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Commercial Law Assessment

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Summary

As noted below, the Commercial Legal Reform Assessment for Georgia focused on four core areas of commercial law: collateral law, bankruptcy law, company law and contract law.

The fundamental conclusion is that the status of many underlying laws and regulations are satisfactory, or at least workable. Implementation of the laws in all four core areas, however, requires considerable improvement.

While viewing many of the underlying laws and regulations as acceptable, it should be noted that the Assessment Team nonetheless recommends that some continued assistance be provided in legislative and regulatory drafting, to improve certain areas of legislative weakness (such as in corporate governance and collateral foreclosure provisions) and to authorize and facilitate improved implementation by the courts and other government agencies.

The primary focus of initiatives in commercial law reform should be to improve implementing institutions and procedures. Key targets should be the courts and the Ministry of Justice (and its agencies, such as the National Registry of Moveable Property).

Collateral Law

In constructing and reviewing the Legal Framework and the Implementing Institutions Development Indicators for Collateral Law, the Assessment Team's judgments clearly reflect the dichotomy seen throughout Commercial Law in Georgia: the comparative strength, or at least sufficiency, of the underlying laws (with occasional exceptions), and the overall weakness of implementing institutions and procedures. The total score for the Collateral Legal Framework, for instance, is a relatively strong 73%, while that for Implementing Institutions is a much weaker 41%. The total score for Supporting Institutions is an equally weak 42%. These scores serve to highlight the fundamental finding of the Assessment: that while there continues to be some need for legislative and regulatory drafting assistance to aid in improving the Legal Framework of various commercial laws, the much stronger need is for assistance to implementing institutions and procedures, designed to improve the implementation of commercial laws that are already in place.

Bankruptcy Law

The status of the Law on Bankruptcy, as with many commercial laws in Georgia, can be described as "workable," in terms of the legislation, but sadly lacking in terms of implementation. The overall rating for the Bankruptcy Legal Framework is 71%, compared with the much lower total for Bankruptcy Implementing Institutions of 51%.

Implementation is rated especially low for the courts – 48% - as well as for the administrators – 53%. Interviews by the Assessment Team echoed these conclusions: the administration of bankruptcy proceedings is confused and in some cases ineffective. Private sector confidence

in Bankruptcy Law and Procedures is only 10% and as a result almost no proceedings are initiated.

Future initiatives should focus on institution-building for the courts and for the administrators, including education/training in the theory and the procedures of an effective bankruptcy system.

Company Law

Once again, the score for the Legal Framework (the legislation) for the Company laws is high: an overall 84% for the company law provisions of the Civil Code, the Law on Entrepreneurs and the Law on Securities Market. Ratings for the implementation of Company Laws, however, are lower: 47% for Company Registrar Operations, for instance, and only 60% for implementing institutions overall.

In addition to these overall ratings, special problems were found in both the legal framework of the Company Laws and in their implementation. Of particular concern is weakness in the Law on Entrepreneurs regarding corporate governance and especially shareholders' rights. Regarding implementation, action is needed to more effectively implement the registration and licensing provisions of the recent Law on Grounds for Issuance of Licenses and Permits for Entrepreneurial Activities (2002).

Contract Law

The total rating for the Legal Framework of Contract Law is 80%, including 85% for Contract Formation and 73% for Remedies and Enforcement. Unlike other areas of commercial law assessed, the implementation of Contract Law receives relatively high ratings: an overall 68% for implementation, including 62% for Court Organization and 71% for Court Operations. Interviews indicate a higher level of familiarity with contract law than with other areas of law, such as bankruptcy, shareholders' rights, and foreclosure proceedings.

Even in this area, however, weaknesses are seen in the implementing institutions, especially the courts. Three key ratings on Court operations, for instance, are at a low 50% or less. Court experience, competence and procedures are thus ranked very low, especially in comparison to the general ratings in Contract Law as a whole.

Improvements in Contract Law implementation and enforcement should focus on institution building for the Courts and concerned government agencies.

Introduction

USAID/Caucuses Mission has requested that the Georgia Enterprise Growth Initiative Project prepare an assessment on the current status of four core commercial law areas in Georgia:

- Collateral law/Secured Transactions
- Bankruptcy Law
- Company Law
- Contract Law.

It was agreed that the assessment would follow the general methodology of the “Commercial Legal and Institutional Reform (CLIR) Assessments for Europe and Eurasia,” as presented in the USAID *Diagnostic Methodology Handbook*.¹

In particular, the assessment has focused on two basic dimensions of the diagnostic methodology, as defined in the *Handbook* at page 8:

- Framework Laws – The “basic legal documents that define and regulate the substantive rights, duties, and obligations of affected parties and provide the organizational mandate for implementing institutions.” It is important to note that these basic documents may include implementing regulations, decrees or other “normative acts, as well as legislation.”
- Implementing Institutions – The “governmental, quasi-governmental or private institutions in which [the] primary legal mandate[s] to implement, administer, interpret, or enforce framework laws [are] vested.” These implementers may include courts and administering agencies and frequently require institutional strengthening measures.

Two other dimensions of the diagnostic methodology, Supporting Institutions and The Market for Reform, are discussed variously throughout the assessment when they are relevant.² The fundamental analysis of the assessment focuses on two elements of commercial law: the Status of the Legal Framework and the Status of the Implementation of the Laws.

¹ *Diagnostic Methodology Handbook*, USAID (Booz Allen).

² Supporting Institutions – “The governmental, quasi-governmental or private institutions that either support or facilitate the implementation, administration, interpretation, or enforcement of framework laws.”

The Market for Reform – “The [existence and] interplay of stakeholder interests within a given society, jurisdiction, or group that, in aggregate, exert an influence over the substance, pace, or direction of commercial law reform.”

Collateral Law/Secured Transactions

I. Status of Legal Framework

The basic legislation that defines the legal framework for Collateral Law/Secured Transactions is currently found in the Civil Code, though drafting of new Collateral Law sections of the Civil Code is currently underway by the Ministry of Justice, with consulting assistance from EBRD and the GEGI Project. It is intended that these “collateral sections” of the Civil Code will in fact constitute a new Collateral Law, within the Civil Code, to be approved hopefully by July 2005.

The Ministry of Justice also currently has a final draft package of related laws and amendments prepared and slated for submission to Parliament by March:

1. A Law on the Registration of Pledges on Moveable Property,
2. Amendments to the Law on Notaries, and
3. Amendments to the Law on Enforcement.

Other laws related to Collateral and Secured Transactions are being worked on:

1. Leasing – a draft law has been prepared by the IFC, with the assistance of GEGI, as a proposed amendment to the Civil Code. The draft law is currently being reformatted for insertion into the Civil Code,
2. Credit Information (Bureau) Law – a draft of this proposed law has been completed by a working group headed by GEGI and is currently under review. It is expected that the final version will be sponsored by the National Bank and submitted to Parliament in March, and
3. Arbitration Law (Alternative Dispute Resolution) – the draft of this law was completed by GEGI and is now with the Ministry of Justice for review. It is expected the draft will be submitted to Parliament in March. In addition, GEGI has assisted in the organization of the Georgian Arbitration

As noted, the basic legislation related to Collateral is currently found in Title 3, Chapter 6 (“Title to Property as Security for a Claim”) of the Civil Code (articles 254 through 485). These articles address only one type of security interest in movable property, the pledge. They do not address other common forms of security, such as retention of title upon sale and financial leases, nor do they deal adequately with other transactions that look like security interests, such as long-term true leases, consignments and sale or assignment of accounts.

The consequence of the failure to include the other forms of movable property interests in the rules governing security interests is that there is no uniformity and little predictability as to how competing interests in the same property will be resolved under the different laws. This is particularly important when the value of the property is insufficient to satisfy all competing interests.

Other forms of interests are addressed separately in the Civil Code, specifically in “Special Part, Title 1, Contract Law.” The Code’s articles here address the law on leases (Articles 576 through 591). They address both financial leases and long-term operating leases. Retention of title as security (Article 188) is known as “conditional ownership.” The law referring to consignment of movables (Article 155, section 2) and the law on the sale or assignment of accounts (Articles 198 through 202), both require amplification, which is being included in the draft of the new collateral provisions currently underway.

II. Implementing Institutions

The National Agency of Public Registry and the Ministry of Justice are the primary implementing institutions for collateral /secured transactions.

The National Agency for Registration of Collateral is an autonomous agency under the supervision of the Ministry of Justice. The authority for its Registry of Pledges of Moveable Property exists under a temporary regulation issued by the Ministry. Extensive amendments regarding all types of collateral and secured transactions have been drafted by the Ministry of Justice for insertion into the Civil Code. Both EBRD and GEGI provided some comments to the Ministry on certain portions of the amendments. The amendments have been completed and the Ministry is expected to request final reviews from interested parties soon.

There are problems related to implementation of the current Law on State Registry. Public Registers are now kept at the regional level. It is difficult to determine in which regional registries to file and to search for information. It is difficult to gain access to the registry office, because the only means of access to the registries is delivery of paper to them during business hours.

With regard to secured transactions, the only information that should be needed in the public register is the identification of the parties and the collateral. However, the Civil Code (see Article 255) is interpreted by the National Agency of Public Registry as requiring filing of the entire notarized security agreement in the registry, to include information on the amount of the obligation, the interest rate and the payback date, none of which contributes to the essential notice. The Public Register law includes presumptions of truth of information in the registry that not only are unnecessary to the purpose of the registry, but are impossible to substantiate.

Information in the registry office is not considered accurate. Accuracy refers to entry into the filing office exactly the information that is provided by the filer. It does not refer to the accuracy of the information as to the true state of the facts. The burden is on the filer to provide correct information. If the filer provides inaccurate information, it risks losing its priority, if the error makes the notice undiscoverable. The burden of the filing office is only to accurately capture the information that is provided.

Interviews with bankers and businessmen reveal dissatisfaction with the administration of the registration process. The registration office is not considered efficient. The process is considered to lengthy and subject to corruption.

Professional associations and private sector representatives did not actively participated in the drafting of the new amendments., citing lack of cooperation from the government side(the Ministry of Justice and the National Agency for Public Registry)..

The creation of a security interest is dependent upon notarization and registration of the security agreement, which must include certain terms of the underlying obligation. Further, it is a disincentive to registration to have private terms disclosed on the public record.

The current deficiencies in this area may be summarized as follows:

- The law governing security interests in movables is limited to only the pledge, and does not address other forms of interests that may have priority in pledged collateral.
- Creation of a security interest is bound by expensive and cumbersome formalities and requires public disclosure of sensitive information.
- There is no reliable way of determining the priority of a security interest against other forms of interest in collateral.
- A secured party must provide burdensome direct notice of its interest to all prior secured parties in the collateral and, if the collateral is accounts, to all account debtors.
- The registration office is not effective, and the law does not include a venue provision, so it is impossible to know where to file and search.
- Enforcement in the event of default requires a judicial process and takes so long that movables are likely to lose their value before realization.

Bankruptcy Law

I. The Status of Legal Framework

The legal framework for bankruptcy law in Georgia consists of the Law on Bankruptcy Proceeding and the Law on Entrepreneurs. The Law on Bankruptcy Proceedings regulates all legal procedures, from the filing of a bankruptcy petition with the court to the completion of the bankruptcy case.

On 25 June 1996, the Parliament of Georgia adopted the Law on Bankruptcy Proceedings. In 2001-2004 the law was significantly amended. In practice, neither creditors nor debtors frequently file petitions to institute bankruptcy proceedings. One of the major reasons is that the law on Bankruptcy Proceedings itself is not implemented. The existing situation damages the interests of all parties to the certain extent.

First of all, it should be pointed out that the main goal of the law is to overcome financial difficulties of a debtor and to meet requirements of creditors in a manner that the legal interests of creditors are not damaged and operations of the enterprise owned by a debtor is not terminated if possible based on creditors' interests.

II. Implementing Institutions

The current court practice indicates that a debtor files a bankruptcy petition based on the expected insolvency, thus damaging interests of creditors. The above is a tool used by debtors to suspend or terminate the execution procedures instituted but not completed against debtors in favor of the certain creditors. The above tool is often used by debtors to drag out enforcement of the execution actions.

In addition, due to complicated and ill-defined procedural provisions, it is easy for debtors to employ delaying tactics, an example of which being that it may take as long as three months for bankruptcy proceedings to be commenced. Thus, strict and shorter deadlines should be established in the Law on Bankruptcy proceedings in order to prevent delays in bankruptcy proceedings.

Poor knowledge of bankruptcy law by judges and bankruptcy administrators contributes to delays in the bankruptcy process, in addition to contributing to incorrect legal decisions by courts. Consequently, it might be recommended to establish specialized bankruptcy courts that would bear sole responsibility for entertaining cases in bankruptcy. However, the relevant amendments should be made to the legislation governing the court system.

In order to prevent fraudulent activities of bankruptcy administrators through undervaluation of assets, or their sale at artificially low prices, a list of detailed rights and responsibilities of bankruptcy administrators, including provisions relating to their remuneration procedures should be established.

Current rehabilitation procedures are not adequate. Moreover, limited access to credit during the rehabilitation process (banks refrain from extending loans to insolvent enterprises) significantly weakens the rehabilitation process.

