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Public Procurement

The public procurement sector
Most of the major infrastructure projects are commissioned as public procurement contracts. The significant need for investment in public infrastructure throughout the EBRD region means that good public procurement regulations are crucial.

The effectiveness of public procurement is strictly related to the legislation in force, efficiency of the public procurement regulatory bodies and professionalism of procurement officers. The challenge is to develop a legal regime that will balance the competition and transparency safeguards and efficiency aspects in the public procurement regulations. The public procurement framework forms an essential part of the market economy; purchases by public entities are realised through the market and market mechanisms should be applicable.

When developing such a legal regime, one needs to create a framework that is consistent and easy to enforce in order to ensure that the rules are respected. To comply with this regime, all of the stakeholders – the contracting entities, the suppliers and contractors - and the general public have to be aware of the fundamental values for public contracts. Transparency and competition both play an important role in ensuring the achievement of the best results while spending public money, but also, the public procurement regulations should maintain efficiency and accountability in the process.

The EBRD’s intention is to support legal and institutional transition in the field of public procurement and ensure that investments in the public sector contribute to the development of a market economy. To enhance the transition impact of the infrastructure projects financed by the Bank, procurement of the supplies, services and works in these projects is conducted in compliance with international public procurement standards and good practice. The EBRD is dedicated to sharing its experience as a direct investor and financier of transition projects and helps to develop international standards and guidelines for achieving fairer and better quality procurement. The EBRD also provides technical assistance to authorities that are committed to undertake the reforms needed.

Why reform is needed
Legal reform in the public procurement sector in the EBRD region started about a decade ago and was primarily designed to re-position public sector entities in the new environment of a market economy.

Soon after, the EU enlargement process encouraged the Baltic states and countries of central and eastern Europe to implement the new public procurement regulation, aiming for full compliance with EU public procurement directives on state and utilities procurement.

The countries of south-eastern Europe have also commenced with EU accession negotiations. As a result they have introduced new laws on public procurement and are now addressing implementation issues and building institutions of the state-funded public procurement sector.

In these countries, the rules on the public procurement governing the utilities sector are still pending.

The public procurement legislative reform in Turkey and Commonwealth of Independent States (CIS) countries, Georgia and Mongolia is underway, but their procurement laws are not currently compliant with international public procurement best practice.

Presently, a major concern for all transition countries is how to adopt a stable and accountable public procurement legal framework that enables both efficiency and integrity.

EBRD involvement

Public Procurement Sector Assessment
The EBRD 2010 Public Procurement Legal Frameworks Assessment was conducted as part of the EBRD’s efforts to promote sound business practices in its countries of operations.

The assessment of the public procurement sector, in line with the mission of the EBRD, intended to address efficiency and economy of the procurements and offer more insight into local Public Procurement law and practice in the EBRD countries of operations.

The assessment allowed for an evaluation of the level of development of the public procurement laws and guide the Bank’s policy dialogue in the field of public procurement. Representatives of the national Public Procurement Offices, contracting authorities/entities and contractors were involved in the assessment.

Through this project, the EBRD aims to influence and inspire the governments and policymakers to increase their efforts in legal reform in the region.

Initial results of the assessment were published in EBRD’s Law in Transition Online (autumn 2010 edition) and EBRD’s Transition Report 2010.

The final Assessment Report in English will be launched during the ‘Roundtable on Public Procurement Policy-Making Efficiency and Transparency: Assessment of Public Procurement Law and Practice in the EBRD Region’ in Astana, Kazakhstan on 19 May 2011. The Russian edition of the final report will be presented on 3 June 2011 at the ‘Roundtable on Balancing Transparency and Efficiency: Public Procurement Policy Development’ in St Petersburg.

Technical cooperation
The EBRD offers technical assistance for the reform of public procurement laws. The EBRD, as a major regional investor, is particularly interested in promoting best international public
procurement practices in the utilities sector and at the municipal level. Reform of this area of the public procurement framework is geared towards opening the naturally monopolistic utilities market, addressing the operational needs of enterprises providing public services and at the same time fostering integrity and transparency.

The main objective of the EBRD Legal Transition Programme in the field of public procurement is to support legal and institutional reform in the EBRD countries of operations by providing assistance to governments to ensure that national public procurement regulations, particularly those relating to municipal and utilities procurement, are in line with international standards and best practice.

The way ahead

Joint EBRD UNCITRAL initiative on Enhancing Public Procurement Regulation in selected CIS countries and Mongolia

During the last decade, the EBRD has successfully provided technical assistance for commercial law reform to the countries of Central and eastern Europe and the CIS and Mongolia. The EBRD is convinced that legal reform work should go far beyond the drafting of new legislation. It should also include measures to implement reform from a practical perspective. Furthermore, by combining country-specific reform projects with broader regional initiatives, the EBRD has been able to increase the impact of its legal reform work.

Since 1992 the EBRD has recognised the transition impact of sound procurement policies. From the outset the EBRD has been developing procurement policies and setting standards for procurement processes in transition countries. Despite continuous efforts, public procurement laws in several countries in the EBRD region remain unresponsive to the market economy. Much remains to be done. Governments are increasingly aware of the economic costs of inadequate public procurement regulation. The EBRD plans to support public procurement reform efforts by drawing on the insight gained through the commercial law reform work carried out in the CIS countries, and its experience in conducting successful procurements for its investments in the region.

Efficient regulation of the public procurement sector can be based on several international standards. Apart from the EU Public Procurement Directives, the most comprehensive standard is that provided by the 1994 UNCITRAL Model Law on Procurement of Goods, Construction, and Services, which is now under revision. Over the last year, the EBRD has collaborated closely with UNCITRAL on development of the new Public Procurement standards. The EBRD’s close involvement in the process of the revision of the 1994 UNCITRAL Model Law was based on the premise that a collaborative effort between the EBRD and UNCITRAL would better benefit the region.

Several CIS countries originally based their public procurement legislation on the aforementioned 1994 Model Law. If improvements are to be made to the public procurement legislation in these countries, the logical reference point will be the new revised UNCITRAL Model Law standard. The objective therefore would be to assist these countries in upgrading their public procurement regulation in accord with this revised Public Procurement standard.

A joint EBRD UNCITRAL Initiative on Enhancing Public Procurement Regulation in CIS Countries and Mongolia is designed to promote upgrading public procurement regulation in the CIS countries and Mongolia to the new UNCITRAL standard.

A joint EBRD UNCITRAL Initiative on Enhancing Public Procurement Regulation in CIS Countries and Mongolia aims to develop a series of public procurement reform initiatives in the CIS countries.

Individual country-specific project implementation will depend on the respective governments’ reform agendas and their determination to invest the necessary resources to undertake such reforms (with EBRD encouragement and tailor-made technical support).

The programme will be delivered by a joint EBRD UNCITRAL team, supported by international and local experts, and will include:

1. a focus on promoting regulatory benefits of public procurement reform in an era of fiscal restraint in the public sector in order to maximise the performance of local public procurement markets.

2. a focus on practical implementation of laws, the development of institutions (regulatory, review and remedies bodies), and providing education and information about laws and procurement best practice to end users such as contracting entities, contractors and suppliers, business and legal procurement professionals, and judges.

3. exploring synergies in utilising the UNCITRAL Public Procurement Model Law to be formally issued in 2011 to upgrade national Public Procurement legislation in the region, which was based originally on the 1994 UNCITRAL standard.

All country–specific projects will be co-ordinated with multi- and bilateral organisations that are active in public procurement legal reform.

A joint EBRD UNCITRAL Initiative on Enhancing Public Procurement Regulation in CIS Countries and Mongolia will be officially launched at the ‘Roundtable on Public Procurement Policy-Making Efficiency and Transparency: Assessment of Public Procurement Law and Practice in the EBRD Region’ in Astana, Kazakhstan on 19 May 2011.
EBRD Core Principles for an Efficient Public Procurement Framework

The core principles on an efficient public procurement framework (the “Core Principles”) are based on a review conducted by the EBRD’s Legal Transition team (LTT) in September 2009. The review looked at international public procurement standards and current best practice relating to the procurement cycle, and all international public procurement instruments presently under revision.

The Core Principles reflect the standards generally regarded as international best practice in the public procurement process. The principles also draw on the practical experience of the EBRD as a direct investor and financier in the region.

The Core Principles are based on the assumption that the primary role of a public procurement law is to accommodate the business process of negotiating a contract in a public governance context. As public procurement constitutes a major economic activity for all governments, regulation is a sensitive component of a country’s legal framework, and is an essential supplement to public finance legislation. Since power dynamics within the public procurement process are inherently unequal, regulatory and enforcement institutions are of immense importance. Consequently, the Core Principles focus, in particular, on the issues of objectivity, consistency and enforceability of public procurement regulation.

The principles apply not only to the tendering phase, but also to the pre- and post-tendering phases. The contracting entity launching the public procurement needs to ensure that the fundamental principles of public procurement are maintained throughout the entire process.

Modelling the content of a national public procurement framework will depend on the contractual traditions of individual transition countries. At the same time, public procurement legislation needs to comply with international standards to ensure that key internationally recognised public governance values are respected. The Core Principles therefore may serve as an aide-mémoire and a checklist for the drafting process.

1. The Public Procurement legislative framework should foster accountability of public sector spending

The framework should promote accountability across all stages of the procurement process, balancing public and business dimensions of the process.

In the procurement process, accountability begins with a requirement for a clear chain of responsibility between management, budget, technical, legal and procurement officials. Furthermore, a separation of duties and authorisation should be enforced to ensure a transparent and smooth decision-making process.

Public procurements should be managed by a dedicated procurement specialist, responsible for co-ordinating the entire procurement process and acting as a contact point for all tenderers competing for a contract.

It is essential that the framework require a sound contract profile and procurement plan to be established before the tendering process is launched, to avoid economically unjustified and unnecessary purchases. For large-value contracts a special approval process should be in place.

The framework should also require technical specifications of tenders to be based on relevant quality characteristics and/or performance requirements.

The scope for rejecting all valid tenders should be clearly and narrowly defined. In cases where all tenders are rejected, the framework should require the contracting entity to provide reasons, and compensation, if valid tenders are received in response to the terms of reference, whenever appropriate.

A public procurement remedies system should strike a balance between protection of public finance and the right of the tenderer to seek effective remedy or compensation. There should be an independent review body with the authority to impose sanctions upon parties who do not comply with the public procurement values. In resolving disputes, the review body must treat contracting entities and tenderers in a fair and impartial way.

2. The Public Procurement legislative framework should ensure the integrity of the procurement process

The Public Procurement framework should promote integrity between the procurement function, transparency in delivering government policy and value for money.

The law should ensure that the behaviour of management and procurement officials is consistent with the public purpose of their organisation. It should contain measures prohibiting undue influence and avoiding conflict of interests at all stages of the procurement process.

Disclosure of a public investment and procurement information should be broad but regulated and information should be provided equally to all parties of the process.

In the public procurement process, communication between the contracting entity and tenderers should be made by the best available means (preferably electronic) that provide a record of the content of the communication.

The law should limit the opportunities for negotiations or amendments to final tenders and proposals after submission.

3. The Public Procurement legislative framework should provide an adequate level of transparency

For public procurement to be acceptable to all stakeholders it should be seen to be public, transparent and objective. Any suggestion of an undisclosed resolution must be avoided. The law should promote the extensive use of e-procurement as one of the methods to prevent collusion with tenderers.

Public Procurement regulation should:

• require an effective, official and dependable publicising of the procurement opportunities, through a single point of access

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● underline the importance of advance procurement and contract award notices
● require the public procurement process is real-time recorded, preferably through electronic means, accessible to the public free of charge.

A contracting entity should whenever possible publish tender documents free of charge online, instead of supplying some by request only and for a fee.

As a rule, tenders should be opened in public opening session promptly after the deadline for the submission of tenders.

A contract award notice should be published for all contracts finalised by the contracting entity.

4. The Public Procurement legislative framework should enable competition

To begin with, the Public Procurement framework should promote fair competition and prevent discrimination in public procurement. Tenders and tenderers of equivalent status should be given equal treatment, without regard to nationality, residency or political affiliation. The law should not allow domestic preferences.

For regular understanding of grounds for exclusion, the Public Procurement framework should distinguish between the public procurement eligibility criteria, qualification and technical requirements to be met by tenderers.

The law should comprise minimum tender deadlines to ensure a level playing field and should demand consistency in its application throughout the procedure. In addition, where tenderers are eliminated, a sufficient standstill period or an alternative procedure should be in place to provide for immediate conservatory and protective measures.

Secondly, the law should encourage competitive contract through the tendering process. Sound Public Procurement law should permit both tendering and competitive negotiations, wherever appropriate, to ensure fit-for-purpose outcome. Selection of tender type or procedure should be based on the value of the tender, specifics of the purchase and the contract profile. The law should provide clear tests for the choice of procedure – it should be explicit to both the contracting entity and potential tenderers what circumstances may justify exceptions to open tender arrangements.

To ensure genuine competition takes place it is essential for the law to require contracting entity to stipulate reasonable technical specifications, requirements and suitable award criteria, adequate to the scope and value of the contract prior to embarking on the tendering process. The law should enable potential tenderers to decide quickly whether to tender. Confusions or complexities in the tender documents may result in too few or too many submitted tenders or a biased evaluation.

For the same reason, the contracting entity should be instructed on how best to deal with an abnormally low tender – it should be able to ask for clarifications and either reject the tender or increase the contract security to mitigate or limit perceived risks.

5. The Public Procurement legislative framework should promote economy in the procurement process

The law should enable public procurement to be accomplished professionally in a reasonable time. Formal requirements essential for transparency reasons should be kept simple and the costs low. All of the costs involved in the public procurement process are eventually paid for by taxpayers’ money. High costs of participation in the procurement procedure (including tender document fees, cost of certified statements and translations, inappropriate cost of producing a tender excessive in size, disproportionate tender security and so on) will increase the cost of contract and diminish the efficiency of the process. Enforcement costs will reduce the profit margin on the contract and may negatively impact the quality of contract delivery.

The law should grant the tenderers an ability to submit an inquiry or tender in a confidential but simple and time and cost-effective manner.

The Public Procurement law should encourage aggregation of lots, and whenever possible, the use of a life cycle costing for the purchase of goods and works. It should instruct the contracting entity in the pre-tendering phase not to divide contracts into small lots unless it is absolutely unavoidable. Aggregation of lots also allows for a ‘double check’ of the accuracy of the needs assessment.

6. The Public Procurement legislative framework should promote efficiency of the public contract

Sound programming and planning of the procurement is crucial to agree a cost effective and accurate public contract. An efficient public contract starts with an accurate and unbiased assessment of the contracting authority’s needs. Once this has been achieved, the public procurement process should not normally be initiated until the appropriate budget has been allocated or a source of financing is defined.

The Public Procurement framework should ensure value for money is achieved, and promote methods of tender evaluation considering both the quality and cost of purchase.

Contract terms and conditions should be fair and balanced and reflect the best available business practice. The law should clearly identify when a contracting entity may obtain a tender deposit or contract security, and specify relevant limits.

The law should mandate proper contract management. The mismanagement of the contract or fraudulent payments may increase the costs of the contract. Variations to the signed contract should be permissible, once carefully scrutinised from an integrity perspective, and should be prohibited when amendments significantly alter the economic balance of the contract in favour of the tenderer in a
manner which was not provided for in the tender and terms of the initial contract.

7. The Public Procurement legislative framework should recognise the value of proportionality

Effective and efficient procurement regulation calls for a proportionality rule. Although these core principles apply to any public procurement, the formality and extent of the procedure should reflect the scope and size of the procurement. The contracting entity should align the value and scope of the contract with a choice of the contract type and formal tendering procedure.

The Public Procurement law should comprise cascaded (monetary and other) thresholds to instruct contracting entities how to produce an effective procurement strategy for a public contract.

The proportionality test should also be employed to decide on the use of languages; the contracting entity should allow proposals, offers or quotations to be formulated in a language customarily used in international trade except where, due to the low value of the goods, works or services to be procured, only domestic tenderers are likely to be interested.

8. The Public Procurement legislative framework should be comprehensive and limit derogations to reasonable exemptions acknowledged by international instruments yet should distinguish between state and utilities public procurement

For public procurement to be feasible, the Public Procurement regulation should be unitary, comprehensive and cover all public contracts. Notwithstanding, state/municipal budget contracting authorities and the entities in a utilities sector may have very different requirements in terms of function and commitments and an effective Public Procurement framework should be clear in determining the requirements of contracting entities of a different status.

At the same time, the Public Procurement framework should limit the exemptions from regulation to contracts outside the public procurement domain for evident and justified reasons, specifically defence procurement, special housing arrangements or development projects. For example, in providing finance to development and transition projects, International organisations are bound by their charters to observe special arrangements in relation to procurement, and have as a result developed special procurement policies, quality assurance systems and methods for publishing information pertaining to procurement opportunities. For this reason, all international Public Procurement regulation instruments, including the World Trade Organization (WTO) Government Procurement Agreement, the EU Treaty and the United Nations Commission on International Trade Law (UNCITRAL) Public Procurement Model Law recommend that national procurement laws should not apply to public contracts awarded pursuant to international rules.

9. The Public Procurement legislative framework should be stable, but flexible

To make the process efficient, stakeholders must learn their roles, rights and obligations, within a stable legislative framework. Any market with a public procurement sector cannot operate smoothly if there are frequent changes to the law.

At the same time, the framework should be capable of flexible so as to accommodate the changing market. This is often best done through secondary legislation. Rules of the procedure should be reasonably constant, with a primary legislation constituting the basic principles and general framework of the procurement process. Secondary legislation should model specific matters, giving sufficient instruction to produce satisfactory tender documents and procurement reports.

