of Trade and Industry established by the Presidential Decree of 21 July 1993, No. 1409. Further, the Law on the Commodity Exchange of Turkmenistan provides for the establishment of the Commodity Exchange Arbitration Committee as a permanent tribunal authorised to resolve disputes arising between traders accredited at the Exchange. Turkmenistan is not a party to the New York Convention on Recognition and Enforcement of International Arbitration Awards. However, it is a member of the Washington Convention on Settlement of Investment Disputes between States and Individuals/Legal Entities of other States.

Recent developments in the investment climate

In recent years, Turkmenistan's leadership has adopted an approach to bring the country more in line with market principles of economy.

However, despite a range of positive developments that took place recently, Turkmenistan remains at an early stage of transition. All sectors of the economy remain dominated by the state. Private sector development is still constrained by the weak business environment, despite some recent deregulation.

Several years ago the President ordered Parliament to review the legislation on foreign investment in view of the proclaimed intentions to introduce market reforms in the country.

A commission on privatisation of state property has been established. In August 2014 the President of Turkmenistan signed a decree to establish a central committee at the Ministry of Economy and Development for the execution of the law on denationalisation and privatisation of state property. Under the decree, the Ministry was ordered to carry out the functions required to ensure control over the execution of denationalisation and privatisation contracts, and the purchase and sale of state property.

The anti-corruption law, adopted in March 2014, sets out the main principles for fighting corruption, including the legal and institutional framework for identifying, warning against and combating it, as well as outlining the penalties for corruption offences. That said, Transparency International's Corruption Perceptions Index 2014 placed the country at 169th place out of 175.²

Turkmenistan is taking further steps towards World Trade Organization (WTO) accession. In 2013 a state commission on joining the WTO was established to study WTO agreements and rules, analyse the potential impact of WTO accession on various sectors of the economy, prepare proposals and participate in WTO-led forums. Joining the WTO may require liberalisation of the current foreign investment regime as well as certain trade regulations. At the same time the country already has one of the lowest average tariff rates for imported goods.

The new Law on External Economic Activity was adopted in August 2014,³ whereby attraction of foreign investment is proclaimed as one of the aims of the country's external economic activity.

While the above definitely indicates a move towards a less regulated economy, the reforms still have a piecemeal character. Access to latest laws and regulations may be distorted. The judiciary is de facto not independent. Foreign investment process is closely controlled by the state.

Freedom of information

Article 28 of the Constitution of Turkmenistan proclaims the right of all nationals of Turkmenistan to access to information unless it is a state or other secret protected by law.⁴ There has reportedly however been a significant lack of compliance with this principle.

Despite adoption in 2012 of the law prohibiting censorship and affirming the right to freedom of

information,⁵ the implementation of the latter has been far from optimal. According to the data provided by the Economic Intelligence Unit Country Report for Turkmenistan (of 13 February 2015), the government accountability remains weak and the overall political system is authoritarian.

The Law on Regulation of Internet and Internet Services was adopted in December 2014.⁶ It requires the government agencies to provide information on their activities online and respond to public requests for information.

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

Electronic Communications

The main legal basis for electronic communications regulation is the Law of Turkmenistan on Electronic Communications, 2010.

The Ministry of Communications (the Ministry) is the central authority in the communications sector in Turkmenistan, being both the regulator and operator, controlling eight State Enterprises in the post and communications sector. The Deputy Chairman of the Cabinet of Ministers (Deputy Prime Minister) has overall responsibility for the sector. The President and the Cabinet of Ministers defines policy for the sector, and the Ministry is tasked with its implementation. Under the 2000 Law on Communications, the Ministry provides proposals for the development of the sector and is the regulatory body that regulates the co-operation between operators. It also receives applications for, and issues, licences (under the Law on Regulation of Licences), carries out spectrum management (under the Law on Frequency Management) and establishes tariff caps for residential line rentals and local calls. The General Director of Turkmen Telecom reports to the Cabinet of Ministers, as does the Minister for Communications. Thus there is no real concept of separation of powers as understood under modern regulatory practices and political interference is

inevitable under the vertical structure of Ministry, Regulator and State owned operator.⁷

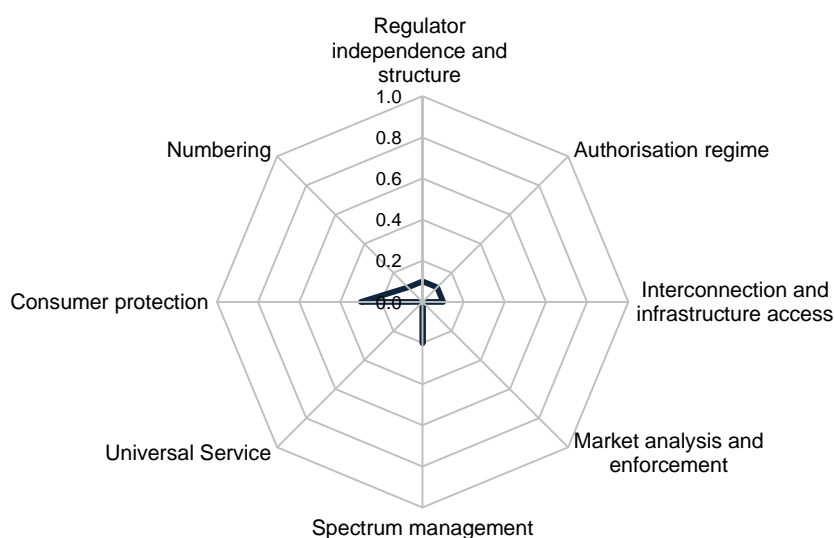
Turkmenistan's telecommunications sector is considered to be the least developed of all the CIS countries. Poor growth in the sector can be attributed to a large extent to the slow development of the private sector, with state control over most economic activities and a poor legislative and regulatory framework. Broader efforts to move towards a more market-oriented economy have been very limited. In the development of the telecommunications sector there had been some progress up to 2010, but the modest steps of allowing an external private operator (MTS) to compete in the mobile market were reversed following a dispute with the government, returning that sub-sector to a monopoly resulting from a failure to renew MTS's licence. Subsequent agreement with the government allowed MTS to return to Turkmenistan in the latter part of 2012, a development which it is hoped will support broader growth in the mobile sector and encourage other potential investors. More generally, overwhelming barriers to competitive market entry have resulted in very low rates of fixed and mobile penetration. Internet usage is the lowest in the CIS countries at c. 3 per cent of the population, with access (particularly to foreign web sites) tightly controlled. Fixed

broadband is largely unaffordable to all but a few businesses. 3G mobile services were launched in Ashgabat in late 2009, but the quality and speed is reportedly poor.