Currently the state enjoys preferential treatment among unsecured creditors. The priority of claims should be amended to provide for equal treatment for all creditors. Exceptions might be salaries and health compensation.

Company Law

I. Status of Legal Framework

The legal framework for Company law in Georgia is regulated by several statutes including the Civil Code, the Law On Entrepreneurs, and the Law On Securities Market.

The key piece of legislation on Company Law, the Law On Entrepreneurs, covers joint stock companies, limited liability companies, limited partnerships, general partnership companies, sole proprietors and cooperatives. Thus, there are no separate laws covering joint stock companies or limited liability companies specifically. Notably, there are no provisions in the Law on Entrepreneurs on unincorporated partnerships, although those are addressed briefly and inadequately in the Civil Code.

The limited liability company and joint stock companies are the most frequently used forms of company in Georgia. The minimum capital requirements for establishment of an LLC (2000 GEL) and a Joint Stock Company (15 000 GEL) are reasonable, and do not discourage entrepreneurial activity.

It should be noted, however, that the company governance provisions are not adequate and thus hamper the operational procedures of the companies. Joint Stock Companies are in particular poorly described; much more clarity and enhancement needs to be put into legislation as to how they should operate. Annual reports/audits of companies are poor to the point of being meaningless, owing to the lack of meaningful standards and/or enforcement thereof.

The provisions of the Law On Entrepreneurs regarding shareholders rights, in particular rights of minority shareholders, need to be reviewed. A shareholder takes part in shareholders' meeting based on ID and the data from the share register presented at the meeting. Participation (representation) via proxies is allowed. The certification of proxy notary hinders adequate representation of the shareholder at the shareholders meeting. Furthermore, the mechanism for redemption of shares should be improved.

Shareholders owning a minimum of 5% of the authorised capital, have the right to demand a special check of the economic activity and the annual balance, if they consider that certain violations might take place. In case their demands are not satisfied by the general meeting, the decision on the special examination may be made by the regional court on the territory where the particular company is located. The effectiveness of this provision is diminished by the requirement that the general meeting must approve the request regarding special check before the request is enforceable.

According to the Law On Entrepreneurs and the Law on Securities Market, certain fiduciary duties are imposed upon the companies' officers and directors. According to the business community, additional requirements are imposed upon management and members of Supervisory Board in order to avoid activities that create conflicts with the interests of company. However, the nature of these requirements and the interplay with fiduciary duties is poorly defined in law, according to practitioners.

II. Implementing Institutions

The Law On Entrepreneurs regulates registration of the above mentioned companies and their branches. The procedure for registration and de-registration of companies is complicated and discretionary. However, the presumptive provision requiring courts to issue either a positive or a negative answer on company registration within 5 working days induces courts to make their decision within the prescribed time period.

In terms of company registry, it is almost impossible to trace the history of a company. There is no centralized registry system, and individual courts are charged with the registration. In order to obtain company information, an interested person visits the regional court where the company was registered, but that court may not have full information about the history of a company – cases exist where multiple courts have been involved in registration matters concerning a single company.

Special Implementation Problems for Companies - Permits and Licenses

The basic outline for the regulatory regime in Georgia for the rules and procedures for the issuance of licenses and permits, applicable to all entrepreneurs both foreign and domestic, is set forth in the Law on Grounds for Issuance of Licenses and Permits for Entrepreneurial Activities which came into force on July 1, 2002. The prior legislation in this field had been drafted at a time when Georgia was still a centrally planned economy and contained outmoded provisions no longer appropriate for Georgia's transition to market economics. The Law shows marked influences from other laws relating to permits and licenses passes in other transition economies in Eastern Europe that were drafted in accordance with the "four freedoms" of the European Union (EU), i.e. the free movement of people, goods, services and capital which constitute the basis for EU legislation, but the Law falls short of these goals in comparison with more liberal legislation adopted in other countries (for example, see the provisions of the Polish Law on Commercial Activity that came into force in 2001). And thus fails to ensure that state bodies *no longer have unlimited power to restrict commercial freedom through a complicated and often non-transparent regime of licenses and permits.*

International Best Practices for Licenses and Permits

The trend in international best practice seeks to reduce significantly the areas of economic activity which require either a license or permit. It also sets forth the grounds for limiting the freedom to undertake economic activity by introducing a *uniform regime for granting licenses and permits*. Any expansion of the requirement for a license or permit would require an actual amendment to the Law itself.

The basic difference between a permit and a license is that a permit cannot be denied if all legal requirements for granting it are met, whereas a license requires administrative approval. Thus a license is “granted” while a permit is “issued”. Georgian Law has expanded the number of activities for which neither a license nor a permit is required. This approach might be carried still further, by converting some licenses under current legislation into permits, while some activities currently requiring a license or permit would require neither.

Progressive legislation provides for an entrepreneur who intends to commence an activity that is subject to licensing to be granted a temporary or “promissory license” whose validity cannot be less than 6 months and which may be conditional on fulfillment of conditions applicable to the given activity. The appropriate licensing organ can then grant or refuse the license, make changes to it or withdraw it in the course of an administrative procedure, for which there is a right of appeal under the Code of Administrative Procedure . Georgian Law currently lacks such a mechanism. The Current Georgian Law does meet international standards by providing that applications for licenses that are not approved during the timeframe prescribed by legislation are automatically issued.

As for permits, the body responsible for issuing a permit checks to ensure that the application fulfills the necessary legal requirements applicable to the activity. The permit *must* then be issued if those conditions are met. As in the case of licenses, all permit decisions may be appealed under the Code of Administrative Procedures.

Licenses

A special problem arises when licenses are issued by multiple authorities with overlapping jurisdictions (or with jurisdictions that may appear to overlap). Even though an authority may cancel a license, a licensed entity can claim to operate legally under another license. This results in confusion and ineffective supervision of licensed activities. Overlapping jurisdictions should be rationalized to prevent such situations.

The more progressive license and permit legislation in the region limits the areas of economic activity requiring licenses from the relevant authority to the following:

- (a) prospecting for and exploitation of subterranean natural resources;
- (b) manufacture and trade in explosive materials, armaments and ammunition, as well as goods and technology intended for use by the military and police;
- (c) manufacture, processing, storage, transport, distribution of fuels and energy, and trade therein;
- (d) bodyguard and property security services;
- (e) air transport and performance of other aviation services;
- (f) construction and exploitation of toll highways and express roads;
- (g) administration of rail lines and performance of rail transport; and
- (h) distribution of radio and television programs

The introduction of new or additional licenses for activities that are currently license free and that have a particular significance for state security or for some other important public interest, may be made *only* by means of amendment to the Law itself. And as noted above, each decision denying the issuance of a license may be appealed administratively.

Permits

The following activities commonly require a permit:

- (a) manufacture of alcoholic beverages;
- (b) tobacco production;
- (c) detective services;
- (d) production and distribution of automobile registration plates;
- (e) airport administration;
- (f) courier services and postal services of a public character;
- (g) telecommunication services;
- (h) production of pharmaceuticals and medical materials, operation of pharmacies and pharmaceutical and medical warehouses and customs houses;
- (i) domestic and foreign trade in livestock, except for sales performed by domestic operators of hunting leaseholds;
- (j) the offering of tourist services for domestic hunting by foreigners and for hunting abroad;
- (k) customs agencies;
- (l) wine production;
- (m) foreign trade in goods and services under separate legal provisions; and
- (n) international transport.

Licenses and permits that were issued prior to the coming into force prior to any amendments to the Law should remain valid for the period for which they were issued, or become permits for the relevant period.

Conclusion

Here are a few noteworthy points that reflect international best practice that should be put into effect in |Georgia:

- 1) Comprehensive listing and treatment of all required licenses and permits in one legislative act.
- 2) Clear delineation of areas of administrative discretion, and the right to appeal administrative decisions.
- 3) Reduction of “ex-ante” barriers to market entry through means of temporarily granted licenses that can be reviewed later.
- 4) Introduction of new licenses only through amendment of the Law.
- 5) Reduction in the number of areas of economic activity that require a license or permit.

Contract Law

I. Status of Legal Framework

The primary text governing contractual relationships in Georgia is the Civil Code. This Code was drafted during period of 1992 to 1997 and consists of 5 books: Book one –general part is a set of common rules that govern the entire private law and its implementing institutions, including the doctrine of subjects of law, transactions, exercise of rights and statutes of limitation (prescription). Book 2 – The Law of Things (Property Law) regulates possession, ownership, property rights and security interests. It is Book 3, containing the Law of Obligations that provides the framework for provisions relating to freedom of Contract, while books 4 and 5 govern family law and the law of inheritance respectively. The Code was drafted with the assistance of the German Development Agency (GTZ) and follows closely German norms and usages. In fact many, if not most of the provisions were copied verbatim from the *Bürgerliches Gesetzbuch* (BGB), often badly or incorrectly, and this has led to the necessity of frequent references to the BGB for clarification and interpretation of particular articles (this is actually a greater problem in the area of secured transactions, but do see Article 405 [Fixing additional time period in case of breach of Obligation] and Article 406 [Right to Receive Counter-performance] as examples of this issue.

Even if a commercial dispute resolution finally makes it through the courts, the actual enforcement can break down badly once it is handed over to the bailiff. At least in Tbilisi, which handles the vast bulk of commercial disputes, the bailiff's office is understaffed and under-funded. The head bailiff is well meaning and hard working but often does not possess the power to enforce in the face of resistance by the judgment creditor. Police or other state enforcement powers are needed to support this function.

Arbitration is often used in other countries as an alternative to the court system. In Georgia, arbitration decisions are binding and final and could provide a useful alternative system for dispute resolution. .

And finally, it should be noted that the business culture still retains a high tolerance for breach of contract, a legacy of the Soviet system that disavowed individual property rights at all levels. This problem will take longer to attack, but improvements in enforcement will go a long way to influence the culture and educate the participants on the importance of commercial contracts and their enforcement.

The discussion illustrates a number of areas where enforcement is deficient, whether it be enforcement of contractual obligations, of court judgments, of arbitral awards, or otherwise. Initial efforts should perhaps be focused on methods of removing the impediments without the necessity of amending existing provisions of the Civil Code relating to contract, introducing new legislation or changing or introducing new court regulations (such efforts will also likely be resisted by the GTZ and the German-dominated legal establishment in Georgia which will fear any innovation to traditional German civil practice). But if these means will not suffice, new legislative measures should be considered.

And though Georgia does have some strong professional associations (the Georgian Young Lawyers' Association merits particular note), various trade and industry associations remain weak.

II. Implementing Institutions

But despite such problems, a glance at the master indicators for contract law confirms the view that Georgia is generally considered to an adequate set of laws relating to contract, being drafted largely according to German principles as noted above. But as one begins to consider the courts as the primary implementing institution for contracting law in Georgia, we begin to encounter greater problems. The judiciary does appear to have a strong legislative base for its authority to decide cases to contracts and other civil commercial disputes, but it would appear that courts are provided with insufficient equipment and staff properly to carry out their activities. Judicial salaries are considered inadequate to attract and retain qualified judges, a state of affairs that has led to the frequent acceptance of unofficial payments by judges. And perhaps most importantly, judges are still often unfamiliar with the principles and concepts relating to contracts under the Civil Code, indicating intensified efforts in the area of judicial training. All of these factors have contributed to a generally unfavorable impression among legal practitioners and the private sector of the ability of the courts to resolve commercial contract disputes. This will likely require close cooperation with the High Council of Justice which has overtaken the responsibility for judicial selection and training from the Ministry of Justice.

Collateral Law

In reviewing the Legal Framework and the Implementing Institutions Development Indicators for Collateral Law, the Assessment Team's judgments clearly reflect the dichotomy seen throughout Commercial Law in Georgia: the comparative strength, or at least sufficiency, of the underlying laws (with occasional exceptions), and the overall weakness of implementing institutions and procedures. The total score for the Collateral Legal Framework, for instance, is a relatively strong 73%, while that for Implementing Institutions is a much weaker 41%. The total score for Supporting Institutions is an equally weak 42%. These scores serve to highlight the fundamental finding of the Assessment: that while there continues to be some need for legislative and regulatory drafting assistance to aid in improving the Legal Framework of various commercial laws, the much stronger need is for assistance to implementing institutions and procedures, designed to improve the implementation of commercial laws that are already in place.