10. The Public Procurement legislative framework should be enforceable

Public Procurement law should be easy to enforce. Regulatory mechanisms should be able to assess the compliance of the contracting entities and employ corrective measures when necessary.

The dedicated national Public Procurement regulatory agencies should be professional, independent and provide audit and monitoring of the Public Procurement sector to raise the profile of procurement and drive up Public Procurement sector capability.

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A model for improving public procurement regulation - the case of Georgia

In 2010 the EBRD Legal Transition Programme conducted its first assessment of the public procurement (PP) sector in its 29 countries of operations, including Georgia. One of the main aims of the assessment was to understand and analyse the legislative framework of the PP and its practical implementation. For the assessment benchmark, the project team selected the most comprehensive and innovative elements of international best practice. The assessment was structured around the EBRD Core Principles for an Efficient Public Procurement Framework (see box below).

Based on the results of the assessment, the present article will provide an overview of the PP regulation in Georgia. The goal of the article is to showcase the achievements of the government of Georgia in the field of PP and also to highlight the areas that need to be further developed in order to be in full compliance with international standards.

EBRD Core Principles on an Efficient Public Procurement Framework

1. Accountability of public sector spending. The PP framework should promote accountability across all stages of the procurement process, balancing public and business dimensions of the process.

2. Integrity of the procurement process. The PP framework should promote integrity between the procurement function, transparency in delivering government policy and value for money.

3. Adequate level of transparency. For public procurement to be acceptable to all stakeholders it should be seen to be public, transparent and objective. Any suggestion of an undisclosed resolution must be avoided.

4. Enabled competition. To begin with, the PP framework should promote fair competition and prevent discrimination in public procurement. Tenders and tenderers of equivalent status should be given equal treatment, without regard to nationality, residency or political affiliation. The law should not allow domestic preferences.

5. Economy in the procurement process. The law should enable public procurement to be accomplished professionally in a reasonable time.

6. Promote efficiency of the public contract. Sound programming and planning of the procurement is crucial to agree a cost effective and accurate public contract. The PP framework should ensure value for money is achieved, and promote methods of tender evaluation considering both the quality and cost of purchase.

7. Value of proportionality. Effective and efficient procurement regulation calls for a proportionality rule - the formality and extent of the procedure should reflect the scope and size of the procurement. The contracting entity should align the value and scope of the contract with a choice of the contract type and formal tendering procedure.

8. Uniformity. The PP legislative framework should be comprehensive and cover all public contracts. Notwithstanding, state/municipal budget contracting authorities and the entities in a utilities sector may have very different requirements in terms of function and commitments and an effective PP framework should be clear in determining the requirements of contracting entities of a different status.

9. Stable, but flexible. To make the process efficient, stakeholders must learn their roles, rights and obligations, within a stable legislative framework. Any market with a public procurement sector cannot operate smoothly if there are frequent changes to the law. At the same time, the framework should be capable of flexible so as to accommodate the changing market.

10. Enforceability. Public procurement law should be easy to enforce. Regulatory mechanisms should be able to assess the compliance of the contracting entities and employ corrective measures when necessary.
Georgia’s achievements

When the project team started working on the assessment in 2009, we reviewed the Georgian PP legislation that was in force at the time. The outcome of the review was rather negative and the analysis of the legislation indicated that much needed to be changed and improved. The assessment was about to be finalised when we learned that the new PP law was being drafted and would be adopted in 2010. Based on the outcomes of the preliminary legislative review, the initial expectations for the legislative amendments were low. However, the subsequent review of the amended PP law yielded very positive results and showcased that new legislation had introduced dramatic improvements to the system.

In particular, several developments were enacted embracing a new public procurement regulatory structure, modern procurement procedures, and an eProcurement scheme.

The charts (right) showcase a comparison of the Georgian PP legislation before and after the 2010 amendments, focusing on:

- the country’s total score in the assessment, calculated with respect to each Core Principle
- the correlation between anticorruption safeguards and efficiency instruments in the previous and current national PP policy
- improvements in the PP institutional framework.

As can be observed, Georgia has not reached a maximum score on the Core Principle benchmark yet. But, as the diagrams reflect, the national PP legal framework has been improved with respect to every PP Core Principle.

The aforementioned achievement is a positive result of the government’s strong political will to improve the public sector purchasing and combine a PP policy reform with further extending...
fiscal reform of government spending. This is also an example of what can be achieved in terms of adopting efficiency instruments in public procurement. In Georgia, modern purchasing techniques, such as eProcurement, have been systematically implemented into the general eGovernment structure.

The amendments still await implementation, nonetheless we believe it is worth mentioning how these changes to the PP legislation influenced the country’s performance in the EBRD 2010 Public Procurement Legal Frameworks Assessment.

What are the main findings of the current Georgian PP Framework?

PP laws “on the books”

**Legal framework**

Public procurement in Georgia is regulated by the law of Georgia on State Procurement (PPL). In the EBRD 2010 assessment PPL scored high compliance in the region (Chart 5). In fact, Georgia ranked number 4 out of the 29 countries assessed. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 6.

**Regulatory institutions**

An independent public procurement regulatory body, the Public Procurement Agency (PP Agency) has been established and is responsible for developing the PP policies and monitoring compliance of PP practice. The Chairman of the PP Agency is appointed by and reports to the Prime Minister of Georgia.

The main functions of the PP Agency are:

- development of PP regulation and standard tender documents
- harmonisation with international standards
- monitoring procurement procedures
- carrying out tenders when consolidated.

Chart 7 illustrates the results of the review of the Georgian PP institutional framework.

**Scope of regulation**

The law covers national and local government procurement and includes procurement rules for public law institutions when those entities spend public funds. PPL does not contain specific procurement rules for the utilities sector.

Concessions are regulated by a separate Law (The Law of Concessions), and PPL clearly differentiates between public procurement contracts and procedures.

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5. Quality of PP legal framework in EBRD countries of operation

Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.
and concessions. The law does not establish a Central Purchasing Body. However, according to PPL, at the discretion of the Government of Georgia, a consolidated tender may be used in the procurement of similar objects.

**Eligibility rules**

PPL does not establish primary public procurement eligibility rules. However, the Public Procurement Agency, based on a secondary law, has established a register which includes blacklisted participants, bidders and suppliers who are forbidden to participate in procurement procedures (Register). Those tenderers entered into the Register are unable to submit tenders for a year.

In addition, the contracting entity for each procurement sets forth qualification requirements for the tenderers. Qualification criteria have to be fair, non-discriminatory and conducive to the promotion of competition principles.

To show compliance with eligibility rules and prequalification requirements specified in tender documents the tenderers may be obliged to demonstrate appropriate evidence, such as certificates.

**Procurement procedure**

PPL provides for various types of procurement procedures:

- open tender
- request-for-quotations
- direct contracting.

Open tender is the default procedure. The contracting entity may apply other procedures only in situations where the law allows.

In addition, requests for quotations may be used for the procurement of goods or services, with an estimated value of less than Lari 100,000 as well as for the procurement of works with an estimated value of less than Lari 200,000.

PPL does not provide for negotiated procedures and forbids any negotiations during the tender.

It is worth mentioning that eProcurement is carried out in a simplified e-tender.

**Procurement time and cost effectiveness**

PPL does not allow for an estimation of the standard length of the procurement process. PPL establishes several specific deadlines for procurement stages:

- the tender notice must be published not less than 20 days from opening the tenders.
- tenderers must be informed about tender results 5 days after the decision was made.
- the contract must be concluded within 10 days of informing the tenderer the contract was awarded.

PPL provides for mandatory aggregations of lots. Procurement of similar goods, services or works during a contracting entity’s budget year shall be regarded as one procurement if it is funded under the same budget. Splitting a procurement to avoid monetary thresholds set forth in PPL is not allowed.

PPL requires formalities to be kept simple and aligned the value and scope of the contract to the formality of the procedure.

PPL contains clear requirements on methods of communication including the mandatory use of electronic communication where the law allows.

PPL stipulates that the costs of tender participation should be kept low. A flat fee of Lari 150 (€63) shall be set for tender documents, and Lari 50 (€21) for the submission of a tender or proposal. Detailed rules for fee payment are established in a secondary law. The contracting entity may seek a tender security, stating its maximum amount in the contract notice.

If the estimated value of goods or services subject to procurement is over Lari 600,000 and, if the estimated value of works is over Lari 8,000,000, the contracting entity shall publish the tender announcement in one of the languages accepted in international trade. If the estimated value of goods or services to

### 7. PP institutional framework

Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law “on the books” and the benchmark) is marked in light blue, light orange, light purple and light green respectively.

### 8. Adequacy of policy-making

Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light orange and light green, respectively.

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be procured is over Lari 500,000 and the estimated value of works is over Lari 1,000,000 publishing an e-tender announcement in English is mandatory. In all other cases, tender documents may be published in a foreign language at the discretion of the contracting entity.

**Public contract management**
PPL requires mandatory planning of public procurement. The contracting entity shall perform procurement functions in accordance with an approved annual plan. In the case of a long-term procurement, the PP Agency shall be notified after the Georgian Ministry of Finance and/or a finance unit of a relevant local self-government body has approved the procurement.

No new conditions that change the nature of the contract established in the contract notice and that were the basis for selection of the tenderer may be added to the contract. Furthermore, amendments that violate the law on public procurement are deemed invalid. In addition, contract performance security, if requested, must be submitted in the form required by the contracting entity.

**Assessment overview**

**Strengths**
PPL contains sound basic principles and comprehensively regulates the procurement process and guides the drafting of tender documents. PPL allows the use of standard international contract forms for all types of procurement. In addition, PPL allows tenders and qualification documentation confirming compliance with requirements to be submitted electronically (i.e. without a certified electronic signature).

**Weaknesses**
Georgian PPL scored low in stability principle as it has been substantially changed within the last three years. This weakness can be easily forgiven as these amendments to PPL improved the legal framework dramatically.

**Opportunities**
PPL in Georgia focuses on efficiency and economy of the public procurement. Efficiency instruments are better regulated in PPL than integrity safeguards, yet the assessment has revealed some gaps in both efficiency (14 per cent) and integrity (17 per cent) measures. The Georgian PP policy features are balanced and at a relatively high compliance level.

9. Quality of PP remedies system in EBRD countries

Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.
Implementation dilemmas - “law in practice”

In order to assess the PP operational issues in practice, the EBRD’s Legal Transition team (LTT) invited major end users of the national public procurement system, including contracting authorities and contracting entities in the utilities sector, to respond the questionnaire that was specifically developed for the assessment.

Legal framework

The assessment of local PP practice confirms that the Georgian PP framework is essentially clear, comprehensive, and conducive to a competitive procurement environment. Internal procurement rules are effective and frequently updated. The roles in the procurement process are generally clearly allocated. In practice internal procurement rules and decisions are disclosed. However, not all contracting entities organise regular training for their PP process stakeholders.

Chart 11 presents the scores for the general quality of local PP practice in Georgia.

Regulatory institutions

Compliance of PP procedures with the law is monitored by a dedicated and independent public regulatory authority, the PP Agency. Chart 12 illustrates how the local PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation

A survey of local PP practice confirmed that PPL covers most of the public sector in Georgia, government and utilities contracting entities, in particular.

Eligibility rules

In practice, eligibility rules are respected. Typical qualification criteria include experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities. False declarations submitted by the tenderer may be used as a reason to exclude the tenderer from the procurement procedure. Tenders are evaluated on the basis of the criteria specified in the tender. Moreover, submission of responsive tenders, compliant with conditions stipulated in the tender documents, is a requirement.

Procurement procedures

Generally PPL recommends tenders as the default procedure. In practice, negotiated procedures are used for specific or complex contracts. In most cases it is necessary for the contracting entity to explain the choice of procurement method.

10. Quality of PP practice in EBRD countries of operation

Note: The chart shows the score for extensiveness and comprehensiveness of national PP laws of EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

11. Quality of PP practice

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.
12. Institutional framework of PP practice

![Diagram showing scores for integrity safeguards, efficiency instruments, stability, and flexibility]

Note: The chart shows the score for integrity safeguards, efficiency instruments, stability, and flexibility regulatory features. The scores have been calculated on the basis of a questionnaire, based on the EBRD Core Principles on an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light green, light orange, light blue and light purple, respectively.

13. PP policy making in practice

![Diagram showing scores for integrity safeguards, efficiency instruments, stability, and flexibility]

Note: The chart shows the score for integrity safeguards, efficiency instruments, stability, and flexibility regulatory gaps. The scores have been calculated on the basis of a questionnaire, based on the EBRD Core Principles on an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light green, light orange, light blue and light purple, respectively.

Procurement time and cost-effectiveness

Review of local practice revealed that contracting entities employ a mandatory test to ensure that the scope and subject of public procurement is economically justified, as well as providing for coordination of technical and financial procurement planning. Procurement plans are prepared every budget year using international or internal computerised standards.

For most contracting entities it is mandatory to complete the procurement plan before a PP process is initiated. In addition, internal PP monitoring and auditing arrangements are usually in place. With some exceptions, PPL provides a mandatory assessment of all relevant procurement risks.

Internal guidelines on drafting tender documents and standard forms of contract notices and reports are well provided for. Use of standard international contract forms for all types of procurement is not always possible. There are standard national tender documents for goods, works and services and their use is generally mandatory. Moreover, standard national contract forms are also mandatory in Georgia. Once the procurement process has been launched, changes in procedure are monitored.

Local practitioners have said that they are able to estimate the length of the procurement procedure for public procurements works contracts of between €500,000 and €250,000. They have not, however, reported the actual duration.

Based on the assessment, sufficient time is allowed to prepare and submit a tender. The tender evaluation is generally completed within the original validity period.

Review and remedies

An administrative review procedure is available for all tenderers: it is straightforward and affordable. However, as it is not independent, not all contracting entities believe that it is effective and non-discriminatory. In most cases the speed of the review procedure is reasonable and it takes from 20 to 45 days to obtain a decision.

The review body is not perceived as corrupt. With few exceptions, hearings are held and all procurement reports are disclosed. The review proceedings are in public and fully recorded.

Public contract management

Contracts are generally well managed; however, the local practice is not fully compliant with international standards.

In practice, there are manual and computerised procurement and contract monitoring systems and appropriate procedures to monitor delivery of goods and services and payments.

Moreover, changes in contracts that take place after the procurement procedure has finished are also monitored. In addition, modifications or waivers of the terms and conditions of a contract are generally subject to a review and approval procedure. Adequate contract administration records are maintained and there are periodic reports prepared on public procurement activities.

Contracts are generally completed within the originally approved contract price and time. There are no internal rules or policy on contract cancellation nor are there internal policies regarding compensation when a public contract is cancelled. A review of practice shows that the reasons a contract has been cancelled have to be specified in general.

Assessment overview

Strengths

The quality of local procurement practice in Georgia is consistent and scores well above average in the EBRD region (84 per cent). Implementation is still a problem, due to laws adopted only recently, and the desired efficiency of the PP system has not yet been achieved.

Weaknesses

There are no distinctly weak elements of practice, as the lowest score is above 60 per cent (economy of the process). The whole life costing approach is not
mandatory nor have all contracting entities got recurrent contract planning in place. The contracting entity may not always apply the requirement for tender security in public procurement.

**Opportunities**

Although there are no mandatory regulations for the pre-tendering and post-tendering phases in Georgia, the contracting entities supplement PPL with internal rules regarding those stages of procurement. The internal regulations are not always comprehensive, but usually cover key elements of the procurement process. Local PP practice is becoming more modern: the contract notice and procurement reports are generally published electronically.

Tender documents are formulated in the contracting entity’s official language and in a language customarily used in international trade (except in cases when, due to the low value of the goods, construction or services to be procured, only domestic suppliers or contractors are likely to be interested).

**Regulatory risks**

Implementation of the revised PP legal framework is still an issue in Georgia. Electronic communication is not always available. Tender documents are not always published on the contracting entity’s web site and are not generally available free of charge. The PP institutional framework could be stronger and more effort put into capacity building. The review body is not perceived to be predictable and market aware. There are generally no regulations nor internal rules or policies on contract cancellation and compensation in cases where a public contract is cancelled.

**Conclusions**

The quality of the PP framework in Georgia scored high among the EBRD countries of operations, with a compliance rate of 84 per cent. The newly adopted PPL improved PP regulation significantly and provides a modern basis for future development.

The Georgian institutional framework is not yet sufficiently robust: some regulatory gaps in the institutional framework were identified (15 per cent in the uniformity measures, 27.5 per cent in the enforceability indicators and 35 per cent in the stability of the local framework). As the newly adopted laws have improved PP regulations, this lack of stability is a minor issue yet insufficient enforcement and uniformity regulation could be a problem. In addition, current Georgian PP policy-making has focused on adopting efficiency instruments and overlooked anti-corruption measures somewhat (a regulatory gap of 17 per cent has been identified in the integrity safeguards).

In the assessment of local PP practice Georgia scored a 78 per cent compliance rate, lower than in the assessment of quality of PP legislation. Several implementation gaps were identified and a general conclusion is that there are substantial gaps in implementation of PP laws and institutional framework capacities. Local PP institutions were reported to be lacking uniformity and stability in their practice and providing insufficient enforcement (a 25 per cent implementation gap has been identified in the enforcement indicators).

As a result, in local PP practice both integrity safeguards and efficiency instruments have not been properly implemented.

Finally, local PP practice in Georgia scored a 48 per cent compliance rate in the PP sustainability survey. These marks revealed a very low compliance with international PP sustainability standards but these are similar to the scores of other EU Member States in the EBRD region.

### 14. Quality of PP remedies practice in EBRD countries of operations

![Chart showing quality of PP remedies practice in EBRD countries of operations](chart.png)

Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic function features of PP remedies practice.
Albania

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations

Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operations. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

2. Quality of PP legal framework in detail

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

Legal framework
Public procurement in Albania is regulated by the Law on Public Procurement no. 9643 November 20th 2006 and amended in 2007 and 2009 (PPL).