The EBRD 2012 Electronic Communications Comparative Assessment⁸ revealed multiple issues in the electronic communications legal framework, with its overall level of development being lower than the regional average, the latter itself far below international standards. Chart 1 shows the

comparison of the legal framework for telecommunications in Turkmenistan with international practice and regional performance, where issues such as universal service and market analysis and enforcement are ranked extremely low. Chart 2, comparing the overall legal/regulatory risk for telecommunications in Turkmenistan with international practice, shows a somewhat better picture for fees and taxation.

Chart 1 – Comparison of the legal framework for telecommunications in Turkmenistan with international practice

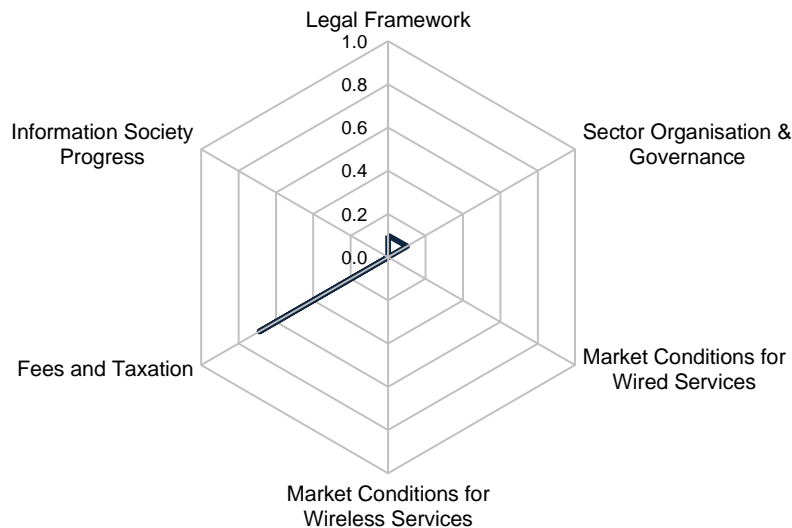


Key: Extremities of the chart = International best practice

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 2: Comparison of the overall legal/regulatory risk for telecommunications in Turkmenistan 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.

Energy

Electricity

The EBRD 2011 Energy Sector Assessment⁹ revealed the rather poor quality of the national energy (electricity) legislation, where market framework and network access scored the lowest (see Chart 3). However, the new Law on Electrical Energy was adopted in 2014,¹⁰ the quality and effectiveness of which is yet to be assessed.

The Cabinet of Ministers and the Ministry of Energy are the state authorities responsible for determining and implementing energy policy in the country. The electricity market in Turkmenistan is represented by Turkmenenergo State Electric Energy Corporation, a vertically integrated monopoly that is included in the Ministry.

Upon independence, Turkmenistan’s leaders renounced the idea of privatisation of electric power facilities, considering them as strategic for the country’s vital activities and sustainable economic development. Since 1 January 1993, electric power is supplied to the population, within the set amounts, free of charge. The electricity ration has been reduced recently.

The Ministry of Finance, engaged in handling tariff methodology matters and, in particular, setting basic

tariffs for transmission, shapes a tariff policy in the national economy.

Pursuant to the Law on Foreign Investments (2008), foreign investors and enterprises with foreign investments are granted a national legal regime, foreign investors are free to choose the size, composition and structure of capital of the enterprise they found, unless otherwise specified by Turkmenistan’s laws activities and/or territories in relation to which investment activities are restricted or prohibited, as well as other restrictions for foreign investors, may be set forth by Turkmenistan’s laws only to the extent necessary for the protection of the foundations of the constitutional order, defence capability and security, customs duty reliefs and other preferences are granted.

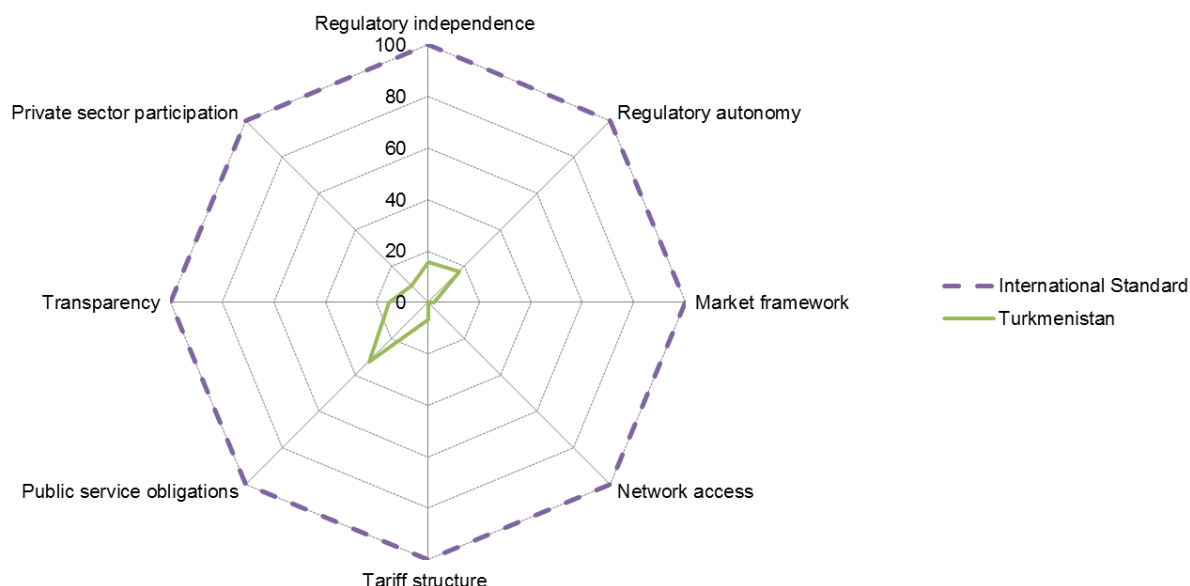
Energy consumption in Turkmenistan has increased over the past years, and new power plants have been constructed. Turkmenistan is exporting electricity to Iran, Turkey and Afghanistan.