B.1	LEGAL FRAMEWORK - COLLATERAL	REF.	Score	%
Forms of Collateral		140	94	67%
1	The Collateral Law recognizes and provides for:			
	a. direct personal guarantees.	10	8	
	b. third-party guarantees.	10	8	
	c. bank guarantees.	10	9	
	d. non-possessory pledges in tangibles.	10	7	
	e. property interests that allow holders to execute against secured property.	10	7	
	f. general (or generic) description of items subject to security interests.	10	9	
	g. pledges which cover after-acquired property.	10	9	
	h. values expressed in foreign currency.	10	2	
2	The Collateral Law recognizes and provides for specialized pledges on:			
	a. accounts receivable.	10	3	
	b. shares.	10	9	
	c. specified groups of goods or objects.	10	10	
	d. warehouse receipts and other documents of title.	10	10	
	e. agricultural produce.	5	1	
	f. livestock.	5	2	
	g. an enterprise as a going concern.	10	0	
Establishment and registration		50	37	74%
3	The Collateral Law clearly defines:			
	a. the requirements for establishing a secured interest.	10	8	
	b. the procedures for registering a secured interest.	10	8	
	c. priorities and their legal basis.	10	7	
	d. rights of third-party, bona fide purchasers.	10	6	
4	The Collateral Law separately defines and delineates the use of possessory pledges.	10	8	
Enforcement Procedures		50	37	74%
5	The Legal Framework specifies mechanisms and procedures for:			
	a. judicial enforcement, including accelerated enforcement proceedings.	10	6	
	b. self help.	10	6	
	c. satisfaction or extinction of secured interests.	10	8	
	d. sales of secured property.	10	8	
6	The Collateral Law specifies responsibility for unauthorized disposal of the collateralized property by the debtor.	10	9	
Definition of Implementing Institution: Collateral		40	37	93%

Registry				
7	The law clearly defines:			
	a. The institution or institutions responsible for implementation.	10	10	
	b. The roles, responsibilities and operational procedures of each relevant institution.	10	7	
8	The law requires that the institution(s) render decisions relating to the law:			
	a. Based on published laws, regulations and standards.	10	10	
	b. Through written documentation clearly setting forth the basis for the decision.	10	10	
TOTAL FOR COLLATERAL -- LEGAL FRAMEWORK		280	205	73%

B.2	IMPLEMENTING INSTITUTIONS COLLATERAL	REF.	SCORE	%
Collateral Registrar: Organization		70	25	36%
1	The Collateral Registrar, or other institution responsible for registration of collateral, has the following characteristics:			
	a. a clearly defined mandate to implement collateral law.	5	3	
	b. sufficient staffing to carry out its mandate.	5	0	
	c. sufficient authority and support to carry out its mandate, including clear policy statements and support from the government.	5	4	
	d. sufficient funding through state budget, fees collected, or a combination of both to maintain its equipment and services.	5	1	
	e. detailed internal regulations and operating procedures.	5	2	
	f. an active staff training and development program utilizing appropriate training materials, guidebooks or procedural manuals to improve staff competency and service.	5	1	
2	There is general consistency in understanding the Registrar's role and functions among the government, the Registrar and the end users.	10	3	
3	The Registrar has adopted a "customer-oriented" approach to fulfilling its mandate.	10	2	
4	The Registrar is sufficiently decentralized to enable users throughout the country to have reasonable access.	10	9	
5	The Registrar has an active, current web site, including contact information, registration requirements, and relevant legal materials.	10	0	
Collateral Registrar: Operations		110	40	36%
6	Primary Services: Registration of collateral			
	a. The Registrar distributes (or makes available for a nominal fee) copies of all procedures, relevant laws, government regulations, fee schedules and other information governing registration and any other activities.	10	2	
	b. The procedures for registration or de-registration are transparent, clear and consistent.	10	2	
	c. The manner in which the Registrar executes the registration procedures is perceived by the end users to be transparent, non-discretionary, non-discriminatory and relatively bribe-free.	10	1	

	d. When rejecting a registration, the Registrar provides a written explanation based on published law and regulations.	10	1	
	e. The Registrar provides certified copies of records for a nominal fee.	5	2	
	g. The registration process is computerized.	5	1	
	h. Records contain sufficient data for identification of the debtors or their legal successors.	10	7	
	i. Records clearly indicate priority of security interests.	10	9	
	j. The cost and procedures for registration are perceived as reasonable by the business community.	10	7	
	k. It takes no more than one day to register a collateral interest in movables.	10	0	
7	Secondary Services			
	a. The Registrar produces and publishes periodic newsletters, reports or other informational pieces intended to increase end-user awareness.	5	1	
	b. The Registrar maintains and publishes statistics on total entries in various collateral categories (e.g. vehicles, other equipment, floating liens on generic goods, etc.).	5	1	
	c. The Registry provides reasonable public access to collateral registration records.	10	6	
B.2	IMPLEMENTING INSTITUTIONS COLLATERAL	REF.	SCORE	%
Courts		55	32	58%
8	Courts are empowered to hear:			
	a. suits against the Collateral Registrar for failure to comply with laws governing collateral registration.	5	5	
	b. claims, including accelerated claims, for execution on collateral for non-payment.	5	4	
	c. injunctions against or damages for inappropriate use of self-help mechanisms.	5	2	
9	The business community considers the courts generally competent to hear suits relating to collateral law.	10	6	
10	The business community generally finds that the courts decide cases:			
	a. in accordance with clear, published laws, regulations and standards.	5	2	
	b. without regard to the nationality or residence of the litigants.	5	4	
	c. in a transparent manner evidenced through published decisions.	10	7	
	d. independently, without regard to inappropriate political pressures or non-judicial considerations.	10	2	
TOTAL FOR COLLATERAL -- IMPLEMENTING		235	97	41%

INSTITUTION				
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B.3	SUPPORTING INSTITUTIONS COLLATERAL	REF	SCORE	%
Government Entities		20	18	90%
1	Notary services for Collateral registration and other needs under Collateral law are perceived by end users as:			
	a. relatively inexpensive.	n/a		
	b. sufficiently available throughout the country.	n/a		
	c. not overly complex or burdensome.	n/a		
2	The business community perceives that enforcement agents (e.g., bailiffs):			
	a. possess adequate authority to execute judgments against collateral.	5	5	
	b. are effective in enforcing judgments against collateral.	5	5	
3	Creditors do not generally resort to extra-legal enforcement mechanisms (e.g., thuggery) to enforce their interests in a debtor's property.	10	8	
Professional Associations		30	16	53%
4	Accountants apply Generally Accepted Accounting Principles (GAAP) or other internationally recognized standards and norms to valuations of collateralized property.	10	3	
5	Lawyers' associations have specialized groups dedicated to Collateral Law issues.	10	8	
6	Professional associations regularly propose amendments and modifications to the content and implementation of Collateral Laws.	10	5	
7	Professional associations are generally satisfied with operations of the Collateral Registrar and have a collaborative working relationship with the officials of the Registrar.	n/a		
Specialized Services		20	1	5%
8	Filing and registration services are available through banks and other private-sector service providers at a cost and quality considered reasonable by the end users.	n/a		
9	Universities, foundations and think tanks regularly examine and issue reports and opinions on content and enforcement of Collateral Law.	10	1	
10	Specialized publishers, in collaboration with the Collateral Registry and professional associations, develop and print standardized forms for most common transactions.	10		
11	Seminars and conferences on Collateral law and new Collateral formation are available and are conducted on a for-pay basis - i.e., not funded by foreign donor agencies.	n/a		
Trade and Special		50	15	30%

Interest Groups				
12	Banking associations, business groups and chambers of commerce actively monitor Collateral Law practice and developments, and issue opinions and appeals for change based on the results of monitoring	10	1	
13	Local media report on Collateral Law issues in a manner supportive of modern collateral law.	5	1	
14	Foreign investor associations provide input to policy makers and business associations on international standards in Collateral Law	10	2	
15	Specialized professional publications report regularly and accurately on matters related to Collateral law, giving the business community and general public a greater understanding of Collateral-related issues	10	2	
16	General private sector confidence in Collateral Law environment is demonstrated by dynamic growth in the use of collateral transactions as a source of corporate financing.	15	9	
TOTAL FOR COLLATERAL -- SUPPORTING INSTITUTIONS		120	50	42%

B.4	MARKET FOR MODERN COLLATERAL SYSTEM	REF.	SCORE	%
Market for Improved Laws		155	27	17%
	Demand for Improved Laws	75	27	36%
	Government	30	12	40%
1	One or more high-level government officials champion the cause of a modern collateral system.	10	3	
2	Elected politicians regularly espouse positions supporting adoption and implementation of a modern collateral system.	10	1	
3	International lending institutions and donor agencies provide assistance to or condition loans upon reform of the Collateral Law regime.	10	8	
	Private Sector	45	15	33%
4	Professional associations, trade and special interest groups:			
	a. have specialized sections or committees dedicated to Collateral Law or secured-lending issues.	5	2	
	b. have established formal mechanisms with policy makers for providing input and feedback on Collateral Law issues.	5	1	
	c. regularly provide substantive input and feedback (including studies, statistics, policy documents, etc.) to policymakers on Collateral Law issues.	5	1	
	d. provide draft laws, comments on regulations, suggested amendments and similar input to lawmakers on Collateral Law issues.	5	2	
	e. conduct programs and events for their members and the general public to promote better understanding of the benefits of a modern collateral system.	5	1	
5	Financial institutions, other lenders, and equipment and vehicle vendors actively lobby the government to improve the collateral-lending system.	10	7	
6	Universities offer courses on Collateral Law and secured lending that support market-oriented collateral systems.	10	1	
B.4	MARKET FOR MODERN COLLATERAL SYSTEM	REF.	SCORE	
Market for Improved Laws (continued)				
	Supply of Improved Laws	160	62	39%
	Government	100	47	47%
7	The government has created an environment generally supportive of liberalized collateral, including:			

	a. stable macroeconomic policy.	5	2	
	b. freely convertible currency.	5	5	
	c. clearly stated policies promoting enforcement of secured transaction contracts.	5	2	
	d. an annual legislative agenda for reform and modernization of the commercial lending sector, including collateral lending, that is actively pursued.	5	0	
8	The government (through a specialized unit or otherwise) has the technical capacity to draft laws and regulations necessary for improved collateral policy.	10	6	
9	The Government provides for meaningful private sector participation in the legal reform process by:			
	a. making copies of laws, regulations, instructions, application forms and similar subsidiary instruments readily available (e.g., in bookstores) to the business community or other end user.	10	8	
	b. providing the business community with meaningful notice of and opportunity to comment on draft laws or legislative amendments affecting collateral and secured lending:			
	1. before they are submitted for legislative approval.	10	5	
	2. before they become effective.	10	5	
	c. providing the business community with meaningful notice of and opportunity to comment on draft <i>implementing regulations</i> :			
	1. before they are submitted for legislative approval.	10	5	
	2. before they become effective.	10	5	
10	Formal mechanisms for soliciting input from the business and professional community for formulating and amending collateral and secured lending policy:			
	a. have been established by the government.	5	1	
	b. are actively used by the government.	5	1	
	c. according to the business and professional communities, generally satisfy private sector demand for providing input.	10	2	
	Private Sector	60	12	20%
	Supply of laws, amendments, regulations and policies by the government is judged sufficient by the private sector in the following ways:			
11	The business and professional communities perceive the legal and regulatory environment with regard to collateral generally to be:			
	a. stable, with stability evidenced by			
	1. infrequent changes to relevant laws and regulations.	5	3	
	2. a relative lack of conflicting laws and regulations.	5	2	

	b. predictable, evidenced by relative consistency in interpretation and enforcement of major laws and regulations.	10	3	
	c. transparent in that equal treatment is generally accorded for end users in similar positions and circumstances.	10	7	
B.4	MARKET FOR MODERN COLLATERAL SYSTEM	REF.	SCORE	
Market for Improved Laws (continued)				
	Supply of Improved Laws (continued)			
	Private Sector (continued)			
12	The business and professional communities perceive the laws and regulations issued by the government with respect to collateral to be relatively:			
	a. precise in that they can be generally read and understood by a business person (or end user) and provide adequate indication of what is required thereunder.	n/a		
	b. complete in that they address the main needs of the business community and do not contain significant gaps.	n/a		
	c. responsive to their needs as reflected in "favorable" (e.g., pro-business) policy measures.	10	4	
13	The business and professional communities generally feel that they have a meaningful role to play in shaping policy reform in area of collateral.	10	4	
14	The business and professional communities generally feel that the state is effectively meeting basic needs for legal reform in the area of collateral.	10	5	
Market for Effective Implementing Institutions		20		0%
	Demand for Effective Implementing Institutions	20		0%
	Government	10		0%
15	One or more high level government officials with responsibility for the implementation of Collateral Law champion the cause of more efficient and effective provision of services by the Collateral Registry.	n/a		
16	The director of the Collateral Registry is committed to improving services and responsiveness to end-user needs.	n/a		
17	A formal mechanism exists for reviewing the performance and effectiveness of the Collateral Registry on a regular basis (at least annually).	n/a		

18	International lending institutions and donor agencies have instituted assistance programs with the government to upgrade and improve the Collateral Registry.	10		
Private Sector		10	0	0%
19	The business community understands and agrees with the service mandate of the Collateral Registry.	n/a		
20	The business community regularly uses the services of the Collateral Registry.	n/a		
21	In service areas where the Collateral Registry or enforcement agents are weak, the private sector offers competing or replacement services to fill the gap.	10	0	
Supply of Effective Implementing Institutions		0		
Government		0		
22	The Collateral Registry actively utilizes:			
	a. an internal plan, reviewed annually, for improving services provided to the private sector and government.	n/a		
	b. a system of accountability for its performance to the government institution responsible for its oversight.	n/a		
	c. a mechanism for obtaining feedback from the private sector on the cost and quality of its services.	n/a		
23	The Collateral Registry provides a written basis for all decisions made based on existing, published law.	n/a		
B.4	MARKET FOR MODERN COLLATERAL SYSTEM	REF.	SCORE	%
Market for Effective Implementing Institutions (continued)				
Supply of Effective Implementing Institutions (continued)				
Government (continued)				
24	The implementing institution makes all regulations, forms, applications and other important documents and information available to the end-users.	n/a		
Private Sector		0		0%
The provision of services and execution of functions is considered satisfactory by the private sector in the following ways:				
25	End-users feel that the manner in which the Collateral Registry supplies services is:			
	a. transparent.	n/a		
	b. non-discretionary.	n/a		
	c. non-discriminatory.	n/a		
	d. reasonably priced.	n/a		