In the EBRD 2010 assessment PPL scored high compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of the legislation are presented in Chart 2.

Regulatory institutions
In Albania there is a central administrative body for procurement functions, the Public Procurement Agency (PPA) financed by the state.

The Director of the PPA is appointed by and reports to the Prime Minister.

The PPA’s core functions are:

- submitting proposals for procurement regulations to the Council of Ministers
- promoting and organising the training of central and local government officials engaged in public procurement activities
- editing and issuing a Public Procurement Bulletin (PP Bulletin)
- preparing standard tender documents to be used in awarding procedures, in accordance with public procurement rules
- on request, giving advice and providing technical assistance to contracting entities, when launching and conducting awarding procedures
- presenting an annual report to the Council of Ministers regarding the overall functioning of the public procurement system
- cooperating with international institutions and with other foreign entities on issues related to the PP system
- planning and coordinating foreign technical assistance to Albania in the field of PP
- encouraging and supporting the use of international technical standards for the preparation of national technical specifications, as well as maintaining an ongoing...
4. PP institutional framework

- monitoring the reports that contracting entities submit at least quarterly
- monitoring the application of public procurement procedures in compliance with the requirements established by the law, requiring the contracting entities to submit all the relevant information
- biannually carrying out controls on the awarding procedures as directed by the central purchasing body
- in the case of misconduct, penalising with fines or proposing disciplinary measures
- preparing and adapting its internal regulations
- carrying out any other task, as specified by the law.

The Albanian system also has a Public Procurement Advocate (PPAd) which is an ombudsman-type body with review powers safeguarding the legal rights and interests of tenderers against unlawful actions or lack of action by the contracting entities.

Chart 3 illustrates the results of the review of the Albanian PP institutional framework.

Scope of regulation

PPL covers government procurement at a national and local level. It includes specific rules for contracting entities in the utilities sector and for public law institutions as well. Exceptions and exclusions provided for are compliant with EU PP Directives. Concessions are regulated under separate legislation, the Law on Concessions 9663 adopted 18 December 2006. Unfortunately, there is no swap mechanism between the public procurement contract and concessions.

PPL provides for a decentralised procurement function. Nevertheless, PPL introduces a Central Purchasing Body. The Council of Ministers may assign a particular contracting entity as the Central Purchasing Body for specific procurements.

Eligibility rules

PPL establishes eligibility rules respecting the general principles under which public contracts are awarded. Tenderers will be excluded from the PP process if they have participated in:
- a criminal organisation
- corruption
- fraud
- money laundering and forgery.

Moreover, the contracting entity has the right to exclude the tenderer, if he:
- has been declared bankrupt and the bailiff is confiscating his property
- is subject to proceedings for declaration of bankruptcy
- has been convicted of any offence concerning his professional conduct
- has not fulfilled his obligations to pay social security contributions and taxes
- is guilty of supplying false information and/or has not supplied information and documentation as required.

PPL distinguishes between eligibility criteria and qualification requirements to be met by tenderers as defined by the contracting entity.

The contracting entity may use various criteria when evaluating tenders as well as lowest price, as long as these criteria are related to the subject matter of the public contract.

In order to show compliance with requirements specified in tender documentation, the tenderers can be required to offer evidence, such as certificates.
Albania

Procurement procedures
Albanian PPL provides for various types of procedures:
- open tender
- restricted tender
- negotiated procedures, with or without prior publication of a contract notice
- request for quotations
- design contests.

These options provide for tendering and negotiated PP procedures.

PPL incorporates a clear test as to the choice between tendering and negotiated procedures. In Albania, an open tender is the default procedure. Restricted procedures may be applied only when it is necessary to pre-qualify tenderers before they are invited to submit proposals.

For small-value contracts the contracting entities may use negotiated procedures and requests for quotations.

For contracts above thresholds, the contracting entities should mainly use open procedures, restricted procedures and design contests; negotiated procedures may be used only in specific circumstances.

PP procedures are conducted electronically; in Albanian eProcurement is mandatory for all contracting entities and covers all types of contracts.

Procurement time and cost-effectiveness
PPL allows for the estimation of the typical length of the procurement process for works and goods contracts of a significant value. The minimum deadline for the submission of tenders in an open tender is no less than 52 days (for procedures above the thresholds), 30 days (for procedures between high- and low-value contracts) or 10 days (for low-value contracts).

There is a mandatory deadline for the contracting entity to evaluate tenders: contracts should be awarded within the original tender validity period. The contracting entity should conclude the contract within 30 days of publication of the contract award in the PP-Bulletin.

PPL requires mandatory aggregation of lots. No public contract may be divided to prevent its coming within the scope of the provisions of PPL.

Contracting entities should keep the costs of tender participation low and tender documents are available free of charge on the eProcurement website, administered by the PPA.

The use of foreign languages is allowed; the rules on the use of currency should be explained in the tender documents.

Review and remedies
Any person having or having had an interest in obtaining a public contract and who has been or risks being harmed by a decision taken by a contracting entity, which infringes PPL, may challenge such a decision.

Objections should be filed in the first instance with the concerned contracting entity. If the contracting entity fails to examine the objection within the deadlines specified in PPL, or rejects the objection, the complainant may file a written appeal with an independent review body, the Public Procurement Review Commission. A review decision issued by the Commission may be challenged in the commercial court. Within five days of the publication of the Commission’s decision, the parties have the right to lodge a complaint before Tirana District Court.

Public contract management
Albanian law clearly defines the obligation of contracting entities to prepare and submit an annual procurement plan. In addition, appropriate budget or financing authorisation prior to publication of a contract notice is required as well as budgetary authorisations for contract payments falling due beyond the current financial year. The law includes a test to determine when the contracting entity should seek a contract performance guarantee and limits its maximum amount.

PPL requests that contracting entities provide for contract management of the public contract. The contracting entity may determine special conditions relating to the performance of a contract, provided they are lawful and indicated in the invitation to tender or in the tender documents.

All terms of the contract should be adhered to in good faith by both parties and are subject to Albanian Civil Law.

5. Quality of PP remedies legislation in EBRD countries of operations

Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.
Assessment overview

Strengths
In the 2010 assessment the Albanian PPL reached high compliance with international standards (more than 90 per cent), specifically in accountability, transparency, competition, uniformity and flexibility indicators. PPL strongly promotes transparency and competition in the PP framework. In addition, government procurement officials must follow a published code of ethics.

Cancellation of the procurement process has to be reasonably justified and all participants have to be informed of the reasons. In addition, the participants have access to both administrative and judicial review procedures if they feel their rights have been infringed.

Due to the mandatory use of the eProcurement platform, Albanian PPL is highly transparent. PPL provides for the mandatory publication of all tender related documents and reports on the contracting entity’s website. In addition, an interested party has easy access to the procurement records due to the fact that eProcurement platform provides real time records of the procurement process.

Current Albanian PPL is well structured and based on sound principles and provides a well coordinated comprehensive legal framework.

Weaknesses
PPL has no major weaknesses: no indicators fell below 50 per cent.

Given Albania’s enviable assessment record, there are few areas of weakness. The framework is not stable yet, as PPL has been changed frequently within the last five years in order to harmonise the Albanian framework with EU legislation. Other minor weaknesses are as follows: i) there is insufficient regulation with reference to electronic auction and dynamic purchasing systems; ii) there is no competitive dialogue procedure; iii) services have not been divided into “priority” and “non-priority” categories; and iv) the contracting entity is always obliged to request tender security for all public sector contracts.

Opportunities
PPL in Albania is balanced and most integrity safeguards and efficiency instruments recommended by international best practice have been implemented. eProcurement, introduced as mandatory in 2009, has improved the situation significantly and will further decrease corruption. A specific regulation for the utilities sector has been introduced as well as an independent review body.

Regulatory risks
In spite of the excellent scores for its PP legal framework, there are still some regulatory risks. The gap in the efficiency instruments regulation, at 19 per cent, could be decreased. Enforceability of the regulation could also be improved.

Detailed and unbiased assessment of the contracting entity’s needs is not required by PPL so far. Furthermore, PPL does not require the contract terms and conditions to be fair and balanced, reflecting best available business practice.
Eligibility rules
In practice, general eligibility rules are respected. Typically, qualification criteria include experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities as well as financial position. On the other hand, false declarations and significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts are grounds for exclusion from the procurement procedure. In Albania, affiliates of the contracting entity are generally not eligible to tender, unless it can be demonstrated that there is no significant degree of common ownership, influence or control between the contracting entity and the affiliates.

The procurement procedures
Open tender is recommended by the law as a default procedure and is the most frequently used in practice. Contracting entities apply other procedures only in situations where the law allows; however, it is not always necessary for the contracting entity to explain the choice of the procurement method. Negotiated procedures are used for specific or complex contracts.
7. Quality of PP practice in detail

1. Accountability  2. Integrity  3. Transparency  
4. Competition  5. Efficiency of public contract  
6. Economy of the process  7. Proportionality  

Note: The chart shows the score for extensiveness and comprehensiveness of national PP practice for the country in the region. The scores have been calculated on the basis of practice questionnaires, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

8. PP institutional framework in practice

The procurement time and cost effectiveness

In Albania the procurement procedure for goods to the value of €250,000 as well as the procurement of works to the value of €500,000 lasts approximately 60 to 90 days (from the contract notice publication to signing a contract). Sufficient time is provided to prepare and submit tenders. Standard tender documents, standard contract notices, and procurement reports are provided for and widely used. However, PP regulations rarely allow the use of standard international contract forms for procurement. There are standard tender documents for goods, works and services. In general, the standard tender documents provided are mandatory. Moreover, standard national contract forms are mandatory and available.

Tender evaluations are completed within the original tender validity period. Procurement reports are easily available free of charge to the general public.

Once the PP process has been launched, changes in procedure as well as changes made to the contract are generally not monitored. In addition, modifications or waivers of the terms and conditions of the contract are not always subject to review and approval procedures.

Review and remedies

Local practitioners consider the Albanian review and remedy procedures straightforward, effective, and non-discriminatory. Complaints are heard by an independent review body, established in 2010. The speed of the remedies procedure is reasonable with decisions obtained in 15 to 20 days. The remedies body is not perceived to be corrupt. The cost of the remedies procedure is also bearable. Generally, parties are able to present their position during the remedies proceedings and all procurement records are disclosed; however, hearings are not provided for and proceedings do not take place in public. The remedies procedures are recorded.

Public contract management

According to local practitioners, contract administration is mandatory for public contracts. Changes to the contract once the procurement process has finished are monitored by most contracting entities. However, regular contract monitoring systems have not been established and are not provided for by the Albanian eProcurement platform. There are appropriate procedures to monitor the delivery of goods and services and payments. Public contracts are generally completed within the originally approved budget and/or contract price but they are not always completed on schedule. Contract cancellation and compensation policies are only partially established. Compensation is provided only when the contract terms provide for it. When a public contract is cancelled, the contracting entity is required to specify a reason for doing so.
79% 21% 18%

Strengths
The assessment of local PP practice revealed that the current PP framework embracing mandatory eProcurement is clear, comprehensive, and enables competitive procurement (average 82 per cent compliance).

Due to mandatory use of eProcurement, PP practice in Albania is strong in terms of its stability and uniformity. There is a mandatory assessment of all relevant procurement risks prior to the start of a procurement procedure. The procedure is conducted within a reasonable time, lasting from 60 to 90 days. Tender evaluations are normally completed within the original tender validity period.

Local contracting entities have regulated internal procurement including monitoring and auditing arrangements not provided for by PPL. Contract administration for public contracts is mandatory. However, not all modifications or waivers of the terms and conditions of a contract subject are subject to a review and approval procedure.

Weaknesses
No element of local practice in Albania has been identified as weak (below 50 per cent compliance). The existing PPL has been consistently implemented in practice. However, some areas of local practice offer room for improvement: the lowest marks were for the economy of the procurement process and integrity indicators (both less than 80 per cent compliance rate).

Opportunities
Albanian PP practice is surprisingly good; the survey confirmed that tenders conducted via the eProcurement platform are in most cases compliant with international good practice. The PP institutional framework is not perceived to be corrupt, which is a significant achievement considering local business culture. Albanian contracting entities are trying hard to be seen as accountable and transparent and achieve good value for money in their public procurement.

Risks
There are some areas of concern in public procurement practice. Tenders are not always opened in public promptly after the submission deadline. Moreover, the tenderers or their representatives are not always allowed to be present at the tender opening session. Contracts are generally completed within the originally approved contract price but sometimes contracts are extended, consequently raising the contract price without sufficient monitoring or contract management.
The remedies proceedings do not take place in public and not all the decisions of the remedies body are published, and easily accessible to the public. The tender documents are generally formulated in the contracting entity’s official language.

III. Conclusions

The quality of the PP framework in Albania scored high among the EBRD countries of operation, with a compliance rate of 83 per cent. Recently adopted laws have improved PP regulation significantly and provide a modern basis for future development.

The Albanian institutional framework is also doing well; no significant regulatory gaps were identified.

PPL is lacking in stability, but this is mainly due to recent improvements designed to align Albanian PPL with EU PP Directives. Thanks to the eProcurement platform, Albanian PPL promotes uniformity, integrity and competition in public procurement.

In addition, current Albanian PP policy-making is well balanced and responsive to challenges in the local market; most of the anti-corruption measures recommended were adopted (a regulatory gap of 11 per cent has been identified). Albania scored slightly lower in efficiency instruments, but several efficiency instruments have been adopted (a regulatory gap of 19 per cent has been identified).

In the assessment of local PP practice, Albania scored 82 per cent almost matching its compliance rate in the assessment of the legislation. This is an outstanding result in the EBRD region, where almost no other country has achieved such consistency in the implementation of its laws. Based on the local practitioners’ reports, Albanian PP practice is uniform and stable.

Despite this laudable achievement, a small implementation gap was identified in the implementation of integrity instruments (9 per cent). As in many countries in the EBRD region, Albanian contracting entities are learning to draw up internal procurement rules to improve the efficiency of the PP process (in Albania the regulatory gap in adopting efficiency instruments is bigger than the efficiency implementation gap observed in local practice).

Finally, local PP practice in Albania scored a 51 per cent compliance rate in the PP sustainability survey. These marks reveal a medium level of compliance with international PP sustainability standards but are one of the better results in the EBRD region.
I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations

[Graph showing scores for EBRD countries]

Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

2. Quality of PP legal framework in detail

1. Accountability 2. Integrity 3. Transparency
4. Competition 5. Efficacy of public contract
6. Economy of the process 7. Proportionality

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

3. PP institutional framework

Legal framework
The Public Procurement System in the Republic of Armenia is governed by the Law on Procurement enacted in July 2004, enforced on 1 January, 2005 (PPL). In the EBRD 2010 assessment, PPL scored medium compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions
The Public Procurement Regulatory Body in Armenia (the PPA), responsible for procurement policies and monitoring of compliance, is not fully independent.

The PPA core functions are:

- drafting laws and regulations on public procurement
- developing standards and good practice in conducting procurement
- organising professional training for procurement officers
- approving and publishing contract notices
- coordinating cooperation among international organisations, foreign states and state and local self-government bodies related to procurement
- reviewing procurement records
- reviewing complaints related to public procurement.

Chart 3 illustrates the results of the review of the Armenian PP institutional framework.

Scope of regulation
PPL covers both national and local government procurement and public law institutions. There are no specific rules for the public procurement of utilities.

There is no dedicated concession law in Armenia. A reference to concession can only be found in the Law on Foreign Investments, providing that concessions are one of the forms of foreign investment. Two sector-specific laws (in the mining and water treatment sectors) regulate concessions. There is no clear distinction between a public procurement contract and procedure and concessions.

Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law “on the books” and the benchmark) is marked in light blue, light orange, light purple and light green respectively.
4. Adequacy of PP policy making

Eligibility rules

PPL does not establish the general public procurement eligibility criteria.

To participate in the procurement process, the tenderer must meet the qualification criteria stipulated by the contracting entity in the contract notice or in the tender documents. PPL introduces a closed list of qualification criteria, and consequently, it prohibits establishing any qualification criteria other than those prescribed by law.

According to PPL, tenderers:

- must have the capacity required to fulfil obligations envisaged under the procurement contract, including professional qualifications, technical resources, financial resources and labour resources
- may not be deemed bankrupt, be under liquidation proceedings, or have had property intended for the fulfilment of the contract, confiscated
- may not have outstanding debts to tax and social security as of the last day of the reporting period prior to the day of tender submission
- and representatives of its management body at the moment of tender submission may not, within the last three years:
  - have been convicted for offences against economic activities or public services;
  - have submitted false records in order to sign the procurement contract;
  - have violated obligations under the procurement contract, which resulted in unilateral termination of the contract by the contracting entity.

To show compliance with qualification criteria, the tenderers may be obliged to offer appropriate evidence, such as certificates.

Procurement procedures

PPL provides for various types of procurement procedures:

- open tender
- restricted tender
- competitive negotiations with publication
- request for quotations
- direct contracting.

PPL allows the selection of a tender type or method to be based on the specifics of the purchase and contract profile. PPL incorporates a clear test as to the choice between tenders and negotiated procedures.

PP may be conducted as a competitive negotiation, if the subject of the contract is not covered by an existing procurement contract, and both a) owing to an emergency or contingency, there is an urgent need for the procurement and, in terms of time, it is impossible to use a tender, provided this need was impossible to predict; and b) the price of the procurement item does not exceed the base procurement unit.

Tenders and proposals may be submitted electronically when it is allowed by the contract notice. eProcurement is subject to special regulation.