Turkmenistan aims to continue increasing its power generation in future, which is expected to be achieved by constructing new power plants. Modernisation of power generation units is also

anticipated, which will increase the electricity

generation capacity.¹¹

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



Note: The spider diagram presents the sector results for Turkmenistan 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 Turkmenistan are represented by the green area in the centre of the web.

Source: EBRD 2011 Energy Sector Assessment

Gas

Turkmenistan’s oil and gas sector is managed by the State Agency for the Management and Use of Hydrocarbon Resources under the President of Turkmenistan (the Agency), established in March 2007 by a Presidential Resolution.¹² On 20 August 2008, the Law on Hydrocarbon Resources was signed, legislatively enshrining the powers of the Agency. The Agency has assumed all the powers of the Ministry of Oil and Gas Industry and Mineral Resources concerning the issuance of licences for exploration survey, development of deposits, oil and gas production and transportation. The Agency also concludes agreements with contractors and sets uniform rules for all the companies operating in the country. The Agency operates under the President of Turkmenistan, whose remit includes all political decisions in the country, including the oil and gas sector as strategic for Turkmenistan. The Agency is responsible for all matters relating to the use of hydrocarbon resources, including those relevant to political decisions (gas export, construction of new export gas pipelines, and others). The Agency is

headed by a Director appointed and dismissed by the President of Turkmenistan. Nominations for Agency unit heads are agreed upon with the President of Turkmenistan.

According to the Law on Hydrocarbon Resources, the Agency’s income sources consist of royalties, bonuses, income on the production sharing agreements (PSAs), income on other contracts, and other income including assets and financial means. The Agency deducts 10% of all such income to the state budget of Turkmenistan. A procedure of calculation and payment of the said deductions to the state budget is set forth by the Ministry of Finance, the Chief State Tax Service and the Agency.

The share of the Agency’s income less payment of the above-mentioned sums to the budget remains at the Agency’s disposal. The Agency has its own budget, whose expenditures are controlled by the Government represented by the Chairperson of the Government (i.e. the President of Turkmenistan).

Decisions made by the Agency may be cancelled only by the President of Turkmenistan. Other state bodies may only submit to the President of Turkmenistan their opinions and proposals on some or other matter related to the Agency.

The Ministry of Oil and Gas Industry and Mineral Resources secures implementation of a uniform policy in the matters related to the use of mineral raw resources, analytical work and preparation of long-term plans and nationwide programmes of the mineral raw base development.

The EBRD 2011 Energy Sector Assessment estimated the quality of energy (gas) legislation in Turkmenistan to be low; tariff structure, network access and market framework scored the lowest (see Chart 4).

Turkmenistan's gas sector is operated by a state monopoly, Turkmengas State Concern. The latter develops, produces, reprocesses, transports and sells gas, gas condensate and liquefied gas. There was no privatisation or liberalisation in Turkmenistan's gas sector. However, the Law on Hydrocarbon Resources allows that, within the framework of oil works, a contractor is deemed the owner of an infield pipeline built thereby, though title to a main pipeline shall belong to Turkmenistan unless the Government makes a specific exception.

The Agency is responsible for new investments, the Ministry of Oil and Gas Industry and Mineral Resources is responsible for sector development planning, and Turkmengas State Concern is responsible for gas sale.

Turkmenistan officially proclaimed an "open-door" policy and formation of a favourable investment

climate. The 2008 Law on Foreign Investments made possible share interests of foreign investors in enterprises jointly with legal and natural persons of Turkmenistan, establishment of enterprises fully owned by foreign investors, establishment of branches of foreign legal persons, or purchase of existing enterprises, purchase of movable and immovable properties, except for those restricted in civil circulation by Turkmenistan's legislation and purchase of property and non-property rights established by the legislation of Turkmenistan.

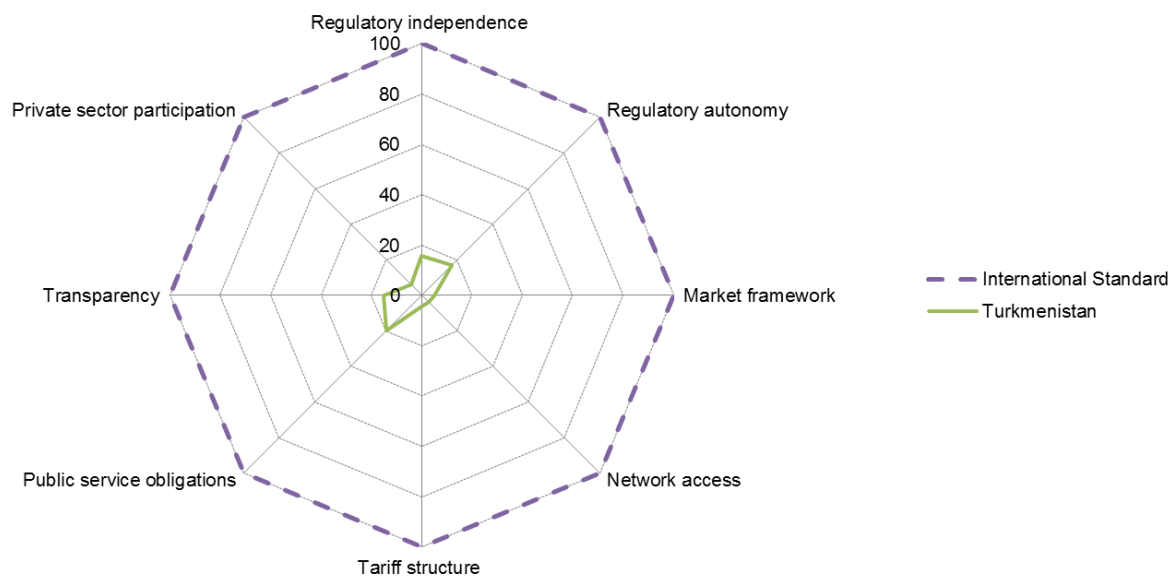
Presence of foreign capital in Turkmenistan's economy is expanding each year. Significant efforts have been made by the government to attract more foreign investment and improve the country's business climate. Foreign investment in the energy sector is expected to dramatically increase in the next few years.