26	End-users feel that they have adequate opportunities to provide feed-back to the Collateral Registry on its performance.	n/a		
27	The general business and professional communities consider to be decisions made by the Collateral Registry to be:			
	a. predictable for similar facts and circumstances.	n/a		
	b. appropriate under existing law.	n/a		
	c. understandable.	n/a		
	d. generally supportive of liberalized collateral.	n/a		
Market for Supporting Institutions		60		0%
Demand for Supporting Institutions		30	11	37%
28	Private sector supporting institutions provide services needed for an efficient operation and improvement of collateral law in each of the following sectors:			
	a. professional associations.	10	5	
	b. specialized services.	10	3	
	c. trade and special interest groups.	10	3	
	For specialized services, there are generally competing service providers.	n/a		
Supply of Supporting Institutions		30	18	60%
29	The business community generally considers the supporting institutions for subject matter area to be adequate in facilitating or supporting the implementation of the framework law in terms of:			
	a. number of institutions.	10	7	
	b. quality of institutions.	10	6	
30	A sufficient mass of private sector associations supports a free-market collateral system to counterbalance any groups that might unduly restrict or burden secured lending.	10	5	
SUB-TOTAL -- DEMAND		125	45	36%
SUB-TOTAL -- SUPPLY		190	80	42%
TOTAL FOR COLLATERAL -- MARKET		315	125	40%

Bankruptcy Law

The status of the Law on Bankruptcy, as with many commercial laws in Georgia, can be described as “workable,” in terms of the legislation, but sadly lacking in terms of implementation. The overall rating for the Bankruptcy Legal Framework is 71%, compared with the much lower total for Bankruptcy Implementing Institutions of 51%.

Implementation is rated especially low for the courts – 48% - as well as for the administrators – 53%. Interviews by the Assessment Team echoed these conclusions: the administration of bankruptcy proceedings is confused and in some cases ineffective. Private sector confidence in Bankruptcy Law and Procedures is only 10% and as a result almost no proceedings are initiated.

Future initiatives should focus on institution-building for the courts and for the administrators, including education/training in the theory and the procedures of an effective bankruptcy system.

A.1 LEGAL FRAMEWORK BANKRUPTCY		REF.	SCORE	%
Bankruptcy Law		90	66	73%
1	A bankruptcy law of national application is in place.	10	10	
2	No direct conflict exists between the bankruptcy law and related laws concerning secured transactions and collateral.	10	6	
3	The law provides an efficient balance among stakeholders in controlling the process (e.g., secured lenders, unsecured lenders, the debtor, employees, the government and shareholders).	10	3	
4	The bankruptcy law does not make a distinction between foreign creditors/debtors and domestic parties.	5	5	
5	The role of the courts or implementing institutions is clearly defined in the bankruptcy law.	10	4	
6	The assets which are subject to the bankruptcy law and those which are excluded are clearly defined.	10	8	
7	The law does not treat for-profit and non-for-profit entities differently for the purposes of bankruptcy.	5	5	
8	The following persons are within the scope of the bankruptcy law:			
	a. natural persons;	5	5	
	b. legal persons; and	5	5	
	c. state-owned or controlled enterprises.	5	2	
9	The bankruptcy law or separate legislation deals with insolvency of financial institutions.	5	3	
10	Prior indebtedness can be expunged through operation of the bankruptcy law.	10	10	
Commencement of Proceedings and the Filing of Claims		140	103	74%
11	The triggering events for initiating bankruptcy proceedings are clearly defined.	10	8	
12	The bankruptcy law primarily employs a liquidity/cash flow standard for insolvency (insolvency is triggered when the debtor is unable to meet its liabilities as they fall due).	5	5	
13	The bankruptcy law also recognizes a balance-sheet test as a trigger criterion.	5	5	
14	The bankruptcy law places an obligation on the debtor to initiate proceedings when insolvent.	10	7	
15	The bankruptcy law or related legislation also provides sanctions if the debtor fails to initiate proceedings when insolvent.	5	4	
16	A governmental agency (public prosecutor's office or, for regulated entities like financial institutions, the relevant regulatory agency) has the right to initiate proceedings.	10	8	
17	The law limits the discretion of the courts or other implementing institution in deciding whether to commence bankruptcy proceedings.	5	4	
18	A bankruptcy proceeding starts with the filing of an insolvency petition.	5	5	
19	The law protects debtors against the abusive filing of a petition by their creditors that could result in harm to the debtor enterprise.	10	1	

20	The definition of a claim is clearly defined in the bankruptcy law.	10	10	
21	The claims determination procedure:			
	a. is open to all creditors and does not impose additional costs for filing of claims.	5	5	
	b. establishes clear order and priority for claims.	10	9	
	c. provides sufficient data that allows for the identification of the property of the debtor and the legal successor.	5	3	
	d. provides for identification of which of the debtor's obligations are secured transactions.	5	5	
A.1	LEGAL FRAMEWORK BANKRUPTCY	REF.	Score	
Commencement of Proceedings and the Filing of Claims (continued)		20	12	60%
22	The creditor has the right to set-off mature claims against the debtor that arose before the filing of the petition.	5	5	
23	If secured creditors are involved, the collateral is valued at the time of the opening of the proceedings	5	1	
24	The secured creditor can request a release of the collateral if it is not adequately protected.	5	2	
25	The part of a secured claim not recovered through the sale of the collateral is recognized as an unsecured claim.	5	4	
Reorganization		60	38	63%
26	The law allows for reorganization whereby a majority of the creditors can reach a settlement with the debtor that is binding on all creditors.	10	9	
27	The bankruptcy law encourages reorganization of companies whose liquidation value is less than the value of the going concern.	10	7	
28	The law allows for debt forgiveness in reorganization situations.	5	5	
29	No more than a two-thirds majority is required for approval of a reorganization plan.	5	3	
30	The voting requirements for creditor approval of reorganization proposal are defined in the bankruptcy law.	5	5	
31	The law provides for a stay of legal proceedings by all creditors during a reorganization.	10	6	
32	The law requires an expert opinion regarding the feasibility of a reorganization plan.	5	3	
33	The bankruptcy law provides for the concept of a "debtor in possession", where the debtor continues to operate the enterprise on a day-to-day basis, but under close supervision of a bankruptcy administrator ("Administrator").	10	0	
Liquidation		205	144	70%
34	The bankruptcy law provides for the appointment of an Administrator (e.g., liquidator or trustee) during liquidation proceedings.	10	10	
35	The role of the Administrator is clearly defined in the bankruptcy law.	10	6	
36	The duties of the Administrator include the authority to:			
	a. investigate the debtor's financial affairs.	5	3	
	b. verify the claims of all creditors.	5	5	
	c. dispose of the assets in a liquidation.	10	8	

	d. distribute proceeds of a liquidation.	5	5
	e. review suspect transactions and challenge them.	10	7
	f. reject or assume pre-insolvency contracts, so long as the contract has not been fully or substantially executed by the parties involved.	5	5
	g. assign contractual rights, even in the case of a contractual "non-assignment" clause.	5	0
	h. take on all rights of the directors and the role of the management of the debtor.	10	10
37	The bankruptcy law or related legislation requires Administrators to have special qualifications (e.g., license, experience as an accountant or financial professional).	5	2
38	Creditors have a right to propose and recommend an Administrator.	5	5
39	The court has the authority to formally appoint and monitor the work of the Administrator.	5	5
40	The Creditor's meeting or a credit committee has the right to dismiss and replace the court-appointed Administrator with its own appointee.	5	2
A.1	LEGAL FRAMEWORK BANKRUPTCY	REF.	Score
	Liquidation (continued)		
41	The Administrator can be held liable and disqualified in the event that he breaches his fiduciary duties.	10	7
42	There is a specific government body which regulates Administrators.	5	0
43	The law creates a presumption that certain transactions between a debtor and third parties are reviewable and void including:		
	a. transactions between related parties (i.e., not at arm's length);	10	7
	b. below fair (market) value; and	10	5
	c. anticipatory or fraudulent transfers.	10	8
44	The exclusion period for voidable transfers is defined to be six months or more.	5	5
45	Secured claims have first priority during bankruptcy proceedings (even over the cost of proceedings, government taxes, employee wages).	10	7
46	The following transactions are protected from interference by the Administrator or the court:		
	a. transactions concluded in the normal course of business prior to the filing of the petition.	5	4
	b. asset transfers made prior to the filing of the petition and in exchange for consideration equal to the fair market value of the asset transferred.	5	4
47	Directors or management of the company may be held liable for:		
	a. continuing to do business before a company is declared legally insolvent if they have knowledge that the company has no reasonable prospect of meeting its obligations.	5	5
	b. providing false or inaccurate information to the Administrator or creditors.	5	5
	c. permitting reviewable or voidable transactions.	10	5

48	The Administrator has the power to sell and dispose of the debtor's assets without court approval in most cases.	5	4	
49	The bankruptcy law protects a foreign currency creditor against inflation when it provides for conversion of the debt into local currency.	5	1	
50	The bankruptcy law provides for:			
	a. a public auction.	5	0	
	b. a private sale of assets in the case of liquidation of the debtor enterprises.	5	4	
TOTAL FOR BANKRUPTCY -- LEGAL FRAMEWORK		495	351	71%

A.2	IMPLEMENTING INSTITUTION: BANKRUPTCY	REF.	SCORE	%
Courts: Organization		55	35	64%
1	The laws establishing the Courts as implementing institutions in bankruptcy proceedings:			
	a. clearly identify the Courts as the institution for overseeing bankruptcy cases.	5	5	
	b. provide a clear mandate for the Courts' jurisdiction.	5	5	
	c. define relevant procedures for judicial oversight of bankruptcy proceedings.	5	5	
2	The Bankruptcy Court, or other institution responsible for the implementation of the bankruptcy law, has the following characteristics:			
	a. a clearly defined mandate to implement the bankruptcy law.	5	5	
	b. sufficient staffing to carry out its mandate.	5	3	
	c. sufficient authority and support to carry out its mandate, including clear policy statements and support from the government.	5	1	
	d. sufficient funding through the state budget, fees collected, or a combination of both to maintain its equipment and services.	5	2	
	e. detailed internal regulations and operating procedures.	5	3	
	f. an active staff training and development program utilizing appropriate training materials, guidebooks or procedural manuals to improve staff competency and service.	5	1	
3	There is a general consistency in the understanding of the role of the courts among the government, the courts and end users (creditors, shareholders, management).	5	4	
4	The Courts maintain an active web site that includes contact information, bankruptcy filing requirements and related legal materials.	5	1	
Courts: Operations		170	82	48%
5	Courts are established and operating effectively with respect to :			
	a. commencement of bankruptcy proceedings.	10	7	
	b. closure of liquidation proceedings.	10	3	
6	Judges who oversee bankruptcy cases:			
	a. are knowledgeable about the bankruptcy law.	5	2	
	b. have received enough training and experience to develop an expertise in bankruptcy procedures.	5	2	
7	The Court provides access (free or for a nominal fee) to copies of all procedures, relevant laws, government regulations, fee schedules and other relevant information concerning the commencement and completion of bankruptcy procedures.	5	5	
8	The procedures for the commencement and the closure of a bankruptcy proceedings are	10	6	

	transparent and consistently applied.			
9	When rejecting a claim, the Courts provide a written explanation based on published laws and regulations.	10	8	
10	The Courts are perceived as effective in overseeing reorganization proceedings and settlement discussions between creditors and the debtor.	10	4	
11	The business community perceives the Courts and the judiciary as interpreting the bankruptcy law in a consistent manner.	10	2	
12	Judges and court personnel receive training concerning implementation of the bankruptcy law.	5	2	
13	The business community considers the Courts generally as knowledgeable about bankruptcy law.	5	2	
14	The business community does not perceive of delays or backlog in bankruptcy proceedings as a problem.	5	0	
15	The business community believes that the assessment of claims is done in a fair and transparent manner.	10	2	
16	The Courts have used their enforcement powers effectively with respect to:			
	a. debtors who have not filed for bankruptcy as required by the bankruptcy law.	5	4	
	b. management of the company for activities done in violation of the bankruptcy law.	5	4	
	c. administrators who have violate relevant provisions of the bankruptcy law or other ancillary regulations.	5	4	
17	The business community generally perceives that the sale of assets is done in a fair and transparent manner.	10	3	
18	Courts are adequately staffed with trained judges.	10	4	
A.2	IMPLEMENTING INSTITUTION: BANKRUPTCY	REF.	SCORE	
Courts: Operations (continued)				
19	The Courts provide sufficient salaries to attract and retain qualified bankruptcy judges.	5	2	
20	The costs associated with bankruptcy proceedings (e.g., courts costs and the Administrator's fees) are not a disincentive for creditors to file a bankruptcy petition with the Court.	5	4	
21	The bankruptcy filing system is computerized.	5	0	
22	The Courts maintain and publish reports of bankruptcy decisions and make these readily available to the public.	10	5	
23	The Courts provide reasonable access to bankruptcy records, including petitions and claims.	5	3	
24	The Courts collect data on bankruptcy proceedings and make the information readily available to end users.	5	4	
Administrators:		45	24	53%