Procurement time and cost-effectiveness

PPL requires public procurement to be accomplished in a reasonable time and provides for the formalities to be kept simple. PPL allows for the accurate estimation of the duration of the procurement process for works and goods contracts of a significant value (average 53 days). Aggregation of lots is mandatory.

The formality of the procurement procedure is linked to the scope and value of the contract; cascaded thresholds are established. PPL does not provide for a maximum tender validity period; it is discretionary for the contracting entity and is stipulated in the contract notice.

PPL regulates communication. In principle, electronic communication is enabled.
subject to specific regulation by secondary laws on eProcurement. Nevertheless, the rules on communication are not clear.

PPL does not require the costs of tender participation to be kept low. No rules on currency have been established. Public procurement is, in principle, conducted in Armenian; however, contract notices for open tenders have to be published in both English and Armenian.

Review and remedies
In Armenia, any person is entitled to seek an administrative review if he claims he suffered damages as a result of actions of the contracting entity or tender commission. The complaint should be submitted to the PPA in writing. The decision of the PPA can be appealed to the commercial court. Contractual disputes are decided by the courts.

Public contract management
PPL requires mandatory planning of public procurement as well as appropriate budget authorisation prior to publication of a contract notice. Budgetary authorisations for payments falling due beyond the financial year are also obligatory. PPL requests that contracting entities provide for contract management of the public contract. Procurement staff are required to have adequate contract management skills. PPL includes a clear test as to when the contracting entity should seek a contract performance security, and limits its maximum amount. The amount of the contract performance security is specified in the contract notice and should be no less than 5 per cent and no more than 10 per cent of the contract price. There is no mandatory computerised monitoring and administration.

Assessment overview

Strengths
In the 2010 assessment the Armenian PPL demonstrated little specific strengths; however, the legal framework is highly compliant with the accountability standards. PPL covers all phases of the procurement process: it requires the contracting entity to prepare a procurement plan, manage the process transparently and monitor contract delivery. Cancellation of any procurement has to be reasonably justified and all tenderers have to be informed about the reasons. Administrative reviews of procurement procedures are accessible.

Weaknesses
PPL has no major weaknesses. PPL and secondary laws are not stable since they have been frequently amended over the last three years. PPL and secondary laws are not stable since they have been frequently amended over the last three years. PPL does not provide rules for compensation when a public contract is cancelled.

Opportunities
PPL in Armenia is modern and mainly based on sound principles; it promotes competition and public accountability yet several areas of local regulation require further improvement.

Regulatory risks
PPL in Armenia still lacks transparency and integrity. In addition, the local institutional framework is weak; it scored particularly low in uniformity and flexibility indicators.

PP policy is well adjusted to the challenge of the local market; however, a significant regulatory gap has been identified in both integrity safeguards and procurement efficiency instruments. General eligibility rules are not established. The qualification process for tenderers is under-regulated. Electronic communication is enabled but advance procurement notices, contract notices and tender documents are not published electronically on the contracting entity’s website. No specific rules for the utilities sector have been established, all public procurement is under the same inflexible regulation. PPL does not forbid a significant change to the scope of contract once the procurement process has been launched.

5. Quality of PP remedies legislation in EBRD countries of operations

Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.
II. Public Procurement Practice

Review Summary

Legal framework
Local contracting entities believe that the legal framework is clear and comprehensive. Internal procurement rules are commonly used and updated each year when needed. Roles in the procurement process are clearly allocated. In practice, internal procurement rules are disclosed. In addition, regular training for all internal stakeholders and procurement officers is provided. Chart 2 presents the scores for the general quality of local PP practice in Armenia.

Regulatory institutions
In Armenia compliance with PPL is monitored by a dedicated administrative body, the PPA. Chart 3 illustrates how the local PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation
A survey of local practice confirmed that procurement in the public sector in Armenia is covered by PP regulation.

Eligibility rules
There are no general eligibility rules established. Local contracting entities decide on the qualification criteria individually. Typical qualification criteria include experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as financial position. A false declaration is grounds for exclusion from participation in the procurement procedure. Affiliates of the contracting entity are, in practice, eligible to tender unless it can be demonstrated that there is a significant degree of common ownership, influence or control between the contracting entity and the affiliates.

A tender should come from a tenderer who complies with the qualification criteria; however, this rule is not applied, in practice, by all contracting entities.

The procurement procedures
Open tender as the default procedure is generally respected. Negotiated procedures are not always used for specific or complex contracts. In practice, it is necessary for the contracting entity to explain the choice of the procurement method.

Results of the 2010 research do not indicate which procurement procedure is typically used in Armenia: it is different for different contracting entities.

6. Quality of PP practice in EBRD countries of operations

Note: The chart shows the score for extensiveness and comprehensiveness of national PP laws of EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles on an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.
Based on the survey results, the procurement procedure for goods valued at €250,000 as well as works valued at €500,000 lasts approximately 60 to 70 days (from the initial phase to signing a contract).

Local practitioners reported that there is sufficient time allowed to prepare and submit tenders. It is difficult to estimate whether participation costs are high or low in Armenia; however, tender documents are not available free of charge.

There are no significant delays in the procurement process; the tender evaluation is normally completed within the original tender validity period.

**Review and remedies**

The administrative review procedures in Armenia are believed to be straightforward, effective and non-discriminatory. The PPA is not perceived to be corrupt.

The speed of the remedies proceedings is reasonable. It takes 15 to 20 days to obtain a decision. In addition, it is claimed that the costs of the remedies procedure are bearable. All procurement reports are disclosed to the review body, proceedings take place in public and are duly recorded.
Public contract management
A survey of local practice confirms that contract administration is mandatory for public contracts in Armenia. Public contracts are generally administered in a fair and equitable manner, completed within the budget and on schedule. Amendments and contract extensions are monitored. Modifications or waivers of the terms and conditions of a contract are subject to a review and approval procedure. In practice, a contract monitoring system, manual or computerised, is employed.

Internal rules or policy on contract cancellation have been established as well as internal policies regarding compensation when there is a cancellation. Contracting entities are required to specify a reason for doing so.

Assessment overview

Strengths
Armenian local procurement practice scored better than its legal framework and seems to be more consistent. In practice, efficiency is the most important factor for contracting entities and received good marks for compliance with international standards.

There is a mandatory test to ensure that the scope and subject of public procurement is economically justified. Contracting entities conduct various tests to verify whether a good business case can be made for a public procurement matched with a realistic budget (i.e. an internal record of contract prices and unit prices used to monitor costs, a benchmark on similar public or commercial project in progress, an independent external evaluation report). Detailed procurement plans are prepared each fiscal year and in most cases a financial authorisation is required to start the procurement process.

For most contracting entities, contract administration is mandatory and, to meet this requirement, monitoring systems have been implemented. All claims are handled fairly based on a clear recognition of both parties’ obligations under the contract. Contracts are generally completed within the original budget and on schedule. Adequate contract administration records are maintained.

Weaknesses
There are no major weaknesses in local practice in Armenia (below 50 per cent compliance). However, scores for integrity and transparency of the public procurement are lower than expected (72 per cent and 73 per cent compliance rate, respectively). Economy of the process could be generally improved. The implementation gap regarding efficiency instruments is smaller than the efficiency regulatory gap by 5 per cent but, in practice, nothing has been done to improve the transparency and integrity of public procurement (the assessment identified a regulatory and implementation gap of 25 per cent in both cases).

In addition, the review process may be time-consuming; sometimes it takes more than 45 days to obtain a decision.

Opportunities
The PPA is not perceived to be corrupt. Contracting entities have successfully supplemented the existing legal framework with internal procurement rules covering the pre-tendering and post-tendering phases. The contract monitoring phase is very precisely regulated.

Risks
Only some contracting entities in Armenia publish contract notices and tender documents on their web sites. Electronic communication is not always available. Public procurement records are not generally available to the public. The assessment revealed that the lack of transparency and shortcomings in the institutional framework are a major problem in local PP practice.

III. Conclusions
PPL scored a 73 per cent compliance rate in the assessment of the legal framework, placing Armenian PPL in the medium compliance range in the EBRD region. PPL scored exceptionally well in the accountability indicators, where it achieved a 92.5 per cent compliance rate. In other legal framework indicators, PPL scored consistently well but slightly lower.

However, analysis of the institutional framework regulation revealed that there are areas with significant regulatory gaps (from 25 per cent to 27 per cent in Enforceability and Uniformity measures and 37.5 per cent to 47.5 per cent in Flexibility and Stability indicators) to be improved. Similarly, not all recommended integrity safeguards and efficiency instruments have been adopted in PPL (a 25 per cent gap has been identified in both fields).

In the assessment of PP practice, Armenia, in principle, scored better than it did on institutional framework regulation: an 80 per cent compliance rate with the benchmark. Average scores for Armenian PP practice range from 69.4 per cent to 88.7 per cent compliance with the benchmark (medium to high compliance). Some implementation gaps were identified; for instance, for the accountability and economy indicators the assessment revealed a 20 per cent implementation gap between Armenian law and practice. The general conclusion is that Armenian contracting entities supplement PP regulation in order to achieve good value for money (a smaller gap regarding implementing efficiency instruments has been identified in practice than provided for by the laws) and this positively influences local PP practice. However, there is a shortfall in the implementation of the law. In particular, improvements in integrity and accountability of PP are needed.

Finally, local PP practice in Armenia scored a 47 per cent compliance rate in the PP sustainability survey. These marks stand for low compliance with the benchmark, but are higher than the scores of some other countries in the EBRD region.
Azerbaijan

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations

In the EBRD 2010 legislation, the Azerbaij an PPL scored low compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions

In Azerbaijan an executive public procurement authority has been established (“Procurement Authority”), which is responsible for developing PP policy. This body is not independent and the Chairman of the Procurement Authority reports to the Ministry of Finance.

The Procurement Authority’s core functions are:

- development of a regulatory framework for the PP sector
- monitoring of PP procedures compliance with national law

- review of complaints related to PP procedures and suspension of procurement procedures for up to seven banking days
- providing capacity-building activities for contracting entities within the scope of PP, including training for procurement officers
- monitoring the transparency of PP procedures.

Chart 3 illustrates the results of the review of the Azerbaijan PP institutional framework.

2. Quality of PP legal framework

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

Legal framework


In the EBRD 2010 legislation, the Azerbaij an PPL scored low compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Scope of regulation

Public procurement (PP) in Azerbaijan is regulated by a separate body of law. However, PPL and related regulations are not well coordinated. PPL covers national and local government procedure and provides for a decentralized procurement function. However, PPL does not include rules for utilities and public law institutions and there is no Central Purchasing Body. Concessions are not regulated by Azerbaijan law.

Eligibility rules

In Azerbaijan, public procurement eligibility rules are not directly established.

3. PP institutional framework

Note: The chart shows the score for four institutional factors. Total scores are pre-sented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law “on the books” and the benchmark) is marked in light blue, light orange, light purple and light green respectively.
4. Adequacy of PP policy making

Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light orange and light green, respectively.

Except in cases indicated in regulations governing PP, all resident and non-resident legal or physical persons or a union of legal persons irrespective of the state they belong to shall be entitled to take part in PP procedures held in the Republic of Azerbaijan as tenderers.

PPL does not distinguish between general public procurement eligibility criteria and qualification and technical requirements to be met by tenderers as defined by the contracting entity. In order to participate in procurement procedures, contractors shall meet the following criteria: professionalism, experience, technical and financial possibilities, workforce, competency in management, reliability in a relevant field to ensure performance of the procurement contract; authority to enter into the procurement contract; possibility of free and unlimited use of its assets as well as solvency. Contractors shall not have been declared bankrupt, their property shall not have been seized, mortgaged or otherwise charged, their commercial activity should not have been suspended by court decision; absence of over-due tax or other mandatory payment obligations in the Republic of Azerbaijan; absence of previous conviction within five years preceding commencement of procurement procedures for any crime connected with their professional activity, as well as the professional activity of their business managers and employees or misrepresentation of their qualification indices for conclusion in a procurement contract and absence of a court ban with respect to their professional activity.

To show compliance with eligibility rules and prequalification requirements specified in the contract notice or tender documents the tenderers may be obliged to demonstrate appropriate evidence, such as certificates.

The procurement procedures

In Azerbaijan PPL provides the following procurement procedures:

- open tender
- two-stage tender
- restricted tender and closed tender
- request for proposals
- request for quotations
- direct contracting.

PPL provides for negotiation during the procedure but does not provide separate negotiated procedures. For this reason there is no test to determine the choice between tendering and negotiated procedures.

If the proposed price for goods (works and services) is higher than the minimum price set by the executive authority, they shall be procured through open tender. In addition, as goods and works are procured, the contracting authority is entitled to use procurement methods other than tender only in circumstances specified by PPL. This rule does not apply to the procurement of services.

Open tender is the default procedure for services only if it is possible to compile a detailed list of services and conducting open tender procedures is the most expedient due to the technical nature of the services. Procurement of services in general is governed by a separate procedure, request for service, regulated by a separate chapter of PPL. PPL does not provide for the electronic communication nor electronic submission of tenders.

The procurement time and cost-effectiveness

PPL does not require PP to be accomplished in a reasonable time. PPL generally allows for an accurate estimation of the duration of the public procurement process for the procurement of works and goods contracts of a significant value. However, details (such as the number of days) have not been provided.

PPL allows for the deadline and time of submission of a tender to be set forth in tender conditions. There is also reference to the tender validity period. PPL provides some deadlines; for instance tender documents shall be submitted to the contracting entity no later than 7 banking days before commencement of a tender. There is a deadline for submitting a request relating to an explanation of tender documents as well as the deadline
Azerbaijan

for the contracting entity to prepare a response. The tender validity period shall be set out in tender documents. Such a term shall commence no less than 30 banking days from the day the tenders are opened. The validity of a tender or proposal can be extended with the consent of tenderer. The contracting entity shall send a notice to the tenderer who submitted the winning tender within 3 banking days of the tender validity period.

PPL does not require mandatory aggregation of lots and does not provide for contract valuation methods taking into account whole life costs of the purchase. Cascaded thresholds have not been established. PPL does not distinguish between short-term and long-term contracts.

Traditional written communication is preferred in all cases. Where communication is by electronic means or fax, written confirmation of such communication is mandatory. PPL does not provide for the mandatory use of electronic communication.

PPL does not stipulate that the costs of tender participation should be kept low; the law allows for a fee to be charged for participation in the PP procedure. The tenderer shall pay a tender participation fee in order to receive the tender documents and register as tenderer. The tender participation fee is set by the contracting entity and must not exceed 0.5 per cent of the estimated value of the contract and 1.5 times the tender costs. All costs related to conducting the tender including costs of the contract notice, lease of office space for conducting the tender, funding the evaluation commission, preparation and delivery of tender documents to tenderers as well as all other costs directly associated with conducting the PP procedure are reimbursed from the participation fee.

PPL contains clear requirements on the use of languages. Documents on pre-qualification, basic tender conditions, proposals, offers and quotations shall be submitted in the official language of the Republic of Azerbaijan. Exceptionally, specified documents can be prepared in one of the languages widely used in international trading. PPL does not contain clear rules on currency. Prices in tender proposals shall be expressed in a currency or currencies specified by the contracting entity in tender documents (not more than three types of currency). Prices in tenders or proposals shall be expressed in convertible foreign currencies for comparison purposes, as well as the currency or currencies of the tender. In a case such as the one described, the rate set by the National Bank of the Republic of Azerbaijan on the last day for submission of tender or proposal shall be used.

Review and remedies

In Azerbaijan, a tenderer who has suffered or will suffer losses or damage as a result of a contracting entity not complying with obligations specified by PPL is entitled to lodge a complaint. Complaints should be lodged in writing with the manager of the contracting entity before the contract is signed. The tenderer may also lodge complaints with the Procurement Authority in cases brought under PPL. The executive authority shall render a written decision within 20 banking days.

The following issues cannot be the subject of a complaint: i) selection of the procurement method; ii) limitation of procurement procedures because of nationality; and iii) a decision by the procurement agency to reject all tenders, proposals, or quotations.

The review decision of the Procurement Authority is final, unless the tenderer appeals the decision to the court.

Public contract management

PPL in Azerbaijan requires neither mandatory planning of public procurement nor a detailed and unbiased assessment of the contracting authority’s needs. PPL does not require appropriate budget or financing authorisation prior to publication of a contract notice nor budgetary authorisations for contract payments falling due beyond the current budget year. PPL does not regulate the contract performance security. In the tender documents there should be information covering what is required, including forms, amounts of the contract performance security, if required. The winner of a tender shall sign a procurement contract and submit a contract performance security within the terms specified in the tender documents.

PPL does not require contracting entities to provide contract management of the public contract nor does it require staff to have adequate contract management capabilities. PPL does not require procurement monitoring and administration to be computerised.

5. Quality of PP remedies legislation in EBRD countries of operations

Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 percent representing the optimum quality of basic functional features of the national PP remedies legal framework.
Assessment overview

**Strengths**
In the 2010 assessment, the Azerbaijan PPL did not demonstrate any specific strengths; the highest compliance rate is 60 per cent for competition benchmarks. Average scores are well below 50 per cent of the benchmark.

**Weaknesses**
PPL in Azerbaijan has several major weaknesses; significant regulatory gaps were identified in almost every indicator. PPL is lacking several integrity safeguards and has not adopted efficiency instruments either.

The institutional framework is inadequate; the PP regulatory body is not independent and there is no independent PP review body. General eligibility rules are not directly established. There are no clear rules on the choice of the PP procedures and PP regulation is clearly incomprehensive.

**Opportunities**
The basic principles of competition in PP are established, including the use of the open tender as a default procedure. However, this is deterred by domestic preferences. PPL contains some provisions aimed at curbing corruption in the PP process and requires that procurement officers avoid any conflict of interest while conducting PP procedures.