Third-party access to gas transportation systems is accomplished on the contractual basis with Turkmengas State Concern, coordinating its actions with higher authorities, especially if a contract is concluded with "important" customers, or for large volumes of gas pumping.

A gas transportation tariff is set by Turkmentransgas Association, agreed upon with Turkmengas State Concern, and approved by the Agency.

In 2014, Turkmenistan introduced a yearly quota limiting free gas to households, and discontinued free fuel handouts to car owners, thus making some progress towards phasing out domestic subsidies.¹³. The nationwide installation of gas meters has put an end to the unlimited supply of free gas.

Chart4 – Quality of energy (gas) legislation in Turkmenistan



Note: The spider diagram presents the sector results for Turkmenistan 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 Turkmenistan are represented by the green area in the centre of the web.

Source: EBRD 2011 Energy Sector Assessment

Energy efficiency/renewable energy

Turkmenistan’s potential for energy efficiency has not been reliably assessed. Similar to the renewable energy sector, there is no policy or legal framework regulating or promoting energy efficiency in the country.

Targeted and consistent efforts towards development of a policy and legal energy efficiency measures and instruments in all sectors of the economy need to be undertaken, with a view to implementing international energy efficiency standards in Turkmenistan. It is understood that the government is working on an energy saving law but it is unclear if any international assistance is being received.

Certain international donors have started looking at introducing energy efficiency instruments and measures in some of the most energy intensive sectors in the country. Specifically, the United Nations Development Programme (UNDP) has started a project to improve energy efficiency in residential. The project budget totals USD 46 million and in addition to the international participation, it is

being co-financed by domestic partners such as Turkmen gas State Concern. Among the activities within the auspices of this project was the conclusion of an agreement on the partnership with Turkmen gas State Concern, the Ministry of Municipal Services and the Department of Energy to purchase and install energy metering devices in pilot buildings, and the carrying out of training seminars on energy audit of residential buildings.¹⁴

Turkmenistan possesses a large potential for wind and solar electric energy. The country is also believed to have significant hydro, biomass and geothermal resources but those have not been extensively researched and their potential is not adequately assessed. With large gas and oil deposits, generally perceived by the government as being sufficient to support the country’s energy needs in the medium to long run, renewable energy has not received much needed government attention. There is no policy or legal framework promoting renewable energy in Turkmenistan, which is a major obstacle to the development of the sector. President Gurbanguly Berdimukhamedov has stated that the utilisation of renewable energy, primarily solar and wind energy is a priority for the development of the country’s energy sector. The country’s energy strategy developed at

present, would, among its priorities, envisage the increase of fuel efficiency in power stations by way of modernising fuel systems, increasing municipal and industrial energy efficiency, as well as improving residential energy efficiency.¹⁵

PPPs / Concessions

According to the EBRD 2012 PPP/Concession Assessment¹⁶ the legislation in Turkmenistan was rated as being in “low compliance” with international standards (see Chart 5), and its application as in “low effectiveness” (see Chart 6). No clear policy framework that would promote PPP in Turkmenistan has been identified.

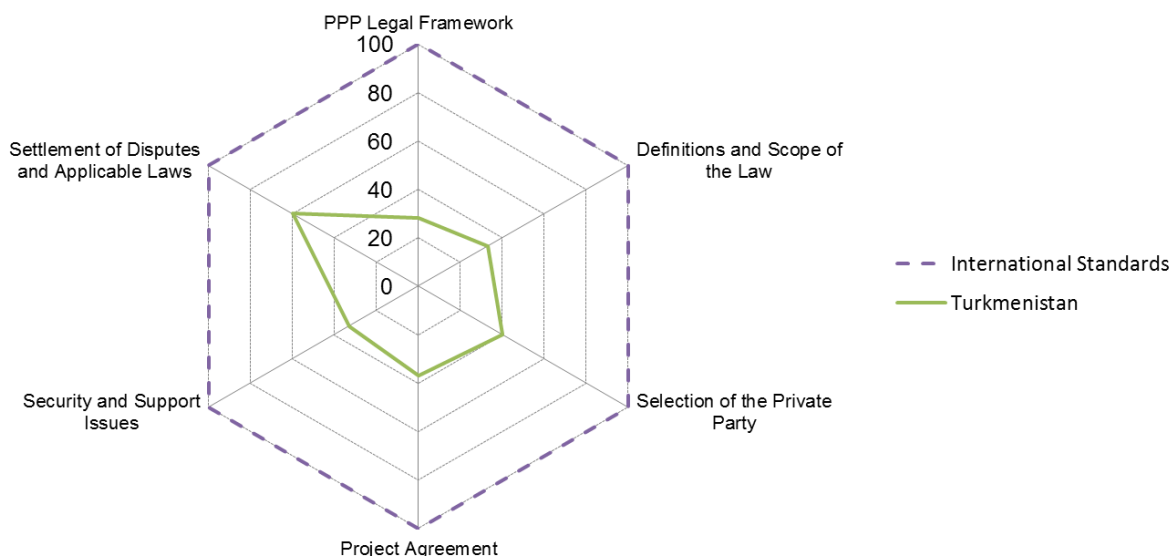
The Turkmenistan Law on Foreign Concessions adopted in 1993 remains the piece of special legislation that is somewhat relevant, to an extent only, to the Concession/PPP subject area in addition to the general contract law rules. As could be seen from its title the law deals with concessions to foreign partners only and therefore discriminates against domestic investors. It covers limited sectors as it was initially designed to focus on natural resources; in fact, the law regulates royalties and associated arrangements for exploration and production as opposed to public works or services. The law is too vague as far as the majority of the key