Organization				
25	The laws establishing Administrators as an implementing institution for reorganization and liquidation proceedings:			
	a. clearly identify Administrators as an institution for directly overseeing reorganization and liquidation procedures.	5	4	
	b. provide a clear explanation of the powers and authorities of the Administrator.	5	3	
	c. define relevant procedures or mandate relevant procedure for the appointment of Administrators (by the Courts or creditors).	5	4	
	d. designate a primary government body or the Courts as the entity responsible for monitoring and regulating Administrators.	5	1	
26	Administrators (as an institutional grouping) have the following characteristics:			
	a. a clearly defined mandate to oversee the reorganization or liquidation of an insolvent entity.	5	5	
	b. sufficient staffing (or supply of Administrators) to carry out their mandate.	5	1	
	c. sufficient authority and support to carry out their mandate, including clear place statements and support from the government.	5	1	
	d. sufficient funding, through the state budget, fees, collected or a combination of both, to maintain its services.	5	1	
27	There is a general consistency in the understanding of the role of Administrators among the government, the Courts, the Administrators and end users (creditors, shareholders, management)	5	4	
Administrator: Operations		65	30	46%
28	There is a sufficient number of Administrators available for Court appointment during bankruptcy proceedings.	5	5	
29	There is a growing number of qualified Administrators who have previous experience or relevant expertise and credentials.	5	3	
30	The business community perceives of Administrators as fair and efficient in the fulfillment of their duties.	10	4	
31	Generally, Administrators have used their powers effectively to:			
	a. investigate the debtor's financial affairs.	5	2	
	b. verify the claims of all creditors.	5	3	
	c. dispose of assets in a liquidation.	5	4	
	d. distribute the proceeds of a liquidation.	5	2	
	e. review suspect transactions and challenge them.	5	1	
	f. reject or assume pre-insolvency contracts.	5	2	
	g. assign contractual rights.	5	1	
	h. take on the role of directors and management of the debtor.	5	3	

	i. sell the debtor's property in a public auction or judicial proceeding.	5	0	
TOTAL FOR BANKRUPTCY IMPLEMENTING INSTITUTIONS		335	171	51%

A.3	SUPPORTING INSTITUTIONS BANKRUPTCY	REF.	SCORE	%
Government Entities		60	33	55%
1	The business community perceives that enforcement agents (e.g., bailiffs) possess adequate authority to execute judgments against the debtor estate.	5	2	
2	The business community perceives that enforcement agents (e.g., bailiffs) are effective in enforcing judgments against the bankrupt party's property.	10	3	
3	The supply of notaries is sufficient to meet the business community's demand with respect bankruptcy filings.	5	5	
4	Creditors do not view notarial fees are an impediment to registering their security interests.	5	4	
5	Creditors do not generally resort to extra-legal enforcement mechanisms to enforce their interest in a debtor's property.	10	5	
6	The Prosecutor initiates bankruptcy proceedings against debtors.	5	0	
7	Courts and/or company registries maintain readily accessible-to-date public records on bankruptcy, judgments and other issues relating to bankruptcy and creditworthiness of natural and legal persons.	10	7	
8	The Collateral Registrar maintains records that are easily accessible concerning pledges on a debtor's estate.	10	7	
Professional Associations		30	14	47%
9	Professional associations, including lawyers' associations, accountants and bankers, support bankruptcy law development by proposing changes and refinements to the bankruptcy law and related commercial laws.	5	3	
10	Lawyers' associations have engaged in legal education and training programs for members of the bar concerning the bankruptcy law and related legislation.	5	3	
11	Accountants apply generally accepted accounting principles (GAAP) or other international recognized standards and norms to asset valuations insolvent economic entities.	5	4	
12	Lawyers' associations have specialized groups dedicated to bankruptcy law issues.	5	4	
13	Administrators (liquidators, trustees) have formed a professional or trade association.	10	0	
Specialized Services		55	25	45%
14	Bankruptcy lawyers or practitioners are developing as a specialized sector of the bar.	10	0	
15	Filing and registration services available through banks and other private-sector service providers are considerable adequate and reasonably priced.	5	4	

16	Seminars and conferences on bankruptcy law and procedure are available and are conducted on a for-pay basis (e.g., not funded by foreign donor agencies).	5	0	
17	Appraisal or accountancy firms are perceived by the business community as providing fair valuation of debtor assets.	10	5	
18	Appraisal firms use GAAP and other international standards when providing appraisal of the value of debtor assets.	5	4	
19	Universities (law faculties, business schools) increasingly deal with issues of bankruptcy in support of the development of a market economy.	10	5	
20	Professors have published academic treatises or interpretations of bankruptcy law to provide courts and lawyers with guidance in implementing the law.	5	4	
21	Management consultants provide services to the management of debtor companies with respect to reorganization and exist strategies (pre insolvency as well as during reorganization).	5	3	
22	If private repossession of collateral is permitted, private enforcement agents (repossession companies) are actively involved in repossessing property.	n/a	0	
23	Private repossession companies follow the relevant legal procedures and are perceived as fair in their enforcement of creditors' rights as balanced against the rights of the debtor.	n/a	0	
A.3	SUPPORTING INSTITUTIONS BANKRUPTCY	REF.	SCORE	
Trade and Special Interest Groups		45	10	22%
24	Trade and industry associations have affiliations with international organizations and are involved in the harmonization of bankruptcy law and practice with international standards.	5	1	
25	Foreign investor associations provide input to policy makers and other trade associations on international standards in bankruptcy.	10	3	
26	The media has increased its reporting of bankruptcy cases and court decisions.	10	3	
27	Trade and industry associates are informed about technological developments as they relate to bankruptcy and commercial law and have advocated new commercial practices and reforms to existing law to accommodate changes (e.g., electronic filing of petition)	5	0	
28	Bankers' associations and other credit institutions remain actually involved in promoting the interest of secured creditors by advocating reform of bankruptcy legislation.	5	2	
29	General private sector confidence in bankruptcy law environment is demonstrated by consistent use of bankruptcy procedures when necessary (rather than looking for some extra-judicial or informal	10	1	

	procedures for debt recovery).			
TOTAL FOR BANKRUPTCY SUPPORTING INSTITUTIONS		190	82	43%

A.4.	MARKET FOR AN EFFECTIVE BANKRUPTCY SYSTEM	REF.	SCORE	%
Market for Improved Laws		345	52	15%
	Demand for Improved Laws	115	36	31%
	Government	45	16	36%
1	One or more high-level government officials champion the cause of liberalized trade in each of the following:			
	a. legislature.	5	2	
	b. the ministry responsible for policy relating to finance.	5	4	
	c. the bankruptcy courts.	5	0	
2	Elected politicians regularly espouse positions supporting improved bankruptcy policies.	10	1	
3	Foreign governments seek to include the country in bilateral or multilateral agreements related to bankruptcy, or seek to enforce existing agreements.	10	1	
4	International lending institutions and donor agencies provide assistance to or condition loans upon reform of the bankruptcy law regime.	10	8	
	Private Sector	70	20	29%
5	Professional associations:			
	a. have specialized sections or committees dedicated to bankruptcy law or policy issues.	5	1	
	b. have established formal mechanisms with policy makers for providing input and feedback on bankruptcy-related issues.	5	1	
	c. regularly provide substantive input and feedback (including studies, statistics, policy documents, etc.) to policymakers on bankruptcy-related issues.	5	2	
	d. regularly provide draft laws, comments on regulations, suggested amendments and similar input to lawmakers on bankruptcy-related issues.	5	3	
	e. conduct programs and events for their members and the general public to promote better understanding of the benefits of improved bankruptcy policies and practices.	5	2	
6	Trade and special interest groups:			
	a. have specialized sections or committees dedicated to bankruptcy law or policy issues.	5	0	
	b. have established formal mechanisms with policy makers for providing input and feedback on bankruptcy-related issues.	5	0	
	c. regularly provide substantive input and feedback (including studies, statistics, policy documents, etc.) to policymakers on bankruptcy-related issues.	5	1	

	d. regularly provide draft laws, comments on regulations, suggested amendments and similar input to lawmakers on bankruptcy-related issues.	5	1	
	e. conduct programs and events for their members and the general public to promote better understanding of the benefits of improved bankruptcy policies and practices.	5	1	
7	Financial institutions and other creditors actively lobby for improved bankruptcy laws and practices.	10	3	
8	Universities offer courses on bankruptcy-related issues that generally support compliance with international norms and best practices in bankruptcy.	10	5	
A.4.	MARKET FOR AN EFFECTIVE BANKRUPTCY SYSTEM	REF.	SCORE	
Market for Improved Laws (continued)				
	Supply of Improved Laws	205	80	39%
	Government	125	57	
9	The government has created an environment generally supportive of improved bankruptcy law and practices, including:			
	a. large scale privatization.	5	4	
	b. small scale privatization.	5	4	
	c. stable macroeconomic policy.	5	2	
	d. freely convertible currency.	5	5	
	e. clearly stated policies that government will not bail out creditors or debtors in bankruptcy situations.	5	2	
	f. active initiatives to combat fraudulent transfers and other abuses of creditors' rights.	5	2	
	g. an annual legislative agenda for bankruptcy policy reform that is actively pursued.	5	3	
10	A specialized administrative unit has been established to review existing or proposed laws and regulations with the aim of reducing the regulatory burden on the business community or other end user.	10	1	
11	The government (through a specialized unit or otherwise) has the technical capacity to draft laws and regulations necessary for improved trade policy.	10	7	
12	The Government provides for meaningful private sector participation in the legal reform process by:			
	a. making copies of laws, regulations, instructions, application forms and similar subsidiary instruments readily available (e.g., in bookstores) to the business community or other end user.	10	5	
	b. providing the business community with meaningful notice of and opportunity to comment on draft laws or legislative amendments affecting creditors' rights, insolvency and other bankruptcy issues:			

	1. before they are submitted for legislative approval.	10	5
	2. before they become effective.	10	9
	c. providing the business community with meaningful notice of and opportunity to comment on draft <i>implementing regulations</i> :		
	1. before they are submitted for legislative approval.	10	1
	2. before they become effective.	10	1
13	Formal mechanisms for soliciting input from the business and professional community for formulating and amending bankruptcy policy:		
	a. have been established by the government.	5	1
	b. are actively used by the government.	5	1
	c. according to the business and professional communities, generally satisfy private sector demand for providing input.	10	4
	Private Sector	80	23
	Supply of laws, amendments, regulations and policies by the government is judged sufficient by the private sector in the following ways:		
14	The business and professional communities perceive the legal and regulatory environment generally to be:		
	a. stable, with stability evidenced by		
	1. infrequent changes to relevant laws and regulations.	5	1
	2. a relative lack of conflicting laws and regulations.	5	1
	b. predictable, evidenced by relative consistency in interpretation and enforcement of major laws and regulations.	10	5
	c. transparent in that equal treatment is generally accorded for end users in similar positions and circumstances.	10	4
A.4.	MARKET FOR AN EFFECTIVE BANKRUPTCY SYSTEM	REF.	SCORE
Market for Improved Laws (continued)			
	Supply of Improved Laws (continued)		
	Private Sector (continued)		
15	The business and professional communities perceive the laws and regulations issued by the government to be relatively:		
	a. precise in that they can be generally read and understood by a business person (or end user) and provide adequate indication of what is required thereunder.	10	2
	b. complete in that they address the main needs of the business community and do not contain significant gaps.	10	2
	c. responsive to their needs as reflected in "favorable" (e.g., pro-business) policy measures.	10	3

16	The business and professional communities generally feel that they have a meaningful role to play in shaping policy reform in area of bankruptcy.	10	2
17	The business and professional communities generally feel that the state is effectively meeting basic needs for legal reform in the area of bankruptcy.	10	3
Market for Effective Implementing Institutions		160	68
Demand for Effective Implementing Institutions		70	18
Government		40	10
18	One or more high level government officials with responsibility for implementation champion the cause of more efficient and effective provision of services by the Bankruptcy Courts.	10	2
19	The officials in charge of Bankruptcy Courts are committed to improving services and responsiveness to end-user needs.	10	3
20	A formal mechanism exists for reviewing the performance and effectiveness of the Bankruptcy Courts and Administrators on a regular basis (at least annually).	10	1
21	International lending institutions and donor agencies have instituted assistance programs with the government to upgrade and improve the Bankruptcy Courts and Administrators.	10	4
Private Sector		30	8
22	The business community understands and agrees with the service mandate of the Bankruptcy Courts.	10	4
23	The business community regularly uses the services of the implementing institution.	10	4
24	In service areas where the implementing institutions are weak, the private sector offers competing or replacement services to fill the gap.	10	0
Supply of Effective Implementing Institutions		90	50
Government		40	23
25	The Bankruptcy Courts actively utilize:		
	a. an internal plan, reviewed annually, for improving services provided to the private sector and government.	5	0
	b. a system of accountability for its performance to the government institution responsible for its oversight.	5	2
	c. a mechanism for obtaining feedback from the private sector on the cost and quality of its services.	10	1
26	The Bankruptcy Courts provide a written basis for all decisions made based on existing, published law.	10	10
A.4.	MARKET FOR AN EFFECTIVE BANKRUPTCY SYSTEM	REF.	SCORE