**Regulatory risks**
Several features of the PP policy in Azerbaijan fall below any international standard. A major shortcoming is the preferential treatment of local tenderers, as PPL allows for domestic preferences.

The 2010 assessment revealed substantial regulatory gaps in adopting key elements of the PP framework (a 43 per cent gap in adopting the integrity safeguards and a 47 per cent gap in incorporating the efficiency instruments).

III. Conclusions

The quality of Azerbaijan PPL is low, with a 51 per cent compliance rate with the international standards. Most marks on the core principle indicators are rather low.

The Azerbaijan institutional framework is insufficient and little enforcement is provided; the assessment identified substantial regulatory gaps in key elements of the institutional framework and insufficient integrity safeguards and efficiency instruments have been adopted.

Local PP policy making is not responsive to market challenges; PP sector in Azerbaijan is generally closed to international suppliers.

All efforts were made to interview local contracting entities. In spite of several attempts, it turned impossible to obtain any feedback from local contracting entities.
I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations

Legal framework
Public procurement in Hungary is regulated by the Act CXXIX of 2003 on Public Procurement (PPL), (amended on several occasions) and secondary legislation (Government Decrees and Ministry of Justice and Law Enforcement Decrees). In the EBRD 2010 assessment, the Hungarian PPL scored high to very high compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Scope of regulation
PPL covers both national and local government procurement and establishes specific procurement rules for public law institutions. PPL enumerates groups of governmental buyers, including state and local government agencies, organisations performing tasks in the public interest, and agencies that intend to realise their procurements from subsidies under EU funds, which are subject to public procurement obligations and which are deemed contracting entities.

PPL includes specific procurement rules for the utilities sector for organisations performing tasks in the public interest and operating in the sectors of water management, energy, transport and electronic communications.

Public works concessions and service concessions are partly regulated by PPL; however, a separate law – the Law on Concession – has been established.

2. Quality of PP legislation in detail

Regulatory institutions
In Hungary, the Public Procurement Council (PPA), an independent authority, has been established as a public procurement (PP) regulatory body. It consists of nineteen members, reporting to the Parliament.

The core function of the Public Procurement Council is monitoring enforcement of the legislation as well as initiating and amending legislation related to public procurement. Moreover, the Public Procurement Council is responsible for publishing the Public Procurement Bulletin containing contract notices, monitoring amendments and delivery of public contracts, and maintaining a register of the contracting entities.

Chart 3 illustrates the results of the review of the Hungarian PP institutional framework.

3. PP institutional framework

Note: The chart shows the score for four institutional features provided by national PP laws: uniformity, stability, flexibility and enforceability. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP laws “on the books” and the benchmark, regarded as optimal for these four recommended regulatory features, is marked in light blue, light orange, light purple and light green red respectively.

Note: The chart shows the score for extensiveness and comprehensiveness of national PP laws of the country. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.
4. Adequacy of PP policy making

Note: The chart shows the score for integrity safeguards implemented by national PP laws compared with the score for efficiency instruments, as provided by national PP legislation, for the country. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent (one-half of the pie chart) representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP laws “on the books” and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light orange and light blue, respectively.

PPL provides for a decentralised procurement function as well as a Central Purchasing Body. The Government may conduct any public procurement in the framework of a centralised procedure. Local government is entitled to implement a public procurement process in the framework of a centralised procedure as well.

Eligibility rules
PPL determines primary eligibility rules which clearly state when tenderers are excluded from participation in the procurement procedure.

The main reasons for excluding tenderers are: bankruptcy, liquidation proceedings, suspension of business activity; professional misconduct; final conviction of an offence concerning professional activity, failing to fulfil obligations relating to payment of taxes or social security contributions; and submission of false information in previous procedures.

In addition to the general eligibility criteria, PPL establishes regulations governing how qualification criteria for tenderers shall be established by contracting entities. Tenderers may be requested to demonstrate: professional activity, technical capacity, economic and financial standing and professional qualifications.

PPL enumerates all certificates that may be required from the tenderer by the contracting entity to prove his compliance with the qualification criteria set out in the contract notice.

The procurement procedures
PPL provides both tendering and negotiation procedures including:
- open tender
- restricted tender
- negotiated procedure
- competitive dialogue
- direct contracting.

PPL incorporates a clear test as to the choice between tendering and negotiated procedures.

Open tender and restricted tender are the default procedures. The contracting entity may apply other procedures only in situations where the law allows. As far as negotiated procedures are concerned, PPL allows the selection of tender type or method based on the specifics of the purchase and contract profile.

The procurement time and cost-effectiveness
PPL allows for an accurate estimation of the length of the PP process for the procurement of public works and goods of significant value. PPL requires the public procurement to be accomplished in a reasonable time. Therefore, several specific deadlines have been established to achieve this objective, both for tenderers and contracting entities. Deadlines for submitting tenders are compliant with EU PP Directives.

PPL requires mandatory aggregation of lots but does not provide for contract valuation methods taking into account whole life costs of the purchase or works; nonetheless such a method can be introduced by the contracting entity. The cascaded thresholds have been established and the formality of the procedure is adjusted to the contract type and value.

PPL does not contain specific provisions regarding electronic or fax communication; this is regulated by Government Decree 257/2007. Currently, electronic communication or eProcurement has not been adopted as a mandatory solution.

PPL stipulates indirectly that the costs of tender participation should be kept low. PPL does not contain a direct provision requiring the contract terms and conditions to be fair and balanced or reflecting best available business practice.

If a tender security is requested, the contracting entities are obliged to set it forth details of it in the contract notice. PPL does not provide for a maximum amount of tender security, but requires setting the amount of the tender security proportionately to the contract value.

PPL allows for the use of languages other than the official language of
Hungary; however, it does not clearly state rules on the use of languages. Contracting entities are obliged to set forth those rules in the contract notice. PPL does not contain any specific rules concerning currency in procurement procedures.

**Review and remedies**
PPL provides for independent remedies mechanisms. In addition, public procurements and public contract award procedures are regularly audited by the national audit bodies.

The Arbitration Committee for Public Procurement (the Remedies Body) works under the Public Procurement Council reviewing complaints regarding public procurements and deciding on PP remedies.

In Hungary, tenderers may challenge a tender evaluation report by submitting a request for reconsideration. The contracting entity is obliged to reply within three days of receiving such a claim and notify all tenderers. When a request for reconsideration has been received, the contracting entity may not enter into a procurement contract within 10 days of its reply to the tenderers. If the tenderer is not satisfied with the decision of the contracting entity, the tenderer may file a claim for a remedy with the Remedies Body. This claim needs to be submitted within 15 days of notification of the contract award or from obtaining the tender evaluation report. The decision of the Remedies Body is final, unless the tenderer appeals the decision to the court.

**Public contract management**
PP planning is mandatory for contracting entities, except for the utilities sector. The plan should be prepared at the beginning of each budget year, preferably by 15 April 15, and should cover all public procurements for the next 12 months.

PPL requires the contracting entities to provide appropriate contract management of the public contract. In addition, the contracting entity is requested to submit notification of any public contract extension or amendment and contract performance to be published in the Public Procurement Bulletin. In the case of long-term public contracts, such notification is submitted annually and includes information about the performance of the contract to date.

5. Quality of PP remedies legislation in EBRD countries of operations

**Assessment overview**

**Strengths**
PPL in Hungary clearly promotes transparency, integrity, and competition in public procurement and scored very high compliance in these areas (an average 90 per cent compliance rate). PP policy has focused on adopting integrity safeguards and providing significant enforcement instruments; it is less comprehensive when it comes to efficiency instruments.

PPL provides for a dedicated public procurement enforcement mechanisms and remedies system. PPL balances administrative and civil aspects of the PP framework well. In addition, PPL stipulates that, if applicable, PP remedies should be simple, quick and inexpensive.

PPL provides for modern, uniform and comprehensive regulation, in accordance with EU PP Directives. In addition, the PP framework follows the principle of proportionality, distinguishing short- and long-term contracts, small- and high-value contracts, as well as providing for different procurement procedures suitable for different contract types.

Moreover, the PP framework in Hungary is stable. Certain specific rules have been amended several times; however, the core principles of the framework are very stable. Most of the PPL amendments have resulted from implementation of EU PP directives.

Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.
Weaknesses
PPL is based on sound principles and has no major weaknesses, scored below the 50 per cent compliance rate.

Marks for efficiency and economy of the PP process are relatively low, due to insufficient adoption of the procurement efficiency instruments in the regulation of pre-tendering and post-tendering phases. In certain aspects PPL is outdated: electronic communication is not mandatory and PPL does not require procurement monitoring and administration to be computerised.

Opportunities
The Hungarian PP framework is, in principle, highly compliant with international procurement standards. Specifically, PPL fully implements EU rules on public procurement. In addition, the PP institutional framework is of high quality and provides sufficient enforcement; no significant regulatory gaps were identified. PPL strongly promotes anti-corruption policies, with good results. The Hungarian PPL scored best in the EBRD region in the 2010 assessment.

Risks
In spite of very high marks, PPL could improve by adopting some procurement efficiency and economy measures and increasing accountability of contracting entities. PPL does not provide a code of ethics for PP officers, nor does it require the procurement staff to have adequate contract management capabilities. Communication rules are outdated and there is no general requirement to publish all tender documents and procurement reports on the contracting entity’s website.

II. Public Procurement Practice Review Summary

Legal framework
Local PP practitioners reported that PPL is generally considered clear and comprehensive. The contracting entities have established internal procurement rules to eliminate eventual regulatory gaps. Internal PP rules are disclosed to the public and are updated every year. Roles in the procurement process are usually clearly allocated and contracting entities organise regular training for all internal stakeholders. Chart 2 presents the scores for the general quality of local PP practice in Hungary (average compliance rate above 75 per cent).

Regulatory institutions
Compliance with PPL is monitored by a dedicated public regulatory authority, as well as a dedicated and independent remedies body. Chart 3 illustrates how the Hungarian institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation
In Hungary PPL covers both government and utilities public procurement. Exceptions and exclusions are compliant with EU PP Directives.

Eligibility rules
In practice, eligibility rules are generally respected. Submitting false declarations is grounds for exclusion from the procurement procedure.

In practice the contracting entities establish prequalification criteria which include experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities.

Affiliates of the contracting entity are generally eligible to tender, unless it can be demonstrated that there is a significant degree of common ownership, influence or control between the contracting entity and the affiliates.

The procurement procedures
Tenders are typically used though negotiated procedures can be used for specific or complex contracts. In most cases it is necessary for the contracting entity to explain their choice of procurement method.

6. Quality of PP practice in EBRD countries of operations

Note: The chart shows the score for extensiveness and comprehensiveness of national PP laws of EBRD countries of operations. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.
7. Quality of PP practice in detail

The procurement time and cost-effectiveness

In Hungary public procurement planning procedures are implemented. In most cases a PP plan is prepared each budget year. Contracting entities are obliged to complete the PP plan before a process is started and, as a result, coordination of technical, financial and procurement planning is achieved. Moreover, reasonable assessment of relevant procurement risks is mandatory, therefore enhancing performance of the procurement.

In practice, the contracting entities have introduced internal PP monitoring and have established auditing arrangements. Consequently, changes in PP procedure are monitored and, in most cases, amendments and extensions to a public contract will be monitored as well. As a result, modifications or waivers of the terms and conditions of a contract are subject to an internal review and approval procedure.

Contracting entities have also adopted standard procurement forms and templates, but they are not uniform across the country. Internal PP regulations do not always allow the use of standard international contract forms.

In practice it is possible to estimate the length of the PP procedure. It takes about 170 days to sign a public procurement goods contract of the value of €500,000 and a works contract of the value of €500,000. Generally sufficient time is allowed to prepare and submit tenders. In practice the evaluation of tenders is completed within the original tender validity period.

Review and remedies

In Hungary, complaints are heard by an impartial and independent Remedies Body. The remedies procedures are considered to be straightforward, effective and not discriminatory. This is confirmed by the fact that the Remedies body is not perceived to be corrupt. Both the cost and the speed of the remedies proceedings are deemed to be reasonable: it takes from 30 to more than 45 days to obtain a review decision. All procurement reports are disclosed to the Remedies Body and, in principle, a tenderer may explain their position during the remedies proceedings. However, it is not clear whether the hearings and the proceedings are fully open to the public.

Public contract management

Public contracts are generally administered in a fair and equitable manner. There are appropriate procedures to monitor the delivery of goods and services and all contract payments. Evaluations and audits of PP are also conducted.

Generally, contract management is well developed in Hungary. Public contracts are generally completed within the budget and on schedule. However, manual or computerised procurement and contract monitoring systems do not exist in practice. Internal rules on contract cancellation and compensation in such cases have been only partially established. When a public contract is cancelled, the contracting entity is required to specify a reason for doing so.
Assessment overview

**Strengths**
Local procurement practice in Hungary received high scores (average above a 75 per cent compliance rate). Local PP practice is perceived to be transparent, competitive and well-managed. Contracting entities supplement PPL with internal procurement rules. There are appropriate procedures in place to plan procurement, manage the PP process and monitor delivery of public contracts. The PP framework is deemed clear, comprehensive, and conducive to a competitive procurement environment.

**Weaknesses**
Review of local practice revealed that there are no elements of practice scored below 50 per cent in Hungary. However, several implementation gaps were identified, as the scores on the quality of local PP practice are generally lower than the quality of the PPL; in particular, integrity and economy of the PP process could be improved. In addition, institutional PP capacities could be improved, as the PP practice survey revealed implementation gaps of between 10 per cent and 27 per cent on every institutional capacity indicator. Furthermore, significant implementation gaps were identified in implementing integrity safeguards and procurement efficiency instruments (above 23 per cent) in practice.

**Opportunities**
Hungarian PP practice is medium- to high-compliant with international standards. There are several positive features in the local practice: there are many internal regulations which cover the pre-tendering and post-tendering PP phase; public contracts are generally completed on schedule; procurement evaluations and audits are conducted; and the Remedies Body is not perceived to be corrupt.

**Risks**
The quality of local PP practice is distinctly lower than the quality of local PP laws; significant implementation gaps were exposed in the assessment. Regular procurement capacity building is not sufficient and PP practice does not measure up to the standards imposed by PPL.

In addition, not all contracting entities have introduced internal rules regarding the pre-tendering and post-tendering phase.

There is limited use of electronic communication and the tender documents are, in most cases, not available on the contracting entity's web site and formulated only in the contracting entity's official language. In most cases the only tender currency allowed is the domestic currency.

**III. Conclusions**

Hungary achieved the highest result among all of the EBRD countries of operation in quality of legal PP framework (91 per cent compliance rate), the only country in the region to achieve very high compliance with international PP standards.

The Hungarian institutional framework is comprehensive; no substantial regulatory gaps in institutional framework were identified. However, PPL is somewhat bureaucratic and not flexible enough - a regulatory gap of 17.5 per cent in flexibility indicators has been observed.

PP policy-making is reasonably balanced and responsive to local market challenges; both integrity safeguards and efficiency instruments have been adopted in PPL. Regulatory gaps of no more than 12 per cent were identified in the assessment.

However, in the assessment of local practice Hungary scored a 78 per cent compliance rate (high compliance), significantly lower than in the assessment of quality of legislation (very high compliance). Several implementation gaps were identified and a general conclusion is that there are substantial gaps in implementation of laws and institutional framework capacities.

Finally, local PP practice in Hungary scored a 33 per cent compliance rate in the PP sustainability survey. These marks are similar to scores of other EU Member States in the EBRD region.

10. Quality of PP remedies practice in EBRD countries of operations
I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations

Note: The chart shows the score for extensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework
Public procurement law in the Kyrgyz Republic is regulated by law № 69 May 24th, 2004, with later amendments № 172 July 28th, 2008 and № 236 July 20th, 2009, (PPL). In the EBRD 2010 assessment, PPL scored low to medium compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulator institutions
The Kyrgyz Republic has established a dedicated and independent regulatory body, the State Public Procurement Authority (Procurement Authority), which is responsible for developing PP policy. The Head of the Procurement Authority is appointed by the President at the Prime Minister’s request and reports to the Prime Minister.

The procurement Authority’s core functions are:

- development of a regulatory framework for the PP system
- coordination and regulation of activities connected with procurement procedures in public institutions
- the monitoring of PP procedure and its compliance with national law
- cooperation with contracting entities within the scope of PP, including training for procurement officers
- monitoring the transparency of PP procedures
- reviewing complaints filed in the course of PP procedures and issuing decisions within its competence.

Chart 3 illustrates the results of the review of the Kyrgyz PP institutional framework.

Scope of regulation
The law covers both national and local government procurement. There are separate regulations for the procurement of goods in some areas, for example, national defence.

The law provides procurement rules for public law institutions. According to PPL, the status of public law institutions is devolved to: legal persons, organisations financed by the national budget;

2. Quality of PP legal framework in detail

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

3. PP institutional framework

Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law “on the book” and the benchmark) is marked in light blue, light orange, light purple and light green respectively.
4. Adequacy of PP policy making

Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light orange and light green, respectively.

In addition to the general eligibility criteria, PPL establishes regulations governing how qualification criteria for tenderers shall be established by contracting entities. Tenderers may be requested to demonstrate:

- professional and technical competence, experience and reputation, financial resources, equipment and other physical facilities necessary to perform the activities specified in the procurement contract as set forth in the tender documentation.
- they do not have property subject to judicial control.
- their affairs are not at the disposal of the court or a court officer and the tenderers’ business activities may not be suspended or may not be subject to lawsuits that threaten their business activities.
- that, together with senior staff and the providers themselves, they should not have given false information or misrepresented or misled the entity about their qualifications for the procurement contract.
- they have legal ability to enter into a procurement contract.