elements of a modern concession law are concerned: definitions and scope, selection procedures, project agreement, security instruments and state support, dispute resolution. According to the law concession is defined merely as a permission by the state to a foreign partner to carry out a specific type of business activity. The Contracting Authority is not clearly defined either. Sectors that may be subject to concessions are not defined, and, as noted above, seem limited to natural resources only. The selection procedure is underdeveloped; although competitive selection is provided for no pre-qualification is required; there is no obligation to make public a notice on the project award. The law refers to the Cabinet of Ministers decisions regarding the award procedures, however no such document, except in the oil and gas sector, is publicly available even though certain rules are said to exist.

Disputes are settled in domestic courts; no arbitration, let alone international arbitration, is either expressly provided for, or prohibited.

Despite certain positive components, the law does not constitute a sufficiently solid legal basis for the development of PPPs in infrastructure or utility services in Turkmenistan. Concessions have been awarded in the natural resources sector only.

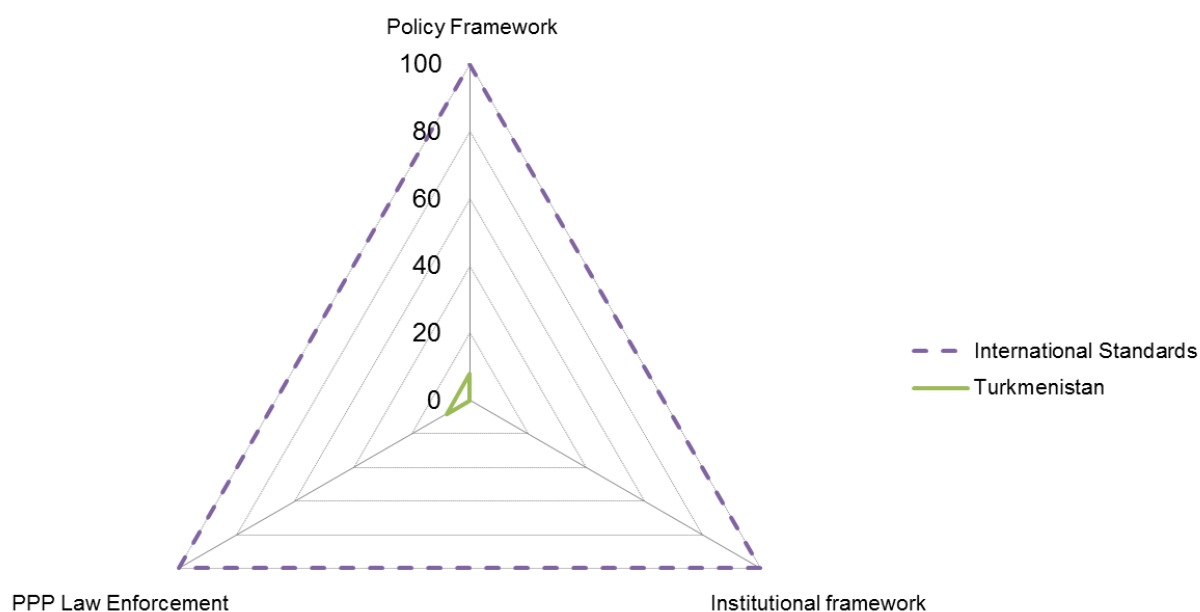
Chart 5 – Quality of the PPP legislative framework in Turkmenistan



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)

Chart 6 – How the PPP law is implemented in practice in Turkmenistan



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).

Public procurement

Public procurement in Turkmenistan is governed by the Law on Public Procurement of 5 March 2002 (the PPL). It regulates both national and local government procurement. The public procurement function in Turkmenistan is fully centralised, and the PPL applies to all public contracts with enterprises and organisations not owned by the state with an estimated value exceeding 30,000,000 TMM (1,530 Euros). The PPL does not incorporate any specific rules for procurement within the utilities sector or public law institutions; state owned entities follow general public procurement rules in their tenders.

There is no independent public procurement regulatory body or specialised agency in Turkmenistan. The Ministry of Economy and the dedicated permanent unit, the Tender Committee, are responsible for organising public tenders.