Market for Effective Implementing Institutions (continued)			
	Supply of Effective Implementing Institutions (continued)		
	Government (continued)		
27	The Bankruptcy Courts make all regulations, forms, applications and other important documents and information available to the end-users.	10	10
	Private Sector	50	27
The provision of services and execution of functions is considered satisfactory by the private sector in the following ways:			
28	End-users feel that the manner in which the Bankruptcy Courts and Administrators supply services is:		
	a. transparent.	5	4
	b. non-discretionary.	5	2
	c. non-discriminatory.	5	2
	d. reasonably priced.	5	3
29	End-users feel that they have adequate opportunities to provide feed-back to the Bankruptcy Courts on their performance.	10	5
30	The general business and professional communities consider to be decisions made by the Bankruptcy Courts to be:		
	a. predictable for similar facts and circumstances.	5	3
	b. appropriate under existing law.	5	4
	c. understandable.	5	3
	d. generally supportive of international standards and best practices in bankruptcy law.	5	1
Market for Supporting Institutions		70	12
	Demand for Supporting Institutions	40	7
31	Private sector supporting institutions provide services needed for an effective bankruptcy system in each of the following sectors:		
	a. professional associations.	10	4
	b. specialized services.	10	1
	c. trade and special interest groups.	10	1
	For specialized services, there are generally competing service providers.	10	1
	Supply of Supporting Institutions	30	5
32	The business community generally considers the supporting institutions for subject matter area to be adequate in facilitating or supporting the implementation of the framework law in terms of:		
	a. number of institutions.	10	2
	b. quality of institutions.	10	2

33	A sufficient mass of private sector associations supports an effective bankruptcy system counterbalance groups who lobby for bailouts and special privileges.	10	1	
SUB-TOTAL -- DEMAND		225	61	27%
SUB-TOTAL -- SUPPLY		325	260	80%
TOTAL FOR TRADE -- MARKET FOR LIBERALIZED TRADE		550	321	58%

Company Law

Once again, the score for the Legal Framework (the legislation) for the Company laws is high: an overall 84% for the company law provisions of the Civil Code, the Law on Entrepreneurs and the Law on Securities Market. Ratings for the implementation of Company Laws, however, are lower: 47% for Company Registrar Operations, for instance, and only 60% for implementing institutions overall.

In addition to these overall ratings, special problems were found in both the legal framework of the Company Laws and in their implementation. Of particular concern is weakness in the Law on Entrepreneurs regarding corporate governance and especially shareholders' rights. Regarding implementation, action is needed to more effectively implement the registration and licensing provisions of the recent Law on Grounds for Issuance of Licenses and Permits for Entrepreneurial Activities (2002).

C.1	LEGAL FRAMEWORK COMPANY	REF.	SCORE	%
Incorporation forms and mechanics		85	69	81%
1	Company law provides for: a. joint stock companies. b. limited liability companies. c. limited partnerships. d. general partnerships. e. sole proprietorships.	5 5 5 5 5	5 5 5 5 5	
2	Procedures for registration and de-registration of companies are published, non-discretionary, non-discriminatory and simple.	10	7	
3	Company law provides appropriate flexibility for shareholders to establish or amend by-laws and charters as needed.	10	5	
4	Company law permits companies to adopt general purposes rather than requiring explicit statements of each economic activity to be pursued.	10	8	
5	Generally, no specific investment or state approvals are required to set up a general purpose business.	10	9	
6	Minimum capital requirements for establishing a company are reasonable and do not discourage legitimate entrepreneurial activity.	10	10	
7	Registration and licensing are handled separately for general purpose companies, and license procedures are transparent, commercially reasonable, non-discretionary, non-discriminatory, and required for reasonably few activities.	10	5	
Shareholder Rights		115	102	89%
8	Shareholders have the following rights: a. to participate in shareholders' meetings, in person or by proxy. b. to propose resolutions for voting. c. to vote in person or by proxy. e. to nominate and vote for directors, using cumulative voting. f. to participate in profits in the form of dividends. g. to assert claims upon liquidation of the company. h. to alienate shares without undue encumbrance. i. to exercise pre-emptive rights on the offering of new shares. j. to redeem their shares at market value in limited situations involving fundamental changes or transactions. k. to bring suit on behalf of the company ("shareholder derivative suits") if the company management does not act to protect the company's interests. l. to inspect the books and share registry of the company upon reasonable notice and with a minimum shareholding of 5-10%.	10 5 10 5 10 5 5 5 5 10 5	7 5 10 2 10 5 3 5 5 10 4	

9	For shares with voting rights, all shares of the same class must be treated equally ("one share/one vote" principal is respected).	10	10	
10	The law establishes and permits expansion of super-majority voting requirements for fundamental changes or transactions.	10	10	
11	The law provides shareholders with the legal means to enforce the rights described above.	10	6	
12	Liability of shareholders in joint stock companies for the obligations or debts of the company is limited, absent fraud or other serious abuse by shareholders.	10	10	
Creditor Rights		20	12	60%
13	Contracts with third parties (including employees and creditors) are adequately enforceable against the company.	10	7	
14	Creditors are adequately protected from fraud, self-dealing and preferential transfers by obtaining redress from personal assets of officers and shareholders ("piercing the corporate veil") in appropriate circumstances.	10	5	
C.1	LEGAL FRAMEWORK COMPANY	REF.	SCORE	
Officers, Directors and Governance		90	80	
15	The company law is generally compatible with international standards of corporate governance in establishing mechanisms for:			
	a. strategic guidance of the company.	5	4	
	b. effective monitoring of management by the board.	5	4	
	c. accountability of the board to the company and shareholders.	10	5	
16	Company directors and senior officers are legally required to avoid activities that create a conflict with the interests of the company or the shareholders, such as involvement in competing businesses.	10	7	
17	Standards of care ("fiduciary duties") are defined for directors and officers.	10	10	
18	Company directors may be held personally liable for actions that are harmful to the interests of the company.	10	10	
19	The law requires that an external auditor review and approve the company's annual financial statements.	10	10	
20	Companies are required to make timely and accurate disclosure on all material matters regarding the corporation, including the financial situation, performance, ownership and governance of the company.	10	10	
21	Company charters and bylaws are legally enforceable.	10	10	
22	The law requires an adequate system of share registration	10	10	
Definition of		40	32	80%

Implementing Institution				
23	The law clearly defines:			
	a. the institution or institutions responsible for implementation of laws relating to investment, including foreign investment.	10	10	
	b. the roles, responsibilities and operational procedures of each relevant institution.	10	5	
24	The law requires that the institution(s) render decisions relating to the law:			
	a. based on published laws, regulations and standards.	10	10	
	b. through written documentation clearly setting forth the basis for the decision.	10	7	
TOTAL FOR COMPANY FRAMEWORK LAW		350	295	84%

C.2	IMPLEMENTING INSTITUTIONS COMPANY	REF.	SCORE	%
Company Registrar: Organization		70	44	63%
1	The Company Registrar, or other institution responsible for registration of companies, has the following characteristics:			
	a. a clearly defined mandate to implement the company law.	5	5	
	b. sufficient professional and administrative staffing to carry out its mandate.	5	4	
	c. sufficient authority and support to carry out its mandate, including clear policy statements and support from the government.	5	5	
	d. sufficient funding through state budget, fees collected, or a combination of both to maintain its equipment and services.	5	3	
	e. detailed internal regulations and operating procedures.	5	3	
	f. an active staff training and development program utilizing appropriate training materials, guidebooks or procedural manuals to improve staff competency and service.	5	1	
2	There is general consistency in understanding the Registrar's role and functions among the government, the Registrar and the end users.	10	8	
3	The Registrar has adopted a "customer-oriented" approach to fulfilling its mandate.	10	5	
4	The Registrar is sufficiently decentralized to enable users throughout the country to have reasonable access.	10	10	
5	The Registrar has an active, current web site, including contact information, registration requirements, and relevant legal materials.	10	0	
Company Registrar: Operations		60	29	48%
6	Primary Services: The registration of companies			
	a. The Registrar distributes (or makes available for a nominal fee) copies of all procedures, relevant laws, government regulations, fee schedules and other information governing registration and any other activities.	5	2	
	b. The procedures for registration or de-registration are transparent, clear and consistent.	5	3	
	c. The manner in which the Registrar executes the registration procedures is perceived by the end users to be transparent, non-discretionary, non-discriminatory and relatively bribe-free.	5	4	
	d. When rejecting a registration, the Registrar provides a written explanation based on published law and regulations.	5	5	
	e. Approval procedures for names and logos are transparent, clear, consistent and simple.	5	2	

	f. Fees for services are relatively inexpensive and do not act as a constraint to registration.	5	4
	g. The registration process is computerized.	5	2
	h. The business community considers the cost and procedures for registration reasonable.	5	4
	i. It takes no more than 5 business days to register a Joint Stock Company.	5	2
7	Secondary Services		
	a. The Registrar produces and publishes periodic newsletters, reports or other informational pieces intended to increase end-user awareness.	5	0
	b. The Registrar maintains and publishes statistics on new company formation, liquidations, and amendments to company charters.	5	0
	c. The Registry provides reasonable public access to company registration records	5	1
Courts		60	41
8	Courts are empowered to hear the following kinds of suits:		
	a. suits against the Company Registrar for failure to comply with laws governing company registration.	5	1
	b. suits by shareholders on behalf of the company against the company's officers or directors (shareholder derivative suits).	10	10
	c. suits by shareholders against the company.	5	5
	d. suits by a company against individuals or other companies for breach of contract.	5	5
	e. suits by creditors (including employees) against a company for debts owed.	5	5
C.2	IMPLEMENTING INSTITUTIONS COMPANY	REF	SCORE
Courts (continued)			
9	The business community considers the courts generally competent to hear suits relating to companies and company law.	10	5
10	If companies obtain decisions through Alternative Dispute Resolution mechanisms (including arbitration, mediation and reconciliation), courts will enforce the decisions of the body resolving the dispute.	10	0
11	Companies have the right to appeal government actions against them through the court system.	10	10
TOTAL FOR COMPANY -- IMPLEMENTING INSTITUTIONS		190	114

C.3	SUPPORTING INSTITUTIONS COMPANY	REF.	SCORE	%
Government Entities		45	25	56%
1	End-users find that notary services for company registration and other needs under company law are:			
	a. not overly expensive.	5	5	
	b. readily available throughout the country.	5	4	
	c. not overly complex or burdensome.	5	4	
2	Registries of names, copyrights, trademarks, patents and other intellectual property are up-to-date and readily accessible to the business community.	10	4	
3	Courts maintain readily accessible, up-to-date public records on bankruptcy, judgments and other issues affecting the creditworthiness of companies.	10	4	
4	The government regularly collects and maintains data on company registrations, liquidations, and other statistics of interest to policy makers and the private sector.	10	4	
Professional Associations		40	25	63%
5	Accountants apply Generally Accepted Accounting Principles (GAAP) or other internationally recognized standards and norms to audits of company books and records.	10	10	
6	Lawyers' associations have specialized groups dedicated to company law issues.	10	6	
7	Professional associations regularly propose amendments and modifications to the content and implementation of company laws.	10	7	
8	Professional associations are generally satisfied with operations of the Company Registrar and have a collaborative working relationship with the officials of the Registrar.	10	2	
Specialized Services		95	48	51%
9	Filing and registration services are available through banks and other private-sector service providers at a cost and quality considered reasonable by the end users.	10	9	
10	Specialized publishers, in collaboration with the Company Registry and professional associations, develop and print standardized forms for most common transactions.	10	0	
11	Universities, foundations and think tanks regularly examine and issue reports and opinions on content and enforcement of company laws.	10	0	
12	Management consultants provide services to company boards needing assistance.	10	0	
13	Seminars and conferences on company law and new company formation are available and are conducted on a for-pay basis - i.e., not funded by foreign donor agencies.	10	0	
14	A recognized stock exchange exists, with the following characteristics:			

	a. it has clear, transparent and consistent rules and procedures for transactions.	5	4	
	b. it has well-defined sanctions for non-compliance with the rules and procedures, and the power to enforce the sanctions.	5	5	
	c. it enforces sanctions in a non-discriminatory, non-discretionary and transparent manner.	5	5	
	d. it certifies and decertifies brokers and other agents.	5	5	
	e. the business community is generally satisfied with the operations and performance of the stock exchange.	5	4	
	f. officials of the exchange regularly issue opinions on matters of company law.	5	4	
15	Private-sector transfer agents provide services to larger companies such as share registry, shareholder meeting support, proxy services and other assistance at a reasonable cost.	5	4	
16	Stock brokers are available and offer services on a competitive basis.	10	8	
Trade and Special Interest Groups		50	17	34%
17	Banking associations, business groups and chambers of commerce actively monitor company law practice and developments, and issue opinions and appeals for change based on the results of monitoring.	10	5	
18	Foreign investor associations provide input to policy makers and business associations on international standards in company law.	10	4	
19	The national media report regularly and accurately on matters related to company law, giving the business community and general public a greater understanding of company-related issues.	10	3	
20	Associations of corporate officers and directors exist and provide support for best practices in corporate governance.	10	1	
21	General private sector confidence in company law environment is demonstrated by dynamic growth in new company formation.	10	4	
TOTAL FOR COMPANY -- SUPPORTING INSTITUTIONS		230	115	50%