The requirements listed above apply to all tenderers except in cases where the value of the procurement is less than the minimum threshold. In addition, the contracting entity has the right to exclude the tenderer when information submitted regarding qualifications is inaccurate or incomplete and the tenderer fails to eliminate these shortcomings immediately at the contracting entities’ request.

The contracting entity evaluates the tenderers in accordance with the eligibility rules and qualification requirements (if prequalification is available); tender documents or other documents soliciting proposals or quotations should explain all requirements.

The procurement procedures

Kyrgyz PPL provides for various types of procurement procedures:

- Open tender
- Restricted tender
- Two-stage tender
- Request for quotation
- Direct contracting.

Open tender is the default procedure. The contracting entity may apply other procedures only in situations where the law allows. The only negotiated procedure is direct contracting. There is no direct link between the type of contract and the type of procedure with the exception of consultancy contracts. Unlike the other procured services, when procuring consulting services, the contracting entity may adopt the most advantageous offer approach and evaluate tenders under a broader set of criteria, such as: quality; quality together with price or individual consultants.

The procurement time and cost-effectiveness

PPL does not allow for an estimation of the standard length of the procurement process for works or goods contracts of a significant value. There is also no requirement for the procurement process to be accomplished in a reasonable time. There is no general requirement that the cost of participation in the procedure should be kept low. PPL stipulates only that the contracting entity may charge a non-refundable fee for a copy of tender documents, although it should not exceed the cost of printing and delivery. In addition to that fee, the contracting entity may also require the tenderer to submit, together with the offer, a refundable tender security. For small-value contracts tender security may not be applied.

PPL enables the Procurement Authority to conduct procurement procedures electronically; eProcurement is not available to regular contracting entities.

governmental agencies; municipal organisations funded by local budgets; local governments; institutions and funds established by public funds; joint stock companies in which the state owns at least 51 per cent of shares.

PPL does not provide any specific regulations for procurement in the utilities sector. Concessions are not regulated in Kyrgyz law.

PPL provides decentralised functions; it also establishes a Central Purchasing Body.

Eligibility rules

PPL establishes some general eligibility criteria such as that tenderers will be excluded from the process if:

- within two years prior to commencement of procurement procedures, they have improperly completed at least one public procurement contract
- they are declared bankrupt or are in the process of declaring bankruptcy
- they fall behind with payment of taxes or other obligatory payments.
PPL provides for the use of three languages in the preparation of tender documents: Kyrgyz, Russian (the official language) and English. However, if the contracting entity decides that due to the small value of the purchase only local tenderers may be interested in participating in the tender, tender documents may be prepared in the national and/or the official language only.

**Review and remedies**

Kyrgyz Republic Law provides for administrative review of PP complaints by the Public Procurement Authority.

PPL stipulates that the tenderer has the right to submit a complaint to the contracting entity within 10 days of the contract award notice. The contracting entity has to review the complaint and issue a decision within 7 days. If the tenderer is not satisfied with the decision or, if the contracting entity fails to issue it within the stipulated period of time, the tenderer has the right to appeal to the Procurement Authority, and then to the court. If, however, the tenderer does not exercise his right to appeal, the decision of the contracting entity is deemed final.

Moreover, the tenderer loses the opportunity to appeal if he fails to submit the complaint within 15 days of the moment when he found out or should have found out about the decision. There are certain exemptions from the general right of the tenderer to appeal. The tenderer may not file a complaint about:

- the choice of procurement method, the choice of a selection procedure made in accordance with the Law on Procurement, providing benefits for domestic suppliers in accordance with PPL.
- the decision of the contracting entity, taken in accordance with the Act.

The tenderer or any governmental entity, whose interest is violated or may be violated as a result of appeal, has the right to participate in the review proceedings.

If the complaint is reasonable, the tender procedure shall be suspended for 10 days. If the procurement contract has already been concluded within this time, the Procurement Authority may delay bringing the contract into force for 10 calendar days. The suspension may be prolonged but may not exceed a limit of 30 days.

**Public contract management**

PPL does not establish any requirement for public procurement staff to have adequate contract management skills or for the monitoring and administration of public contracts to be computerised.

PPL requires contracting entities to submit procurement plans for the following financial year within 10 days of the approval of the national budget. There is no regulation requiring a detailed and unbiased assessment of the contracting entities’ needs. Contracting entities shall receive the appropriate budget or financing authorisation prior to the publication of a contract notice, but no such authorisation is required for contract payments falling due beyond the current financial year.

The contracting entity awards the contract to the tenderer who submitted the lowest responsive tender. After the procurement contract has been awarded, the contracting entity and the tenderer sign a contract within 7 days of the contract award notice.

Contract performance security, if requested, must be submitted in the form required by the contracting entity.

No new conditions which change the nature of the contract established in the contract notice and which were the basis for selection of the tenderer may be added to the contract. Amendments which violate the law on public procurement are deemed invalid.

If there are any disputes regarding PP contracts, the tenderer has the right to file its requests with the contracting entity which is obliged to comment on them. If a dispute still remains unresolved, the tenderer has the right to turn to the courts. PPL also regulates cancellation of contracts. If there has been a major change of conditions, which the contracting parties have not and could not have foreseen while concluding the contract, and there is no longer a valid public interest in proceeding with the subject of the contract, the contracting entity may terminate the contract. In such a case, PPL provides that the settlement of expenses resulting from a cancelled contract between the parties shall be conducted according to the provisions of Kyrgyz law.

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**5. Quality of PP remedies legislation in EBRD countries of operations**

Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.
Assessment overview

Strengths
In the 2010 assessment the Kyrgyz PP framework did not demonstrate specific strengths; enforceability, with a score of 85 per cent compliance, is the strongest point of the local framework.

PPL provides for an administrative review and allows for a judicial review as an alternative. Provisions of PPL also allow a tenderer to seek compensation in a case where a contract has been cancelled. Moreover, PPL limits the authority to cancel a public procurement contract by naming specific conditions. Contracting parties also have the right to adapt the contract provisions about settling disputes resulting from the contract before the courts need to intervene.

Weaknesses
The Kyrgyz institutional PP framework shows some deficiencies: regulatory gaps are substantial (between 15 per cent and 30 per cent). The weakest point is economy of the process, where the score is only 50 per cent compliance. Substantial gaps were identified in both integrity safeguards and efficiency instruments regulation. PPL is outdated: it does not match a contract type with tender selection processes or require contract terms and conditions to reflect the best available business practice. Electronic communication is limited and available only when accompanied by written confirmation. Furthermore, PPL does not provide for the difference between a public procurement contract and concessions.

Opportunities
Integrity safeguards are better regulated in the Kyrgyz PPL than efficiency instruments, yet the assessment has revealed significant gaps in both integrity (32 per cent) and efficiency (41 per cent). The PP policy features are balanced, but at medium compliance level.

II. Public Procurement Practice Review Summary

Legal framework
The 2010 assessment revealed that the Kyrgyz contracting entities have not fully implemented mechanisms ensuring the objectives of PPL. Several Kyrgyz practitioners consider the legislative framework to be unclear, incomprehensible, and not conducive to a competitive procurement environment, although others express the opposite view.

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

PPL does not address the distinction between the nature and the scope of the procurement contract and the type of procurement method to be applied. This may lead to unnecessary bureaucracy.

Furthermore, some of the local contracting entities stated that they have substantial internal procurement procedures and their procurement decision-making process is mainly regulated by internal rules. Internal procedures are updated on an ad hoc basis. Internal roles in the procurement process were evaluated by participants as clearly allocated. Not all of the contracting entities provide training for all their stakeholders regarding their roles, rights, and obligations. Chart 2 presents the scores for the general quality of local PP practice in the Kyrgyz Republic.

Regulatory institutions
The compliance of PP procedures is monitored by a dedicated Procurement Authority. Chart 3 illustrates how the local PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation
PPL covers both government and utilities public procurement. Exceptions and exclusions are compliant with UNCITRAL Model Law.

Eligibility rules
In practice, PP qualification criteria include experience, past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities.

6. Quality of PP practice in EBRD countries of operations

Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in the EBRD countries of operation. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.
Kyrgyz Republic

7. Quality of PP practice in detail

The procurement procedures
Negotiated procedures are not available for specific or complex contracts. An open tender procedure is not a default procedure in practice, although PPL states otherwise.

The procurement time and cost effectiveness
It takes from 120 to 180 days to sign a PP works contract to the value of €500,000. To sign a contract for goods to the value of €250,000 takes from 45 to 80 days. Review of local practice shows that there is sufficient time allowed to prepare tenders. Evaluations of submitted tenders are normally completed within the original tender validity period and contracts are generally completed on schedule. Tender documents are never published on the contracting entity’s web site nor are they available free of charge.

Review and remedies
According to local practitioners remedies procedures are not always straightforward, effective, and non-discriminatory. The speed and cost of the remedies procedure is not reasonable.

Generally participants have access to review proceedings and these proceedings take place in public. All procurement documents should be disclosed; however, not all contracting entities share this opinion. Moreover, the review proceedings are not always recorded.

Public contract management
Contracts are generally completed within the original contract price and on schedule. Only some of the contracting entities found contract administration mandatory for public contracts. In practice, contracts are generally administered in a fair and equitable manner. However, not all of the contracting entities maintain contract administration records. There are internal rules on contract cancellation; however, the reason for contract cancellation does not always have to be specified.

Assessment overview
Strengths
There is no element of practice in the Kyrgyz Republic which scored above 90 per cent. The Kyrgyz framework scored well on the flexibility indicator.

Contracting entities generally have internal rules on how to draft tender documents and organise the procurement process. There are also standard forms of contract notices and standard internal forms for tender securities. Sufficient time is allowed for tenders to be prepared. Contracting entities monitor changes in the procedure once the procurement process has been launched and changes in the contract once the procurement process has finished.

8. PP institutional framework in practice

9. PP policy-making in practice

Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light green and light orange, respectively.

Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light green and light orange, respectively.

Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light green and light orange, respectively.

Note: The chart shows the score for integrity safeguards implemented by national PP practice compared with the score for efficiency instruments, as provided by national PP practice, for the country in the region. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP practice and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light green and light orange, respectively.
III. Conclusions

The most apparent shortcoming of Kyrgyz procurement regulation is the bias towards domestic goods and tenderers as well as the inefficiency and lack of competition in local public procurement practice. In addition, outdated regulation leads to unnecessary bureaucracy in procurement procedures.

The Kyrgyz public procurement regulation achieved a result of 64 per cent in the assessment of legislation, which placed the country near the bottom of the medium compliance range in the EBRD region (average compliance rates vary from 50 per cent to 85 per cent). The analysis of the institutional framework showed the biggest gap in stability and flexibility indicators, amounting to 30 per cent and 27.5 per cent, respectively. Two remaining regulatory gaps in uniformity and enforceability are substantially smaller, 15 per cent and 22.5 per cent respectively. In addition, the assessment revealed substantial regulatory gaps in PPL regarding the implementation of the integrity safeguards (31 per cent) and the procurement efficiency instruments (41 per cent).

An assessment of the institutional framework revealed that the legislation in place has not been implemented. Substantial implementation gaps have been observed in every indicator (average gap of 29 per cent). In addition to weak institutions, the implementation of integrity safeguards and efficiency instruments in practice is very low, with implementation gaps at 26 per cent and 29 per cent, respectively.

The survey of local procurement practice looked at the level of implementation of sustainable procurement policies and it revealed very low compliance with the sustainability benchmark (30 per cent).

10. Quality of PP remedies legislation in EBRD countries of operations

Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.
I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations

Legal framework
Public procurement in Moldova is regulated by the law on Public Procurement Nr. 96 enacted on April 13th 2007, and published July 27th 2007 in Monitorul Oficial Nr. 107-111, Article N: 470, (PPL).

In the EBRD 2010 assessment Moldovan PPL scored low to medium compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions
PPL has established the Agency for Material Reserves, Public Acquisitions and Humanitarian Assistance (“The Agency”), the central administrative body with legally binding characteristics and functional independence, subordinated to the Government of Moldova.

The Agency was created in order to supervise, control and coordinate public procurement (PP), it has the authority to develop PP policies in Moldova including: development of legislation, drafting regulations for the execution of PPL, and monitoring PP procedures. Moreover, it maintains lists of qualified tenderers, as well as the list of tenderers excluded from participation in public tenders in Moldova. The Agency is also responsible for developing and enforcing standard documentation, as well as organising training for the contracting entities and their procurement staff.

In addition, the Agency is responsible for PP review and resolves complaints related to public procurement. Chart 3 illustrates the results of the review of the Moldovan PP institutional framework.

Scope of regulation
PPL provides regulations for both public and local government procurement and establishes specific procurement rules for public law institutions. PPL does not provide any specific regulations for procurement in the utilities sector. PPL is also applied to PP contracts subsidised directly by the contracting entity in more than 50 per cent of cases.

PPL outlines circumstances in which procurement procedure is not applied (which are generally parallel to circumstances named in EU Directives) and it refers to the following contracts:

2. Quality of PP legal framework in detail

Note: The chart shows the score for extensiveness and comprehensiveness of national PP laws of EBRD countries of operations. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

3. PP institutional framework

Note: The chart shows the score for four institutional features. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator.
4. Adequacy of PP policy making

PPL provides for decentralised procurement functions and establishes a Central Purchasing Body.

**Eligibility rules**
PPL establishes no general eligibility criteria. Under PPL any local or foreign entrepreneur is eligible to tender, unless only local entrepreneurs are invited to tender. Also, entrepreneurs can create a consortium and are allowed to submit a tender offer together.

Contracting entities may set forth pre-qualification criteria, such as:
- managerial competence
- experience
- reputation
- availability of qualified personnel
- technical equipment
- a satisfactory financial situation
- evidence of not being bankrupt or insolvent
- fulfilment of public obligations and the payment of taxes
- non-use of administrative or criminal penalties in the last three years
- information about founders and affiliates.

Tenderers will be excluded from the process if:
- submitted data is unreliable or incomplete
- the tenderer fails to deliver information upon request.

The qualification of the tenderer may be conducted solely in accordance with criteria and procedures set forth in tender documents.

The Agency is responsible for maintaining lists of qualified and unqualified tenderers. Blacklisted participants are excluded from participation in the procurement procedure for three years from the time they are added to the list.

**The procurement procedures**
Among the PP procedures, open tender is the default procedure, while other procedures may be used only under conditions stipulated in PPL. PP procedures may include:
- Open tender
- Restricted tender
- Competitive dialogue
- Negotiated procedures
- Direct contracting
- Request for quotations
- Dynamic purchase system
- Electronic auction
- Procurement for planning of government council housing
- Framework agreement
- Procurement through universal trade stock.

PPL provides for negotiated procedures and for a clear test as to the choice between tendering and negotiated procedures.

PPL allows selection of tender type or method on the basis of the specifics of the purchase and contract profiles. In Moldova electronic auctions are permitted.

**The procurement time and cost-effectiveness**
PPL contains neither provisions regarding contract valuation methods based on an entire life costing of the purchase or works, nor requires contract conditions to be fair, balanced or based on the best available business practice.

It also does not require the formalities of the procurement process to be kept simple.
Tender documents are delivered to the tenderers at their request, but they are not free of charge. PPL stipulates only that the contracting entity may charge a non-refundable fee for a copy of tender documents, although it should not exceed the cost of printing and delivery.

The contracting entity may require tender security (in the form requested in the tender documents) to be submitted together with the offer. Tender security shall not exceed the limit of 3 per cent of the value of the offer submitted. The contracting authority may not require any tender security for tenders with an estimated value of less than 200,000 MDL (about €12,300) for goods contracts, and 1,000,000 MDL (about €61,700) for works contracts.

PPL allows for an accurate estimation of the duration of the PP process for works and goods contracts of a significant value. PPL enforces a general rule that the PP to be accomplished in a reasonable time. It takes around 35 days to select a tenderer. PPL also stipulates that public contracts shall be signed within 20 business days, from the day the contract is awarded, if such a requirement was set forth in the tender documents.

PPL introduces both tendering and negotiated procedure and distinguishes between short- and long-term contracts, enabling contracting authorities to adjust the procedure to the specific features of the purchase. At the discretion of the contracting entity, all means of communication are available to tenderers: mail, fax, electronic means, telephone or a combination of those. The contracting entity may request confirmation of documents in written form, only if such a requirement was directly set forth in the tender notice.

PPL stipulates that all tender documents should be formulated in the official language exclusively, unless the nature of the purchase requires foreign tenderers or the estimated value of the contract exceeds 2,500,000 MDL (about €154,000) for public procurement goods and services contracts; and 99,000,000 MDL (about €6,000,000) for public procurement of works contracts. If a tender is submitted in a foreign language, it has to be submitted in the official language as well.

Foreign currency may be used in the course of the procedure. However, its use has to be clearly stipulated by the contracting authority in tender documentation. In this case, the contracting authority is also obliged to recalculate the proposed price in the currency of Moldova, MDL.

5. Quality of PP remedies practice in EBRD countries of operations

Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

Review and remedies
PPL provides for an administrative review of PP complaints. Tenderers are entitled to file a complaint with the Agency. Any tenderer who believes that his legally recognised interests or rights have been infringed by the contracting entity during the procurement procedure, or that the contracting entity violated a law when awarding the contract which resulted in or might result in damage to the tenderer, is entitled to challenge the contracting entity’s decision or the way the PP decision was made, according to law.

There are certain exemptions from the general right of the tenderer to appeal. The tenderer may not file a complaint about:

- the selection of tendering procedure for consulting services
- the limited participation in the procurement procedure envisaged in law
- the contracting entities’ decision to purchase domestic goods and services
- the decision to reject all offers
- the absence of notification about the right to appeal.

Complaints regarding invitations to tender and tender documents can be submitted until the opening of tenders. If the Agency has not issued a decision within the prescribed period of time (20 days), or the tenderer is not satisfied with the decision, he is entitled to refer the complaint to the appropriate administrative court and, as a result, the Agency loses the jurisdiction to resolve the complaint.