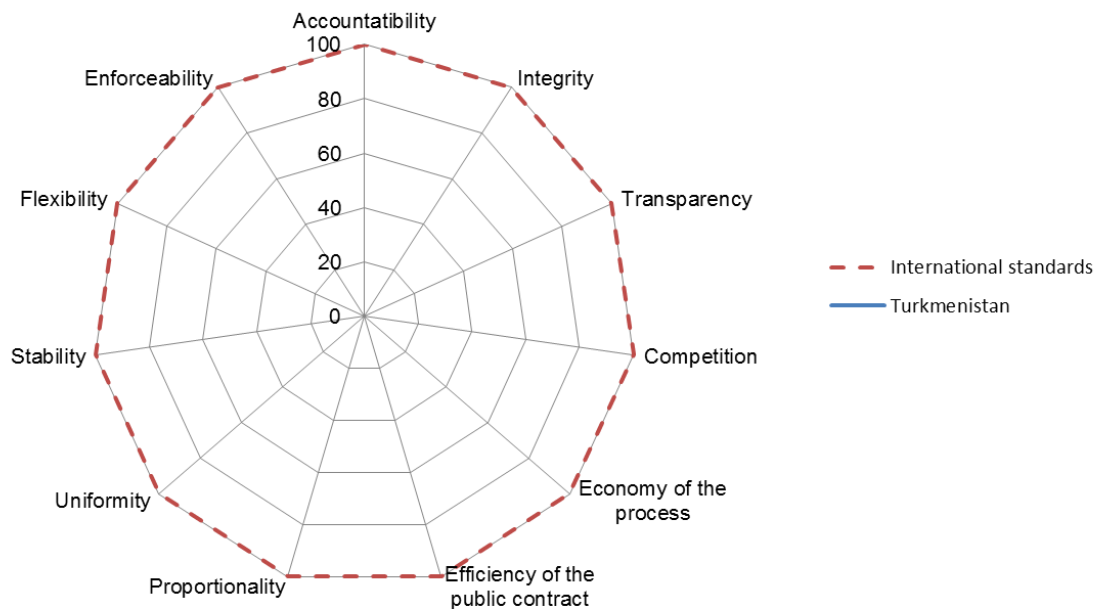
The PPL specifies various types of procurement procedures, including open tender, closed tender, primary tender and recurrent tender. The PPL does

not provide for negotiated procedures; however, after the contract has been awarded, the tenderer and contracting entity may negotiate the contract terms and conditions further. The choice of procedure is discretionary; the Ministry of Economy decides on the tendering method to be applied for a specific contract. There is no provision in the PPL for any form of e-Procurement.

The PPL also does not provide for a dedicated review or remedies system, however, the Ministry of Economy reviews complaints regarding Tender Committee decisions.

In the EBRD 2011 Public Procurement Assessment¹⁷ Turkmenistan demonstrated low compliance with international standards on public procurement, scoring the lowest in the EBRD's countries of operations.¹⁸ In assessing the quality of public procurement practice in Turkmenistan, integrity, transparency and competition received the lowest scores (see Chart 7).

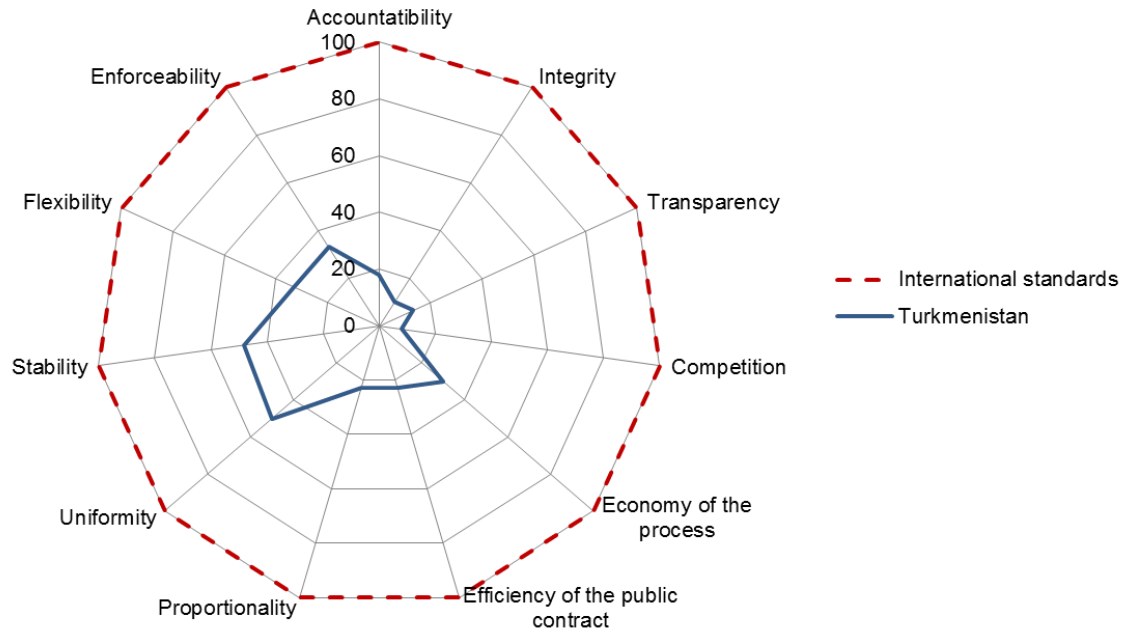
Chart 7 – Turkmenistan's quality of public procurement legislation



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 Turkmenistan



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

Private Sector Support

Access to finance

The EBRD assessment work has shown that Turkmenistan is equipped with a legal framework for secured lending which can be improved in order to avoid some legal uncertainties and to better facilitate sound lending practices. Security rights on movable and immovable assets are governed by the Civil Code of 1 December 1998, (enacted on 1 March 1999) and the Law on Pledge (the Pledge Law) of 1 October 1993. The Pledge Law only applies to the extent that it does not contradict the Civil Code. The Civil Code primarily covers security over immovable assets (mortgages), possessory pledge (*i.e.* where the debtor must transfer possession of the collateral to the creditor or a third party), as well as the rules of enforcement. The Pledge Law incorporates more detailed provisions on non-possessory charges and envisages the establishment of a registration system through which non-possessory charges would be publicised.

The Pledge law still contains some features that can be seen as impractical from a business perspective. For example, the law requires pledged assets to be specifically identified in the pledge agreement, together with the value and their location. The requirement to state the value of the collateral might be too burdening for the parties since not every type of collateral is easy to evaluate, and the practical effect of such provision is questionable. The law does allow pledging commodities in circulation (stock) but limits its usage by stipulating that the pledgor is entitled to sell such property provided he pays the secured debt or that he replaces such property by assets of equal or greater value. While intended to protect the position of the creditor similar provisions are usually seen by business as too rigid since they place the pledgor under an undue risk of unintentionally defaulting. This may make security over inventory impractical and, thus, of limited use. Formalities for the creation of pledges are complex and slightly confusing as unclear provisions of various applicable laws and presidential decrees create problems in practice.