C.4	MARKET FOR EFFICIENT COMPANY LAW	REF.	SCORE	%
Market for Improved Laws				
	Demand for Improved Laws	70	29	41%
	Government	20	5	25%
1	One or more high-level government officials champion the cause of modern company law.	10	2	
2	International lending institutions and donor agencies provide assistance to or condition loans upon reform of company law.	10	3	
	Private Sector	50	24	48%
3	Professional association, trade associations and special interest groups:			
	a. have specialized sections or committees dedicated to company law or policy issues.	5	3	
	b. have established formal mechanisms with policy makers for providing input and feedback on company law issues.	5	0	
	c. regularly provide substantive input and feedback (including studies, statistics, policy documents, etc.) to policymakers on company law issues.	5	3	
	d. regularly provide draft laws, comments on regulations, suggested amendments and similar input to lawmakers on company law issues.	5	3	
	e. conduct programs and events for their members and the general public to promote better understanding of the need for and benefits of modern company law.	5	4	
4	Trade and special interest groups:	5	3	
5	Banks, pension fund managers and investor associations actively lobby for more efficient company law.	10	6	
6	Universities offer courses on company law issues that generally support modernization in accordance with international standards and best practices.	10	2	
C.4	MARKET FOR EFFICIENT COMPANY LAW	REF.	SCORE	%
Market for Improved Laws (continued)				
	Supply of Improved Laws	90	30	33%
	Government	50	14	28%
7	The government has:			
	a. clearly stated policies promoting company law reform.	5	0	
	b. active initiatives to combat abuse of majority shareholder positions that compromise the rights of minority shareholders and creditors.	5	0	
8				

9	The government (through a specialized unit or otherwise) has the technical capacity to draft laws and regulations necessary for improved company law policy.	10	5	
10	The Government provides for meaningful private sector participation in the company law reform process by:			
	a. making copies of laws, regulations, instructions, application forms and similar subsidiary instruments readily available (e.g., in bookstores) to the business community or other end user.	10	5	
	b. providing the business community with meaningful notice of and opportunity to comment on draft laws, legislative amendments, and implementing regulations affecting company law: 1. before they are submitted for legislative approval.	10	3	
	2. before they become effective.	10	1	
Private Sector		40	16	40%
Supply of laws, amendments, regulations and policies by the government is judged sufficient by the private sector in the following ways:				
11	The business and professional communities perceive the legal and regulatory environment generally to be:			
	a. stable, with stability evidenced by 1. infrequent changes to relevant laws and regulations.	5	2	
	2. a relative lack of conflicting laws and regulations.	5	2	
	b. predictable, evidenced by relative consistency in interpretation and enforcement of major laws and regulations.	10	4	
c. transparent in that equal treatment is generally accorded for end users in similar positions and circumstances.	10	3		
C.4	MARKET FOR EFFICIENT COMPANY LAW	REF.	SCORE	%
Market for Improved Laws (continued)				
	Supply of Improved Laws (continued)			
	Private Sector (continued)			
12	The business and professional communities perceive the laws and regulations issued by the government to be relatively clear, precise, and complete.	10	5	
Market for Effective Implementing Institutions				
	Demand for Effective Implementing Institutions			
	Government	40	9	23%

13	One or more high level government officials with responsibility for implementation champion the cause of more efficient and effective provision of services by the Company Registrar.	10	0	
14	The director of the Company Registrar is committed to improving services and responsiveness to end-user needs.	10	5	
15	A formal mechanism exists for reviewing the performance and effectiveness of the Company Registrar on a regular basis (at least annually).	10	2	
16	International lending institutions and donor agencies have instituted assistance programs with the government to upgrade and improve the Company Registrar.	10	2	
Supply of Effective Implementing Institutions		90	53	59%
Government		40	18	45%
17	The Company Registrar actively utilizes:			
	a. an internal plan, reviewed annually, for improving services provided to the private sector and government.	5	0	
	b. a system of accountability for its performance to the government institution responsible for its oversight.	5	3	
	c. a mechanism for obtaining feedback from the private sector on the cost and quality of its services.	10	0	
18	The Company Registrar provides a written basis for all decisions made based on existing, published law.	10	10	
C.4	MARKET FOR EFFICIENT COMPANY LAW	REF.	SCORE	%
Market for Effective Implementing Institutions (continued)				
Supply of Effective Implementing Institutions (continued)				
Government (continued)				
19	The Company Registrar makes all regulations, forms, applications and other important documents and information available to the end-users.	10	5	
Private Sector		50	35	70%
The provision of services and execution of functions is considered satisfactory by the private sector in the following ways:				
20	End-users feel that the manner in which the Company Registrar supplies services is:			
	a. transparent.	5	3	
	b. non-discretionary.	5	4	
	c. non-discriminatory.	5	5	
	d. reasonably priced.	5	4	
21	End-users feel that they have adequate opportunities to provide feed-back to the Company Registrar on its performance.	10	2	

22	The general business and professional communities consider to be decisions made by the Company Registrar to be:			
	a. predictable for similar facts and circumstances.	5	4	
	b. appropriate under existing law.	5	5	
	c. understandable.	5	5	
	d. generally supportive of liberalized trade.	5	3	
Market for Supporting Institutions		30	22	73%
	Demand for Supporting Institutions	10	7	70%
23	Professional associations, specialized services, and trade and special interest groups provide services needed for an efficient operation of companies and improvement of company law.	10	7	
	Supply of Supporting Institutions	20	15	75%
24	The business community generally considers the number and quality of supporting institutions for company law to be adequate in facilitating or supporting the implementation of the framework law.	10	7	
25	A sufficient mass of private sector associations supports modern, free-market company law principles to counterbalance opposing forces.	10	8	
SUB-TOTAL -- DEMAND				
SUB-TOTAL -- SUPPLY		200	98	49%
TOTAL FOR MARKET FOR MODERN COMPANY LAW		200	98	49%

Contract Law

The total rating for the Legal Framework of Contract Law is 80%, including 85% for Contract Formation and 73% for Remedies and Enforcement. Unlike other areas of commercial law assessed, the implementation of Contract Law receives relatively high ratings: an overall 68% for implementation, including 62% for Court Organization and 71% for Court Operations. Interviews indicate a higher level of familiarity with contract law than with other areas of law, such as bankruptcy, shareholders' rights, and foreclosure proceedings.

Even in this area, however, weaknesses are seen in the implementing institutions, especially the courts. Three key ratings on Court operations, for instance, are at a low 50% or less. Court experience, competence and procedures are thus ranked very low, especially in comparison to the general ratings in Contract Law as a whole.

Improvements in Contract Law implementation and enforcement should focus on institution building for the Courts and concerned government agencies.

E.1	LEGAL FRAMEWORK; CONTRACT	REF.	SCORE	%
Contract Formation		190	161	85%
1	A framework law of national application (such as a Civil Code) is in place.	10	8	
2	The Civil Code clearly defines:			
	a. the elements of an enforceable commercial contract.	10	8	
	b. the remedies available for breach of contract.	10	7	
3	The Civil Code makes distinctions between business/commercial contracts and contracts involving non-merchants.	10	6	
4	Related laws concerning specific types of contracts are consistent with the Civil Code, including contracts related to:			
	a. land ownership.	10	6	
	b. secured transactions.	10	10	
	c. company law.	10	8	
5	The Civil Code recognizes freedom of contracts between all parties (natural and legal persons, foreign parties).	10	10	
6	For commercial purposes, state-owned enterprises have rights and obligations similar to private persons with respect to contracts to which they are parties.	10	10	
7	The Civil Code provides clear requirements for the special form of some contracts (e.g., notarization, written form, execution at special exchanges).	10		
8	The Civil Code substantially conforms to emerging international standards:		7	
	a. with respect to commercial transactions (sale and purchase agreements).	10	7	
	b. with respect to intangible property.	10	9	
	c. with respect to real property.	10	7	
9	The Civil Code supports market-oriented commercial practices such as trade usage or industry standards for commercial contracts.	10		
10	Contracting parties are free to agree on customized terms including:			
	a. liquidated damages.	10	9	
	b. choice of forum.	10	9	
	c. choice of law.	10	10	
	d. other remedies.	10	10	
11	The country is a party to the UN Convention on the International Sale of Goods.	10	10	
Remedies and Enforcement		110	80	73%
12	The Commercial Code and related laws guarantee:			
	a. equal contract enforcement rights to individuals, private entities, and non-private enterprises.	10	8	
	b. enforcement of any contract that is not contrary to law, even if not explicitly permitted or	10	9	

	otherwise regulated by law.			
13	Relevant supporting legislation enacted to facilitate the implementation and enforcement of the contract law is in place including:			
	a. procedural law.	10	7	
	b. regulations of notaries services.	10	8	
	c. enforcement of judicial and arbitral awards including foreign judgments and awards.	10	7	
14	The Civil Code provides for adequate legal remedies including:			
	a. liquidated damages.	10	9	
	b. specific performance.	10	5	
	c. money damages.	10	7	
E.1	LEGAL FRAMEWORK: CONTRACT			
Remedies and Enforcement (continued)			-	-
15	The Civil Code provides clear measures for calculating monetary damages.	10	2	
16	Courts or other appropriate government entities have the authority to enforce judgements.	10	8	
17	The country is a signatory to the U.N. Convention on the Enforcement of Foreign Arbitral Awards.	10	10	
Definition of Implementing and Supporting Institutions		100	80	80%
18	The law clearly defines:			
	a. the institution or institutions responsible for interpretation and enforcement of contracts and contract law (including courts and administrative tribunals).	10	8	
	b. the roles, responsibilities and operational procedures of each relevant institution.	10	8	
	c. the procedures for bringing a claim to enforce a contract.	10	8	
	d. the standards and procedures for appealing a decision.	10		
19	The law requires that the implementing institution(s) render decisions relating to the law:			
	a. based on published laws, regulations and standards.	10	10	
	b. through written documentation clearly setting forth the basis for the decision.	10	10	
20	The law clearly defines:			
	a. the role and responsibilities of notaries.	10	9	
	b. the type of contracts and contract-related documents that must be notarized.	10	9	
	c. the requirements and formalities of notarization.	10	9	
	d. the fee schedule for notarization.	10	9	
TOTAL FOR CONTRACT -- LEGAL FRAMEWORK		400	321	80%

E.2	IMPLEMENTING INSTITUTIONS CONTRACTS	REF.	SCORE	%
Courts: Organization		120	74	62%
1	The laws that establish the Courts as implementing institutions:			
	a. clearly identify the courts as the institution for resolving commercial contract disputes.	10	10	
	b. provide a clear mandate for the court's jurisdiction.	10	10	
	c. define relevant procedures or mandate development of relevant procedures for resolving civil commercial disputes.	10	10	
2	The Courts have the following characteristics:			
	a. a clearly defined mandate to interpret, apply, and enforce contract law.	10	10	
	b. sufficient staffing to carry out their mandate.	10	5	
	c. sufficient authority and support to carry out their mandate, including clear policy statements and support from the government.	10	7	
	d. sufficient funding through the state budget, fees collected, or a combination of both to maintain its equipment and services.	10	3	
	e. salaries are sufficient to attract and retain qualified judges.	10	3	
	f. salaries are sufficient to attract and retain qualified administrative staff.	10	1	
	g. detailed internal regulations and operating procedures.	10	7	
3	There is general consistency in the understanding of the role of the courts among the government, the courts and the end users.	10	7	
4	The courts have an active, current web site, including contact information and relevant legal materials pertaining to civil litigation.	10	1	
Courts: Operations		170	120	71%
5	Courts are established and operating effectively with respect to resolving commercial contract disputes.	10	4	
6	Courts are willing to apply the substantive law chosen by the parties in contract disputes.	10	8	
7	The Civil Code requires that the Courts render decisions relating to the law:			
	a. based on published laws, regulations and standards.	10	10	
	b. through written documentation clearly setting forth the basis for the decision.	10	10	
8	Courts have experience with the application of relevant international conventions and the substantive law of other forums.	10	4	
9	Courts are willing to consider evidence of custom, trade usage, or international practice when resolving contract disputes.	10	5	
10	The business community generally finds that the			