Public contract management
Contracting entities must prepare procurement plans on a yearly and quarterly basis. A detailed financial plan for a PP contract is required when the contract is signed.

The contracting entity may establish, in tender documents, requirements regarding and the conditions of contract performance security. Contract security
shall not exceed a limit of 15 per cent of the value of the contract.

The contracting entity is under no obligation to conduct proper contract management. The law does not require a computerised contract monitoring system nor does it provide a requirement for procurement staff to have adequate contract management skills.

**Assessment overview**

**Strengths**
In the 2010 assessment the Moldova PPL did not demonstrate specific strengths; flexibility, with a score of 90 per cent compliance, is the strongest point of the local framework.

PPL commits contracting entities to draft tender documents and provides standard forms of contract notices, procurement reports and tender securities, standard terms of reference, tender documents for all types of procurement and the standard terms and conditions of contracts for all types of procurement.

**Weaknesses**
The weakest point of Moldovan PPL is Stability, scored at 35 per cent compliance. Frequent changes to PPL have had a negative influence on stability. In addition, the stability of specific procurement procedures is not ensured; PPL does not prevent a change of procedure or significant changes to the scope of the contract once the procurement process has been launched.

Electronic submission of tenders is not allowed unless the tender is submitted with a certified electronic signature. PPL does not authorise the resubmission of information and documents during the procurement process. There is also no specific provision for the cancellation of a public contract, consequently there are no rules on compensation.

**Opportunities**
PPL contains explicit anti-corruption policy regulations, yet it is not satisfactory: the assessment has revealed a 35 per cent regulatory gap in PPL integrity safeguards. Similarly, a 22 per cent regulatory gap has been observed in the efficiency instruments.

**Regulatory risks**
PPL suffers from a lack of stability and PP policy-making is inconsistent and unbalanced. Other negative features include the lack of contract management regulation and the lack of a requirement for mandatory publication of contract notices and tender documents on the contracting entity’s web site.

II. Public Procurement Practice Review Summary

**Legal framework**
Several local practitioners consider the legislative framework to be unclear, incomprehensible, and not conducive to a competitive procurement environment. Internal regulation of the procurement process is not very popular among local contracting entities; however, roles in the procurement process were found in most cases to be clearly allocated. Since PPL does not mandate the disclosure of the internal procurement rules, transparency of the procurement process is affected.

No regular procurement capacity-building training is organised for procurement officers.

Chart 2 presents the scores for the general quality of local PP practice in Moldova.

**Regulatory institutions**
The compliance of PP practice with PPL is monitored by the Agency.

Chart 3 illustrates how the local PP institutional framework has been evaluated by local contracting entities and practitioners.

**Scope of regulation**
PPL requires mandatory procurement planning before a PP process is started; however, the technical, financial and procurement planning is not well-coordinated. Assessment of all relevant procurement risks is not mandatory either. Generally, once the procurement process has been launched, changes in procedure are monitored. In some cases contract administration is provided.

Manual or computerised procurement or contract monitoring systems have been introduced generally.

6. Quality of PP practice in EBRD countries of operations

Note: The chart shows the score for extensiveness and comprehensiveness of PP practice in EBRD countries of operations. The scores have been calculated on the basis of a practice questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.
Moldova

7. Quality of PP practice in detail

Both national and internal guidelines concerning the drafting of tender documents have been introduced. Standard forms of contract notices, procurement reports, tender securities and standard international contract forms are not employed in practice.

Eligibility rules

The assessment of practice revealed that eligibility rules are correctly applied.

The qualification criteria set by contracting entities include experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as financial position. Financial information is routinely requested in order to assess the tenderer’s capacity to deliver the contract.

The procurement procedures

PPL recommends open tender as the default procedure and this tender is most commonly used. Negotiated procedure is not utilised for specific or complex contracts, although PPL provides for it. Consequently, the contracting entity is not making use of the choices available when choosing a suitable procurement method.

8. PP institutional framework in practice

The procurement time and cost-effectiveness

In Moldova it is not possible to estimate how long it takes to sign a public procurement goods contract to the value of €250,000 or a public procurement works contract to the value of €500,000. Nevertheless, tender evaluation is normally completed within the original tender validity period. It is claimed that contracts are mainly completed on time.

Review and remedies

An administrative review of complaints related to PP procedures is conducted, but local practitioners reported that complaints are rarely heard in an impartial or independent manner.

The review process is not efficient and it takes from 30 to 45 days to obtain a decision. Most local contracting entities declared that the review process does not fit the business context. The Agency is perceived to be unpredictable. The remedy procedures are neither effective nor straightforward. They are also discriminatory. The cost of the review procedure is not considered bearable for the private sector.

The Agency is generally perceived to be corrupt. Participants have access to all review proceedings; however, these proceedings rarely take place in public.

Public contract management

In Moldova, contract administration is not mandatory for public contracts. To improve the post-tendering PP phase contracting entities introduce internal procedures to monitor contract delivery and/or termination. Any modifications or waivers of the terms and conditions of a contract...
are subject to a review and approval procedure. A manual, rarely computerised, procurement and contract monitoring system has been introduced. In practice the reasons for contract cancellation do not always have to be specified.

Assessment overview

Strengths
There is no element of practice in the Moldovan PP practice which scored high compliance with international standards. The highest marks (69 per cent) are for the competition indicators, due mainly to the fact that the both the lowest price and the most economically advantageous responsive tender approach is enabled.

Weaknesses
There are many weaknesses in Moldovan procurement practice. The main weakness is lack of enforceability (40 per cent compliance rate), flexibility (48.75 per cent compliance) and formality of PP procedures (marks for proportionality are 31 per cent).

There is no mandatory test to ensure that the scope and subject of PP is economically justified. Negotiated procedures are not used for complex contracts, although they are provided for in PPL. Furthermore, it is not mandatory for the contracting entity to explain their choice of procurement method. Tender documents are formulated only in the contracting entity’s official language and are not available in a language customarily used in international trade.

The contracting entity is not required to maintain a real-time written record of the procurement proceedings. PPL compliance monitoring is evidently non-existent.

The contracting entity’s internal procurement rules do not always sufficiently supplement gaps in PPL regulation.

Opportunities
Financial authorisation is required to start the procurement process. Many contracting entities have internal rules for drafting tender documents and standard forms of contract notices increasing the system’s transparency.

There are also internal PP monitoring and auditing arrangements in place. Several contracting entities have internal rules or policies on contract cancellation.

Risks
Local PP practice in Moldova is generally weak (average 55 per cent compliance rate). Significant implementation gaps have been identified in several areas. In addition, the PP review and remedies proceedings seem to be inadequate, corrupt and discriminatory. Moreover, review decisions are not published, or otherwise available to the public.

III. Conclusions
The quality of Moldovan PPL achieved medium compliance with international standards (average 71 per cent compliance rate). PPL scored well on the competition, uniformity and flexibility indicators; otherwise marks were rather low.

The Moldovan institutional framework is fragmented and substantial regulatory gaps in the institutional framework were identified (a 42.5 per cent regulatory gap in enforcement instruments and a 65 per cent gap in stability measures have been identified). Local PP policy-making is reasonably balanced and responsive to local market challenges but insufficient integrity safeguards and efficiency instruments have been adopted. Regulatory gaps of 35 per cent and 22 per cent respectively were revealed by the assessment.

In the assessment of practice, local PP practice in Moldova scored 55 per cent compliance with the international standard, significantly lower than in the assessment of quality of legislation.

The assessment revealed that there is no compliance with any key PP standards and average compliance rates vary from 31 per cent to 69 per cent of the benchmark. Several implementation gaps were identified and a general conclusion is that there are very substantial gaps in the implementation of laws and institutional framework capacities in Moldova. Local practice is lacking in terms of stability and uniformity and the enforcement is generally insufficient (a 60 per cent implementation gap in enforcement has been reported).

Finally, local PP practice in Moldova scored a 14 per cent compliance rate in the PP sustainability survey. These marks are significantly lower than the scores of other countries in the EBRD region.

10. Quality of PP remedies legislation in EBRD countries of operations
I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations

Legal framework
Public procurement in Serbia is regulated by Public Procurement Law of 6th January 2009, Official Gazette of RS No. 116/08. (PPL). In the EBRD 2010 assessment, the Serbian PPL scored at the level of low to medium compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of public procurement (PP) laws are presented in Chart 2.

Regulatory institutions
The Ministry of Finance is the regulatory body for procurement functions in Serbia. The Public Procurement Office was established as a special organisation to work in the field of public procurement in order to ensure proper conditions for economic, efficient and transparent use of public funds in public procurement and to induce competition and equality of opportunity among tenderers. Regulations pertaining to the state administration also apply to the activity and organisation of the PP Office. The Public Procurement Office does not have regulatory powers. Its responsibilities include:

• participation in drafting the regulations pertaining to public procurement
• providing consulting services to procuring entities and tenderers
• organising staff training for work in public procurement
• cooperation with foreign institutions and experts in the field of public procurement
• publication and distribution of relevant professional literature
• preparation of standard tender documents and standard contracts for public procurement
• collection of information on public procurement in other states
• systematic collection of information from procuring entities and keeping records of data in the field of public procurement
• preparation of and participation in determining the criteria for evaluating particular sorts of expenses incurred by beneficiaries of public funds
• preparation of a common database for keeping records of tenderers and their creditworthiness, on the

2. Quality of PP legal framework in detail

Note: The chart shows the score for extensiveness of national PP laws of the country. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each benchmark indicator.

3. PP institutional framework

Note: The chart shows the score for four institutional factors. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmark indicator. A regulatory gap (a difference between the scores for quality of law “on the books” and the benchmark) is marked in light blue, light orange, light purple and light green respectively.
4. Adequacy of PP policy making

Chart 3 illustrates the results of the review of the Serbian institutional framework in the PP sector.

Scope of regulation
PPL covers national and local government procurement. There are specific procurement rules for public law institutions and the utilities sector.

Eligibility rules
PPL establishes primary public procurement eligibility rules. A tenderer, a domestic or foreign legal or natural person may participate in a public tender, if that tenderer:

- is registered for particular activities with the authorised body of the state in his location.
- has not been the subject of an enforced settlement; bankruptcy or liquidation proceedings have not been initiated and the tenderer has not been suspended from business activities by virtue of a court decision or some other enforceable decision.
- has not been convicted of a criminal offence, commercial offence or an offence concerning his business activities by a decision having the force of res iudicata made by a judicial or administrative body over a period of five years prior to the publication of the contract notice, or if, over the same period of time, has not received an enforceable court or administrative order prohibiting him from carrying out the activity which is the subject of the public procurement.
- has fulfilled obligations related to the payment of taxes due, contributions and other forms of public taxation in accordance with the legal provisions of the state in his location.
- has a valid permit issued by the authorised body for carrying out the activity which is the subject of the public procurement, and such a permit is stipulated by a special regulation.
- possesses the necessary financial and economic standing.
- possesses sufficient technical capacities.

The contracting entity may impose additional conditions concerning the fulfilment of the tenderers’ obligations towards his subcontractors and suppliers.

PPL provides a distinction between general public procurement eligibility criteria, and qualification and technical requirements.

The procurement procedures
PPL provides both tendering and negotiation procedures including:

- open procedure
- restricted procedure
- negotiated procedure with prior notice
- negotiated procedure without prior notice
- design contest
- low-value public procurement procedure.

When awarding public contracts, contracting authorities choose, as a rule, open or restricted procedure unless there are specific circumstances. According to the law public procurement contracts shall be awarded in an open tender, but...
they can also be awarded in a restricted tender or using a negotiated procedure. PPL incorporates a clear test as to the choice between tendering and negotiated procedures. The negotiated procedure with prior notice is used:

- when all bids received by the contracting authority in an open procedure (or negotiated procedure) were incomplete or unacceptable
- when it was not possible to assess the value of the procurement
- in the case of a public procurement carried out exclusively for the purpose of research, development and experiments.

There are basic provisions in PPL concerning electronic procurement. The details are set out in secondary legislation.

**The procurement time and cost-effectiveness**

PPL provisions do not provide for an accurate estimation of the duration of a procurement process for goods and works contracts of a significant value. The law establishes several deadlines for contracting entities to comply with, such as the appropriate length of time to allow for tender preparation.

When a procurement is subdivided into separate lots and each one is the subject of a separate contract, the value of all the lots (over the period of one year) must be taken into account, (counting from the day of the contract for the first lot) when calculating the value of the procurement. The contracting entity shall not select a procurement valuation method that results in a lower estimated value so that a public invitation to tender can be avoided.

PPL does not require public procurement to be accomplished in a reasonable time; however, the requirement to treat contractors fairly applies. As a result, PPL does not provide directly for formalities to be kept simple.

An application to participate in a contract award procedure may be sent by letter, telegram, telex, facsimile or electronic mail; it may also be communicated by telephone. If the application has been sent by any means other than letter, it has to be confirmed in writing within the period of time allowed for the submission tenders. PPL does not provide for the mandatory use of electronic communication.

PPL contains a general rule that the costs of tender participation should be kept low. The contracting entity should ensure that the public procurement procedure is conducted and the selection of a tenderer made within the time limits and in the manner prescribed by this Law, incurring as little cost as possible in effecting the public procurement.

PPL does not directly require the contract terms and conditions to be fair and balanced and reflect best available business practice.

The law contains clear requirements on the use of languages. A procuring entity shall prepare tender documents and conduct the procedure in the Serbian language. Tender documents for public procurement of goods and services exceeding 6,000,000 Yugoslav dinars or for work assignments exceeding 120,000,000 Yugoslav dinars shall be prepared by a procuring entity in a foreign language commonly used in international business, as well as the Serbian language. A tenderer shall submit his tender in the language used in the tender documents, that is, in the language specified by a procuring entity in the tender documents.

PPL also contains clear currency rules. The values in tender documents and tenders shall be stated in Yugoslav dinars. A procuring entity may demand the tenderer state the values in a foreign currency as well, in which case the values shall be converted into Yugoslav dinars using the medium exchange rate of the National Bank of Yugoslavia valid on the day of the opening of tenders.

**Review and remedies**

The remedies procedure consists of two phases: the first begins with a request to the contracting entity and the second with a request to the Commission for the Protection of Tenderers’ Rights. The Commission is an independent body, established in October 2010, whose members are elected by Parliament. No complaint may be lodged against the Commission’s decision, nor may administrative proceedings be initiated against it. A claimant may claim compensation from a procuring entity before the authorised court.

**Public contract management**

PPL requires mandatory planning of public procurement. Contracting entities are required to obtain budgetary authorisation for contract payments.
falling due beyond the current financial year. The law provides for relevant quality standards and/or performance requirements to be incorporated in the technical specifications.

The law does not require appropriate budget or financing authorisation prior to publication of a contract notice. It does not include a clear test as to when the contracting entity should seek a contract performance guarantee. Performance guarantees are regulated by secondary legislation. The law allows the selection of tender type or method to be based on the specifics of the purchase and contract profile.

PPL does not request that contracting entities provide for contract management of the public contract directly nor provide for procurement staff to have adequate contract management capabilities. PPL does not require procurement monitoring and administration to be computerised.

Assessment overview

Strengths
Serbian legislation shows a medium to high compliance with the benchmarks.

PPL is stable; however, the new law only came into force in 2009.

The law forbids changes in the procedure when a procedure has been launched. If contracting entity wants to change the procedure, he has to start the procurement process all over again. Significant changes in the scope of a contract are also prohibited once the procurement process has been launched.

PPL contains specific provisions for the cancellation of a public contract. When a public contract is cancelled, the law requires the contracting entity to specify a reason for doing so.

Weaknesses
PPL legislation exhibits no major weaknesses.

The body with regulatory powers for procurement functions is the Ministry of Finance, which is not an independent body. The Public Procurement Office does not have regulatory powers.

PPL provisions are not precise enough and do not allow for the accurate estimation of the duration of the procurement process for works and goods contracts of a significant value (e.g. equivalent to €500,000 or higher).

Opportunities
PPL establishes clear anti-corruption rules. PPL states that a contracting entity shall reject a tender if there is verifiable evidence that a tenderer has given or promised to a current or former employee of a procuring entity a gift in money or in a non-monetary form, or that the tenderer offered employment or any other benefit, an object or a service that may be expressed in terms of money, in an attempt to influence an action, decision-making or the further course of the public procurement procedure. The contracting entity shall inform, in writing, a tenderer who has offered a bribe (as detailed above), as well as the Public Procurement Office, that the tender in question has been rejected and the reasons for the rejection. In addition, the contracting entity must keep a record of such a rejection in the documentation pertaining to the procedure.

Regulatory risks
PPL does not forbid preferential treatment of domestic tenderers. The law allows the preferential treatment of Serbian tenderers under certain conditions. In applying the criterion of the most favourable tender in economic terms, and where there are foreign and domestic tenderers, the contracting entity must select the most favourable domestic bidder when the difference in the final sum of points assigned does not exceed 20 in the case of the foreign bidder. The same preference applies when applying the criterion of the most favourable tender in economic terms.

II. Public Procurement Practice Review Summary

Legal framework
In practice the internal procurement process and decision-making regulations have not been regulated and, in addition, internal roles in the procurement process are not always clearly allocated. However, PP regulations mandate disclosure of the internal regulations and decisions.

There is also no training for internal stakeholders regarding their roles, rights and obligations in the public procurement process.

Chart 2 illustrates the general quality of practice.

Regulatory institutions
Compliance with PPL is not always monitored by the independent and dedicated public regulatory authority.

Chart 3 illustrates how the local PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation
The survey of local practice confirmed that procurement in the public and utilities sector is covered by PP regulation.