The current developments of micro and SME lending, carried out with assistance from organisations such as the EBRD, may create momentum for modernisation of the legal regime for secured transactions.¹⁹ Further reforms should help expand the provision of commercial finance to micro, small and medium-sized enterprises (MSMEs) by banks and non-bank financial institutions.²⁰

Capital Markets

The 1993 Law on Securities and Stock Exchanges sets out the key principles for issuing, selling and circulating securities in Turkmenistan. Furthermore, the 1999 Law on Corporations provides for issuance of common and preferred stock and bonds and convertible securities. However, in the absence of a stock exchange, there is no market for securities, and its development is seen to be a long-term endeavour.

In 2007 the EBRD benchmarked securities markets legislation against the “Objectives and Principles of Securities Regulation” published by IOSCO, finding the national framework in “very low compliance” with international standards. The assessment pointed to an urgent need for reform in all elements examined, with the exception of “Accounting”, due to the 1996 Law “On Accounting in Turkmenistan”.

Effectiveness of securities markets legislation is perceived to be very low as the country lacks a functioning stock exchange, and an IPO has yet to be launched. The underdeveloped financial system significantly hinders the free flow of financial resources in the country. There is no prospectus – based disclosure practice. The functions of the Ministry of Economy and Finance as the securities markets regulator extends beyond mere supervision, with the Ministry empowered to enquire into the merits of an issue in certain cases. This form of control is too strict to allow a market to develop effectively.²¹

Corporate governance

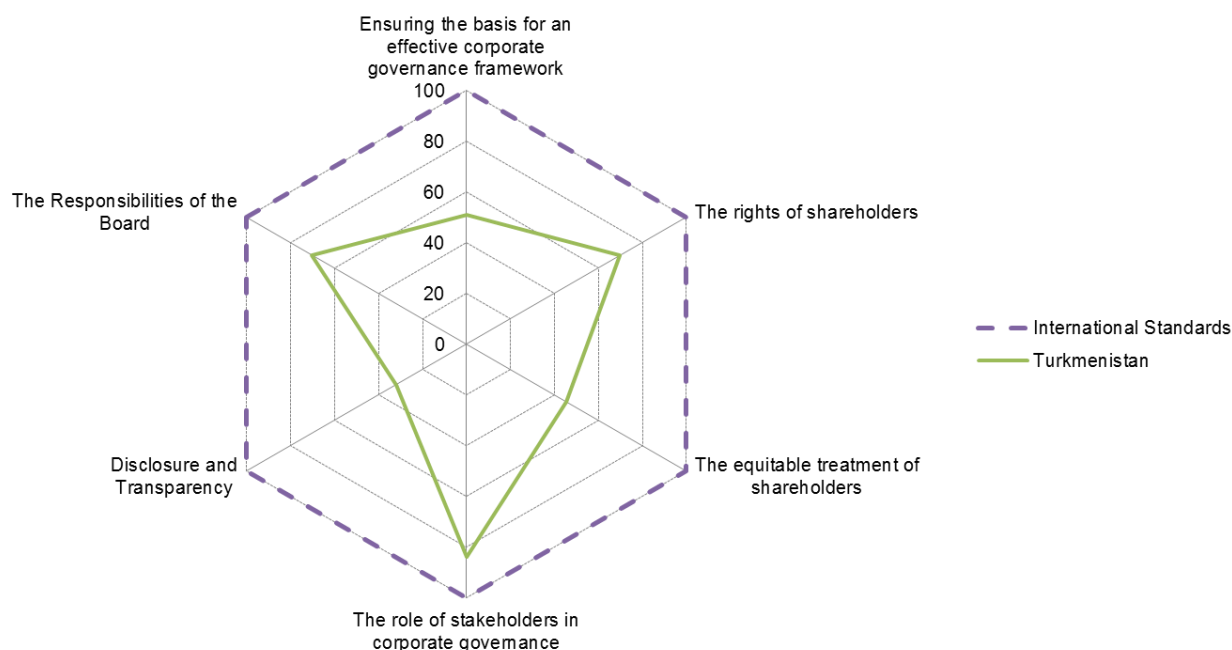
The principal legislation on corporate governance is contained in the Law on Enterprises of Turkmenistan and in the Civil Code, both issued in 2000, and in the Joint Stock Companies (JSC) Law of Turkmenistan, issued in 1999. The JSC Law provides the basic legal framework for the establishment, functioning, reorganisation and liquidation of joint stock companies and the rights and duties of shareholders. Turkmenistan does not have a voluntary code of corporate governance.

According to the results of the latest EBRD’s Corporate Governance Assessment 2007,²² Turkmenistan was found to be in “low compliance” with the OECD Principles of Corporate Governance. A number of substantial shortcomings were revealed particularly with respect to disclosure and transparency and equitable treatment of shareholders (see Chart 9). Among the major flaws highlighted by the 2007 Assessment were the weak disclosure and reporting requirements, the lack of protection for minority shareholders, the absence of specific regulation on related party transactions and the weak regulation of conflicts of interest.