	Courts:			
	a. are competent to decide contract disputes and enforce judgments.	10	5	
	b. decide cases in accordance with law.	10	6	
	c. are transparent in their decision-making process.	10	6	
	d. are unbiased toward foreigners in disputes with nationals.	10	8	
	e. calculate damages in a fair and transparent manner.	10	8	
11	Court fees for commencing a lawsuit are relatively inexpensive and do not act as a disincentive for parties to use the courts for contract disputes.	10	9	
12	Courts encourage settlement by the parties through such means as arbitration, mediation or reconciliation.	5	2	
13	If parties obtain decisions through Alternative Dispute Resolution mechanisms (including arbitration, mediation and reconciliation), courts will enforce the decisions of the body that has resolved the dispute.	10	10	
14	The court docket is computerized.	10	6	
15	The Courts maintain and publish reports of their decisions and make these readily available to the public.	10	8	
16	The Courts provide reasonable public access to litigation records.	10	8	
17	The Courts collect and maintain data and statistics, which are made available to the public.	5	3	
E.2	IMPLEMENTING INSTITUTIONS CONTRACTS	REF.	SCORE	%
Government Contracts and Administrative Decisions		60	43	72%
18	Administrative bodies that handle commercial disputes between the government and private sector:			
	a. operate according to clear, transparent, published rules and procedures.	10	6	
	b. make their rules and procedures available to the public.	10	8	
	c. issue written decisions based on the published, established law.	10	8	
	d. actually decide in favor of the private sector parties a reasonable percentage of cases, according to professionals (lawyers, judges, legal analysts) who monitor decisions.	10	5	
19	Private sector parties who have contract disputes with the government are generally satisfied with the fairness of the administrative bodies.	10	6	
20	Decisions of the administrative bodies can be appealed to the court system.	10	10	
TOTAL CONTRACT IMPLEMENTING		350	237	68%

INSTITUTIONS				
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E.3	SUPPORTING INSTITUTIONS CONTRACT	REF.	SCORE	%
Government Entities		60	43	72%
1	If notarization is required to validate or to make a contract enforceable, contracting parties consider notaries to be reasonably available and accessible.	10	7	
2	Notary fees are considered reasonable by end-users and do not discourage the formation of contracts.	10	8	
3	Notaries are reasonably familiar with the standards prescribed by the Civil Code and related laws for written agreements.	10	8	
4	The government customs authorities have clear and articulated standards related to import and export of goods that can be incorporated into written agreements.	10	8	
5	Bailiffs have sufficient authority to enforce judicial decisions.	10	7	
6	The business community considers bailiffs to be effective at enforcing decisions.	10	5	
Professional Associations		50	34	68%
7	Professional associations, including lawyer's associations, accountants, and other economic associations, support contract law development by proposing changes and refinements to the Civil Code and related commercial laws.	10	7	
8	Lawyers' associations have engaged in legal education and training programs for members of the bar concerning the Civil Code and related commercial laws.	10	6	
9	Lawyers' associations have specialized groups dedicated to contract law issues.	10	6	
10	Professors have published academic treatises or interpretations of the Civil Code to provide courts and lawyers with guidance.	10	7	
11	The Law school curriculum includes components on domestic contract law and the Civil Code as well as international conventions and practices.	10	8	
Specialized Services		70	36	51%
12	An experienced group of commercial arbitrators is developing within the jurisdiction.	10	6	
13	Private sector commercial arbitration services are available as an alternative to Courts.	10	8	
14	Specialized publishers have published the following materials:			
	a. reference material relating to the Civil Code and contract law.	10	4	
	b. books containing specimen contracts.	10	4	
	c. periodicals and other publications that report regularly and accurately on matters related to contract law in order to give the business community and the public a great understanding of commercial matters.	10	6	

15	Universities increasingly deal with issues of contract law in support of the development of a market economy.	10	6	
16	Certification and inspection services have adopted uniform standards and procedures that can be easily incorporated into commercial contracts.	10	2	
Trade and Special Interest Groups		70	24	34%
17	Trade and industry associations have affiliations with international trade organizations and are involved in the harmonization of contract and commercial law and practice with international standards.	10	3	
18	Trade and industry associations (including chambers of commerce, bankers associations and business groups) have developed standardized or "form" contracts.	10	3	
19	Standardized contracts that have been developed conform to international commercial standards (for example, ICC standards or guidelines).	10	2	
20	Standardized contracts provide for specific remedies in the event of breach that are perceived as effective by end users.	10	5	
21	The media has increased its reporting of business and commercial matters and court decisions.	10	6	
22	Foreign investor associations provide input to policymakers and other trade associations on international standards in commercial contracting.	10	3	
23	Trade and industry associations are informed in technology developments as they relate to contract law and have advocated new commercial practices and reforms to existing law to accommodate changes (e.g., digital signatures).	10	2	
TOTAL CONTRACT -- SUPPORTING INSTITUTIONS		250	137	55%

E.4	MARKET FOR EFFICIENT CONTRACT LAW	REF.	SCORE	%
Market for Improved Laws		330	167	51%
	Demand for Improved Laws	100	59	59%
	Government	30	17	57%
1	High-level government officials champion the cause of efficient contract law in each of the following:			
	a. legislature.	5	4	
	b. the ministry responsible for promotion of investment.	5	2	
	c. the Ministry of Justice.	5	3	
	d. the Courts.	5	2	
2	International lending institutions and donor agencies provide assistance to or condition loans upon reform of the courts in their capacity to adjudicate and enforce contract disputes.	10	6	
	Private Sector	70	42	60%
3	Professional associations:			
	a. have specialized sections or committees dedicated to contract law and enforcement issues.	5	2	
	b. have established formal mechanisms with policy makers for providing input and feedback on contract law and enforcement issues.	5	2	
	c. regularly provide substantive input and feedback (including studies, statistics, policy documents, etc.) to policymakers on contract law and enforcement issues.	5	4	
	d. regularly provide draft laws, comments on regulations, suggested amendments and similar input to lawmakers on contract law and enforcement issues.	5	3	
	e. conduct programs and events for their members and the general public to promote better understanding of the need for and benefits of more efficient contract law and enforcement.	5	4	
4	Trade and special interest groups:			
	a. have specialized sections or committees dedicated to standardization of common contract clauses and terms.	5	2	
	b. have established formal mechanisms with policy makers for providing input and feedback on contract law and enforcement issues.	5	3	
	c. regularly provide substantive input and feedback (including studies, statistics, policy documents, etc.) to policymakers in support of adopting international harmonized standards in commercial and trade contracts.	5	2	
	d. regularly provide draft laws, comments on regulations, suggested amendments and similar input to lawmakers on contract law and enforcement issues.	5	2	

	e. conduct programs and events for their members and the general public to promote better understanding of the benefits of international harmonized standards for commercial contracts.	5	3	
	f. use standardized forms and contracts in their areas of commercial activity.			
5	Associations of foreign investors (including bi-lateral chambers of commerce) lobby for adoption of international norms and standards in common commercial contracts. .	10	7	
6	Universities offer courses on commercial contract law.	10	8	
Supply of Improved Laws		200	108	54%
Government		120	65	56%
7	The government has created an environment generally supportive of efficient contract law and enforcement, including:			
	a. use of standardized forms for government procurement of goods and services.	5	3	
	b. adoption of a modern collateral law.	5	4	
	c. implementation of an ongoing program of improved judicial efficiency.	5	4	
	d. creation of the judiciary as an independent branch of government.	5	4	
	e. clearly stated policies regarding the rule of law.	5	4	
	f. active anti-corruption initiatives to combat corrupt practices involving government procurement.	5	2	
8	A specialized administrative unit has been established to oversee judicial reform.	10	6	
E.4	MARKET FOR EFFICIENT CONTRACT LAW	REF.	SCORE	%
Market for Improved Laws (continued)				
Supply of Improved Laws (continued)				
Government (continued)				
9	The government (through a specialized unit or otherwise) has the technical capacity to draft laws and regulations necessary for more efficient contract law.	10	5	
10	The Government provides for meaningful private sector participation in the legal reform process by:			
	a. making copies of laws, regulations, instructions, application forms and similar subsidiary instruments readily available (e.g., in bookstores) to the business community or other end user.	10	5	
	b. providing the business community with meaningful notice of and opportunity to comment on draft laws or legislative amendments affecting contract law and enforcement:			
	1. before they are submitted for legislative approval.	10	6	
	2. before they become effective.	10	6	

	c. providing the business community with meaningful notice of and opportunity to comment on draft <i>implementing regulations</i> :			
	1. before they are submitted for legislative approval.	10	5	
	2. before they become effective.	10	5	
11	Formal mechanisms for soliciting input from the business and professional community for formulating and amending trade policy:			
	a. have been established by the government.	5	1	
	b. are actively used by the government.	5	1	
	c. according to the business and professional communities, generally satisfy private sector demand for providing input.	10	4	
Private Sector		80	43	54%
Supply of laws, amendments, regulations and policies by the government is judged sufficient by the private sector in the following ways:				
12	The business and professional communities perceive the legal and regulatory environment generally to be:			
	a. stable, with stability evidenced by			
	1. infrequent changes to relevant laws and regulations.	5	1	
	2. a relative lack of conflicting laws and regulations.	5	1	
	b. predictable, evidenced by relative consistency in interpretation and enforcement of major laws and regulations.	10	3	
	c. transparent in that equal treatment is generally accorded for parties to contracts in similar positions and circumstances.	10	8	
13	The business and professional communities perceive the laws and regulations issued by the government and affecting contract law to be relatively:			
	a. precise in that they can be generally read and understood by a business person (or end user) and provide adequate indication of what is required thereunder.	10	7	
	b. complete in that they address the main needs of the business community and do not contain significant gaps.	10	7	
	c. responsive to their needs as reflected in "favorable" (e.g., pro-business) policy measures.	10	7	
14	The business and professional communities generally feel that they have a meaningful role to play in shaping policy reform in area of contract law.	10	4	
15	The business and professional communities generally feel that the state is effectively meeting basic needs for legal reform in the area of contract law.	10	5	
E.4	MARKET FOR EFFICIENT CONTRACT LAW	REF.	SCORE	%
Market for Effective		170	96	56%

Implementing Institutions				
	Demand for Effective Implementing Institutions	80	47	59%
	Government	40	23	58%
16	One or more high level government officials with responsibility for implementation champion the cause of more efficient and effective provision of services by the courts.	10	6	
17	The highest court (Supreme Court) is committed to improving services and responsiveness to litigants throughout the judicial system.	10	5	
18	A formal mechanism exists for reviewing the performance and effectiveness of the judicial system on a regular basis (at least annually).	10	5	
19	International lending institutions and donor agencies have instituted assistance programs with the government to upgrade and improve the courts.	10	7	
	Private Sector	40	24	60%
20	The business community understands and agrees with the mandate of the courts with respect to contract interpretation and enforcement.	10	6	
21	Professional associations, trade organizations and special interest groups actively pressure the courts to improve their services.	10	6	
22	The business community regularly uses the courts to settle contract disputes.	10	5	
23	In subject matter areas where the courts are not considered adequate, the private sector offers competing or replacement dispute resolution services to fill the gap.	10	7	
	Supply of Effective Implementing Institutions	90	49	54%
	Government	40	21	53%
24	The courts actively utilize:			
	a. an internal plan, reviewed annually, for improving the administration of justice and enforcement of contracts.	5	1	
	b. a system of accountability for its performance to the government institution responsible for court oversight.	5	2	
	c. a mechanism for obtaining feedback from the private sector on the cost and quality of services.	10	2	
25	Courts provide a written basis for all decisions made based on existing, published law.	10	8	
2+6	Courts makes all regulations, forms, applications and other important documents and information necessary for using the courts available to litigants.	10	8	
27	Courts provide expedited enforcement proceedings for claims involving non-payment of debt.			
28	Bailiffs effectively enforce judgments against recalcitrant debtors.			
	Private Sector	50	28	56%
The provision of services and execution of functions is considered				

satisfactory by the private sector in the following ways:				
29	End-users feel that the manner in which the courts decide cases and enforce contracts is:			
	a. transparent.	5	2	
	b. non-discretionary.	5	2	
	c. non-discriminatory.	5	3	
	d. reasonably priced.	5	4	
30	Litigants feel that they have adequate opportunities to provide feed-back to the institution on its performance.	10	5	
31	The general business and professional communities consider to be decisions made by the courts to be:			
	a. predictable for similar facts and circumstances.	5	2	
	b. appropriate under existing law.	5	3	
	c. understandable.	5	4	
	d. generally supportive of a market-oriented economy.	5	3	
E.4	MARKET FOR EFFICIENT CONTRACT LAW	REF.	SCORE	%
Market for Supporting Institutions		60	31	52%
	Demand for Supporting Institutions	40	21	53%
32	Private sector supporting institutions exist and support more efficient contract law in each of the following sectors:			
	a. professional associations.	10	6	
	b. specialized services.	10	5	
	c. trade and special interest groups.	10	4	
33	For specialized services, there are generally competing service providers.	10	6	
	Supply of Supporting Institutions	20	10	50%
34	The business community generally considers the supporting institutions for subject matter area to be adequate in meeting its needs in facilitating or supporting the implementation of the framework law in terms of:			
	a. number of institutions.	10	5	
	b. quality of institutions.	10	5	
SUB-TOTAL -- DEMAND		220	127	58%
SUB-TOTAL -- SUPPLY		310	167	54%
TOTAL CONTRACT -- MARKET		530	294	55%