International financial reporting standards (IFRS) were introduced in 2014, following a year of IFRS reporting by banks. This represented a major

corporate governance reform and was a welcome move towards a greater openness and transparency in corporate activities.²³

Chart 9 – Quality of the Corporate Governance Legislative Framework in Turkmenistan



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

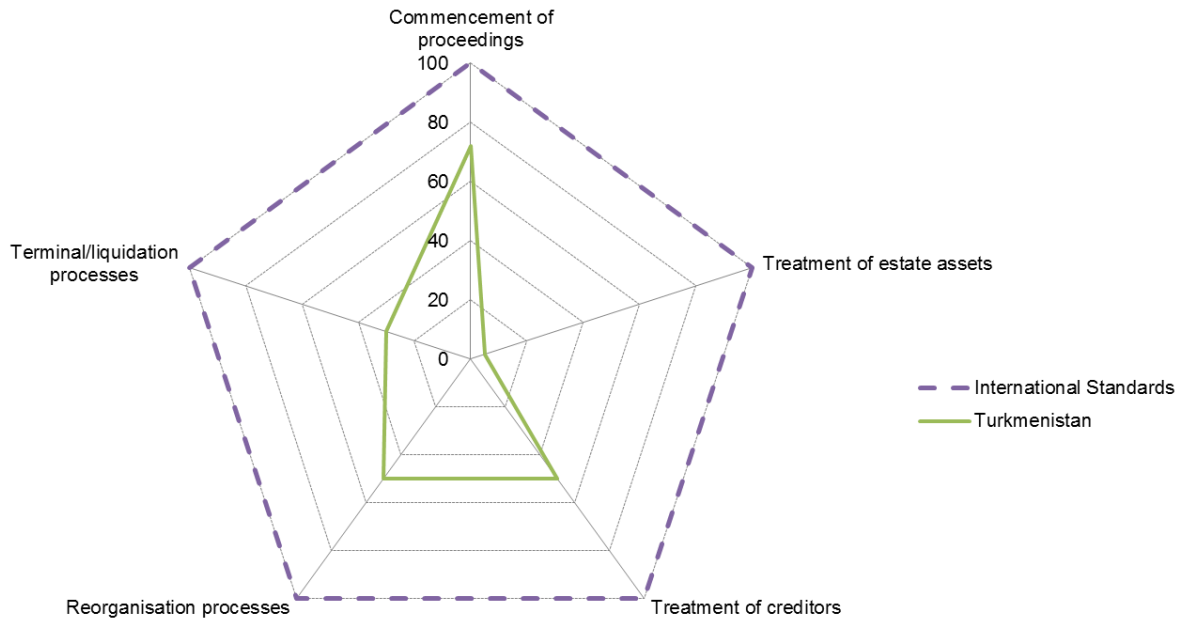
Debt restructuring and bankruptcy

The relevant legislation can be found in the Law on Bankruptcy of 1 October 1993, as amended (the "Bankruptcy Law"). The Bankruptcy Law applies to the bankruptcy of natural and legal persons carrying out commercial activity. There is very little publicly available data on bankruptcy proceedings in Turkmenistan. It is not even clear whether bankruptcy proceedings are used.

The EBRD Insolvency Sector Assessment completed in late 2009 concluded that Turkmenistan's bankruptcy law on the books was in very low compliance with recognised international standards

of best practice (see Chart 11). Particular deficiencies highlighted included vague financial criteria for the petitioning and opening of bankruptcy proceedings, an absence of express notice requirements for creditors regarding the opening of such proceedings, inadequate moratorium provisions (e.g. stay/suspension of actions/proceedings against the debtor) following the declaration of bankruptcy and lack of clarity on the effect of bankruptcy on the positions of secured creditors and the absence of any provisions specifically permitting set off in bankruptcy. The assessment also highlighted the fundamental lack of statutory provisions in the Bankruptcy Law regarding the regulation and conduct of insolvency office holders.

Chart 11 – Quality of insolvency legislation in Turkmenistan



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

¹ <http://turkmenistan.gov.tm/?id=7299> (in Russian)

² <https://www.transparency.org/cpi2014/results>

³ <http://www.turkmenistan.gov.tm/?id=7127> (in Russian)

⁴

http://turkmenistanembassy.am/index.php?option=com_content&task=view&id=31&Itemid=48 (in Russian)

⁵ <http://www.hrw.org/world-report/2014/country-chapters/turkmenistan>

⁶ <http://turkmenistan.gov.tm/?id=7948> (in Russian)

⁷ <http://www.ebrd.com/legal-reform/where-we-work/turkmenistan.html>

⁸ Turkmenistan Country Summary available at <http://www.ebrd.com/downloads/legal/telecomms/turkmenistan-2012.pdf>

⁹

<http://www.ebrd.com/cs/Satellite?c=Content&cid=1395242189791&d=&pagename=EBRD%2FContent%2FDownloadDocument>

¹⁰

¹⁰ <http://www.turkmenistan.gov.tm/?id=7128> (in Russian)

¹¹ http://www.enerdata.net/enerdatauk/press-and-publication/energy-news-001/turkmenistan-unveils-power-sector-strategy-2030_18637.html

¹² <http://www.ebrd.com/legal-reform/where-we-work/turkmenistan.html>

¹³ <http://tr.ebrd.com/tr14/turkmenistan/>

¹⁴

<http://www.tm.undp.org/content/turkmenistan/en/home/operatio>

ns/projects/environment_and_energy/improving-energy-efficiency-in-the-residential-building-sector-o.html;
http://www.tm.undp.org/content/dam/turkmenistan/docs/Press%20release%20PDF/10022015_EERB_energy_audit_27-30_jan_eng.pdf

¹⁵ <http://www.ebrd.com/legal-reform/where-we-work/turkmenistan.html>

¹⁶

<http://www.ebrd.com/cs/Satellite?c=Content&cid=1395242189999&d=&pagename=EBRD%2FContent%2FDownloadDocument>

¹⁷

¹⁷ <http://ppl-report.ebrd.com/>

¹⁸ <http://www.ebrd.com/legal-reform/where-we-work/turkmenistan.html>

¹⁹ <http://www.ebrd.com/legal-reform/where-we-work/turkmenistan.html>

²⁰ <http://tr.ebrd.com/tr14/turkmenistan/>

²¹ <http://www.ebrd.com/legal-reform/where-we-work/turkmenistan.html>

²²

<http://www.ebrd.com/cs/Satellite?c=Content&cid=1395242189444&d=&pagename=EBRD%2FContent%2FDownloadDocument>

²³

²³ <http://tr.ebrd.com/tr14/turkmenistan/>