There is no mandatory test to ensure that the scope and subject of a public procurement is economically justified. However, procurement plans are prepared to regulate the procurement activities of each fiscal year. Technical, financial and procurement planning is generally coordinated. Moreover, it is mandatory to complete the procurement plan before a public procurement process has started.

A reasonable assessment of all relevant procurement risks is not mandatory for contracting entities.
No internal PP monitoring and auditing arrangements take place.

In some cases, guidelines outlining how to draft tendering documents and local and internal standard forms of procurement reports have been established. Moreover, standard forms of contract notices have been introduced. PP regulations allow the use of standard international contract forms for all types of procurement as a general rule. Standard tender documents for goods, works and services have not been established nor have standard national contract forms.

As a general rule, once the procurement process has been launched changes in the procedure are monitored and, in specific cases, changes in the contract are monitored after completing the procurement process.

Eligibility rules

Qualification criteria include experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as financial position. False declarations and failure to pay taxes or other public duties are grounds for exclusion from the procurement procedure.

The law does not forbid affiliates of the contracting entity from tendering.

The procurement time and cost-effectiveness

Contracting entities are not always able to estimate how long it takes to sign a procurement contract; however, it generally takes from 60 to 75 days to sign a public procurement contract on goods to the value of €250,000 or works contracts to the value of €500,000.

In some cases insufficient time is allowed to prepare tenders. Respondents claim that PPL establishes unrealistically short periods for tender preparation (e.g. 22 to 60 days). However, tender evaluations are normally completed within the original tender validity period. Contracts, on the other hand, are rarely completed on time.

Review and remedies

In practice the remedies procedure is straightforward and non-discriminatory; however, it is not always effective. The remedies procedure is not always completed in a reasonable period: it takes from 30 to 45 days to obtain a remedies decision. The cost of the procedure is perceived as unaffordable. However, the remedies bodies are not perceived to be corrupt.
All procurement documents are disclosed to the remedies bodies; however, not all decisions of the remedies body are published and easily accessible to the public. The remedies procedures are recorded.

**Public contract management**

Contract administration is generally mandatory for public contracts. However, contracts are not always administered in a fair and equitable manner. It is difficult to say whether contracts are completed on schedule. Some contracting entities complete contracts on time; others do not. Manual or computerised procurement and contract monitoring systems have not been commonly introduced.

No internal rules or policy regulating contract cancellation have been introduced. Internal policies regarding compensation when a contract has been cancelled have not been established. However, in some cases the contracting entity is obliged to specify the reason for cancellation of the contract.

**Assessment overview**

**Strengths**

There is no indicator on which Serbian practice scores above 90 per cent of the benchmark, although in competition benchmarks it reached 81.25 per cent.

**Weaknesses**

There is no indicator where Serbian practice scored below 50 per cent. However, in the economy of the process indicators it scored only 52 per cent compliance rate. Updating knowledge of prevailing prices for goods, works and services by using market surveys is rarely used. Tender evaluations are often conducted by committees without the appropriate level of expertise.

**Opportunities**

Remedies bodies are not perceived as corrupt or discriminatory.

It is mandatory to complete a procurement plan before a public procurement process is started. In principle, planning is done in sufficient detail to produce a realistic project definition, achievable completion schedules, and accurate cost estimates.

Contract administration is generally mandatory for public contracts. Adequate contract administration records are maintained. Supplier and contractor claims are handled fairly based on a clear recognition of both parties’ obligations under the contract. Appropriate procedures to monitor delivery of goods
Serbia

and services and to verify quantity, quality and timeliness have been established.

*Regulatory risks*
PPL does not forbid preferential treatment of domestic bids: it is allowed by PPL and used in practice.

### III. Conclusions

Serbia achieved a medium level of compliance in the quality of its legal PP framework assessment with a result of 72 per cent.

The evaluation of the Serbian institutional framework revealed a substantial gap of 32.5 per cent in flexibility indicators which could mean that the system is too bureaucratic and not flexible enough. A substantial gap was also observed in enforceability indicators. Serbia achieved the lowest position in the region with an enforceability gap of 25 per cent in the ‘law on the books’ assessment and 35 per cent for its law in practice assessment.

PP policy-making is balanced; however gaps of 32 per cent in integrity measures and 29 per cent in efficiency instruments were identified in the assessment. In both areas there is room for activities aimed at improving the response of contracting entities to local market challenges.

In the assessment of local practice Serbia scored a 69 per cent compliance rate (medium compliance). Several implementation gaps were identified, especially in efficiency indicators, but also in its institutional framework assessment, where gaps of more than 40 per cent were observed in uniformity and stability.
I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operations

The public procurement in Turkey is governed by the Public Procurement Law Act No: 4734, published in the Official Journal No: 22.01.2002/24648 ('PPL'). Since 2002 PPL has been amended several times. The most significant and extensive amendment was adopted in October 2008. In the EBRD 2010 assessment, PPL scored high compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions
Public procurement regulatory role in Turkey is divided between the Ministry of Finance and the dedicated authority, the Public Procurement Agency (PPA).

The core function of the Ministry of Finance is PP policy-making. Under the umbrella of the Ministry of Finance, the PPA is organisationally and financially independent. PPA is comprised of the Presidency and its office and the Public Procurement Board.

The main duties of the PPA include:
- evaluation of complaints submitted by the dissatisfied party regarding conducting procurement procedure in an unlawful manner
- implementation of all the PP-related legislation
- drafting standard tender documents and contract terms and conditions
- providing training on procurement regulation
- maintaining records of the blacklisted tenderers
- publishing the Public Procurement Bulletin and developing an eProcurement system.

Scope of regulation
The PPL covers procurement on both government and local level. Moreover, there are specific procurement rules for public law institutions. Nevertheless, PPL does not introduce specific procurement rules for the utilities sector.

2. Quality of PP legal framework in detail

3. PP institutional framework

Note: The chart shows the score for extensiveness and comprehensiveness of national PP laws of the EBRD countries of operations. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Note: The chart shows the score for four institutional provided by national PP laws: Uniformity, Stability, Flexibility and Enforceability. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP laws "on the books" and the benchmark, regarded as optimal for these four recommended regulatory features, is marked in light blue, light orange, light purple and light green respectively.
4. Adequacy of PP policy making

Concessions are regulated in separate legislation. Unfortunately, PPL does not provide enough distinction between the public procurement contract and procedures and concessions. Finally it has to be stated that PPL provides a decentralised procurement function; no Central Purchasing Body is established.

Eligibility rules
PPL in Turkey establishes primary public procurement eligibility rules. Grounds for exclusion are: bankruptcy, liquidation procedure; lack of fulfilment of obligations regarding payment of taxes or social insurance; submission of false data; suspension of business activity resulting form professional misconduct and conviction by a final judgement for certain crimes. Furthermore, PPL enumerates circumstances and persons or entities that cannot directly or indirectly or as a sub-contractor, either on their own account or on behalf of others, participate in the procurement procedure.

PPL allows the contracting entities to establish individual qualification criteria and asses and verify whether the tenderer is competent, reliable and capable to deliver the contract.

Pre-qualification criteria may include economic and financial standing as well as professional and technical capacities. Tenderers participating in the procurement may be required to submit relevant documents, certificates and licences, proving their compliance with the requirements.

The procurement procedures
PPL provides both tendering and negotiated procedures:

- open tender
- restricted tender
- negotiated procedure.
- direct contracting
- design contest.

PPL provides for a clear test as to the choice between tendering and negotiation procedures. Tenders are default procedure.

The procurement time and cost-effectiveness
PPL allows for an accurate estimation of the length of the procurement process for goods and works of a significant value (e.g. equivalent of €500,000 or higher). PPL establishes several specific deadlines for both contracting entities and tenderers in order to finalise the procurement procedure in a reasonable time. Thus, it takes minimum 48 days to sign the contract in open tender and 23 days in restricted tender. PPL requires to keep formalities simple and provides for aligning value and scope of the contract with a formality of the procurement process. PPL requires mandatory aggregation of lots. PPL also provides for contract valuation methods taking into account all-life costs of the purchase or works, when possible.

The estimated budget is published in tender or pre-qualification notices, and the contracting entities are obliged to provide reasons if the budget is questioned.

The PPL establishes cascaded thresholds as follows:

- 300 billion Turkish Liras for procurement of goods and services by government entities (350 billion 31 million Turkish Liras? = around €163 000).
- 500 billion Turkish Liras for procurement of goods and services by other public contracting entities (583 billion 385 million Turkish Liras? = around €269 936).
- 11 trillion Turkish Liras for the work contracts by any of the contacting entities covered by the PPL (12 trillion 834 billion 470 million Turkish Liras? = around €6 000 000).

PPL does not contain requirements on the use of specific methods of communication. There is no mandatory use of electronic communication. Neither does it include information concerning obligation of written confirmation of electronic or fax communications. However, it is worth...
to mention that both tender notice and tender results are published electronically.

PPL does not require to keep the costs of tender participation low. However, it determines a clear test as to when the contracting entity should seek a tender security. Tender security may amount to 3 per cent of the tender price. As far as the contract performance security is concerned it is calculated as 6 per cent as the contract value. Finally, PPL does not specify clear currency rules. The currency has to be determined in tender documents based on the characteristics of the procurement.

**Review and remedies**
PPL provides for an administrative review mechanism. Complaints related to public procurement are reviewed by the PPA. In addition, the PPA decisions can be appealed to the court.

PPL provides that a tenderer who claims to suffer a loss of rights or damage or who is likely to suffer loss or damage resulting from an alleged breach of law by the contracting entity, is entitled to request review by submitting a written complaint. Firstly, a written complaint can be submitted to the contracting entity. There is a standstill period - the contracting entity cannot sign the contract unless the contracting officer certifies that urgency and public interest considerations require the tender proceedings to continue.

The contracting entity is obliged to issue a reasoned decision, within thirty days form submission of the complaint.

If no decision is taken within the specified period or the tenderer is dissatisfied with the decision of the contracting entity, a further complaint will be reviewed by the PPA. The decisions of PPA are final unless they are appealed to the court.

**Public contract management**
PPL includes a general clause regarding mandatory planning of public procurement. For long-term projects, exceeding one budget year, it is compulsory that a financial programme is established to ensure that financing is available when required. PPL requires appropriate budget authorisation prior to publication of a contract notice.

On the other hand, PPL remains silent on public contract extensions and amendments.

5. **Quality of PP remedies legislation in EBRD countries of operations**

Notes: The chart shows the score on basic function features of PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

**Assessment overview**

**Strengths**
PPL in Turkey clearly promotes integrity and competition in public procurement and scored very high compliance in these areas (92.5 per cent compliance rate). The PP policy focused on adopting integrity safeguards and providing significant enforcement instruments.

PPL requires the procurement processes to be conducted by procurement officers, whose duties are clearly separated from the decision-making process and supply management. There are very high technical and professional requirements for all PPA board members. PPA is required to ensure that adequate formal training programmes exist for entry and higher-level procurement staff. In addition, PPA is obliged to accredit training resources in the country to complement government/donor-administered programmes (university).

PPL also provides for a dedicated public procurement enforcement mechanisms and review system. Moreover, PPL stipulates that, if applicable, the PP remedies should be simple, quick and inexpensive.

**Weaknesses**
PPL in Turkey is based on sound principles and it is evident that all efforts are made to ensure transparency of the process and combat corruption. Also, at the same time framework embraces most of efficiency instruments and if not for some lack of flexibility would be marked as very modern. The only major weakness proves a preferential treatment of domestic tenderers. In addition, domestic tenderers who participate in the tender by forming joint ventures with foreign companies cannot enjoy the domestic preference privileges.
Opportunities
In the future all public procurement in Turkey will be conducted on the eProcurement platform. In 2010 PPA introduced a pilot eProcurement platform for purchases in the pharmaceutical sector. This is a major policy development, as only a few countries in the EBRD region successfully implemented any eProcurement solutions.

Risks
Turkish PPL is in principle in high compliance with the international standards with the exception of:

- a lack of specific procurement rules for the utilities sector
- preferential treatment of domestic tenderers and /or products
- lack of independence of the PP remedies body ( the review proceedings are conducted by the regulatory authority.

II. Public Procurement Practice Review Summary

Legal framework
The local practice assessment revealed that the Turkish PPL is of high compliance with international best practice, but it is not sufficiently comprehensive. The pre-tendering and post-tendering phases are hardly regulated. In practice, the PPL is supplemented by internal procurement rules of contracting entities. Both national and internal procurement rules are fully disclosed to the public; they are usually published at the contracting entity web site or otherwise disclosed. Local practitioners consider the PPL is allocating roles and responsibilities in the PP process sufficiently. Most of contracting entities organise regular training sessions for their internal PP process stakeholders.

Chart 2 presents surprisingly high scores for the general quality of local PP practice in Turkey (average compliance rate above 85 per cent).

Scope of regulation
PPL recommends tenders as default procedure though negotiated procedures can be used for specific or complex contracts.

Eligibility rules
In practice, with some exceptions, the contracting entities allow their affiliates to be eligible to tender, unless it can be demonstrated that there is a significant degree of common ownership, influence or control amongst the contracting entity and the affiliates.

The procurement procedures
PPL recommends tenders as default procedure and most of public procurement in Turkey is conducted via tenders. Negotiated procedures are used for specific or complex contracts.

The procurement time and cost-effectiveness
PPL did not introduce sufficient mechanisms of procurement planning; however, the contracting entities establish such plans and complete the procurement plan before a public procurement process is started. Neither is needs assessment mandatory. Yet, local contracting entities introduced an assessment of all relevant

6. Quality of PP practice in EBRD countries of operations

Chart 3 illustrates how the Turkish PP institutional framework has been evaluated by local contracting entities and practitioners.

Note: The chart shows the score for extensiveness and comprehensiveness of national PP laws of EBRD countries of operations. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.
procurement risks as obligatory. Therefore technical, financial and procurement planning is in principle coordinated during the procurement procedure.

All changes in the procedure process once the procedure has been launched are monitored. The practice assessment reveals that extensions and amendments to the public contract are also monitored, even if modifications or waiver of the terms and conditions of a contract are not subject to special review or approval procedure.

Standard tender documents, contract forms and procurement records are well provided for. The contracting entities are also allowed to use international standard contract forms for all types of procurement.

According to local practitioners there are no substantial delays in procurement and it is possible to estimate the length of the procurement procedure to sign a public contract of any value.

Using sufficient time is allowed to prepare and submit tenders and tender evaluations are normally completed within the original tender validity period. With some exceptions, public contracts are generally completed on time.

**Review and remedies**

The review process, conducted by the PPA is timely and it takes about 30 days to obtain the review decision. Local practitioners believe that review proceedings are efficient and fit to context. As there is no independent remedies body in Turkey, local practitioners observed that the PPA is not always predictable and can be discriminatory for private sector.

The remedies procedures are straightforward, speedy, inexpensive and effective; the PPA is not perceived corrupt.

All procurement records are disclosed to the PPA and tenderers are enabled to explain their position. Yet there are no hearings and the review proceedings are not taking place in public. In most cases review decisions are published and easily accessible to the public, by electronic means.

**Public contract management**

In practice contract administration is mandatory for public contracts. Generally, contracts are fairly administered and completed within the budget and on schedule. With some exceptions, most of contracting entities implemented manual or computerised procurement and contract monitoring systems.

Also, there are internal rules regulating contract cancellation. The contracting entities obliged to specify the reason for public contract cancellation and adopted policies regarding compensation in case a public contract is cancelled.

**7. Quality of PP practice in detail**

|----------------|--------------|-----------------|---------------|-------------------------------|------------------------|-------------------|--------------|----------|--------------|------------------|

Note: The chart shows the score for extensiveness and comprehensiveness of national PP laws of the country. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

**8. PP institutional framework in practice**

Note: The chart shows the score for four institutional provided by national PP laws: Uniformity, Stability, Flexibility and Enforceability. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP laws “on the books” and the benchmark, regarded as optimal for these four recommended regulatory features, is marked in light blue, light orange, light purple and light green respectively.
Assessment overview

Strengths
Local PP practice is mostly compliant with the international standards and scored well above average in the 2010 assessment. It received the highest score for compliance (above 80 per cent) with competition, transparency, uniformity, stability and flexibility benchmarks. Local PP practice is perceived to be well managed. Contracting entities sufficiently regulate internal procurement process and internal decision making. There are appropriate procedures in place to monitor delivery of contracts; contract payments are monitored as well.

Weaknesses
There is no element of practice where local PP practice in Turkey scored below 50 per cent. Yet it scored significantly lower in integrity, stability and proportionality benchmarks which suggest that regardless recent improvements the PP practice is not regular in Turkey yet. Domestic preferences and instability does not improve the picture.

Opportunities
What are evident, local contracting entities are focused on achieving the best value for money and in order to achieve so adopt internal procurement rules regulating pre-tendering and post-tendering procurement phases.

It is also an improvement that the PPA, the regulatory and review body is not perceived as corrupt.

Risks
PPL provides for a uniform and modern framework, if not comprehensive. However, some implementation gaps were identified in practice. Firstly, local PP practice is not yet uniform. Furthermore, there is still both regulatory and implementation gap in integrity safeguards, followed by an even larger implementation gap in efficiency instruments. These deficiencies would be easily removed, if the eProcurement project would embrace all types of public contracts in Turkey.

In addition, as emphasized by local practitioners, the lack of independence of the remedies body is a considerable shortcoming of the otherwise modern Turkish PP system.
FYR Macedonia

I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operation

![Chart showing the score for extensiveness and comprehensiveness of national PP laws in the EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.]

Legal framework
Public Procurement Law in FYR Macedonia is regulated by the Law on Public Procurement adopted on December 3rd, 2007, published in the official Gazette of R.M. No. 136/07; 130/08) (PPL). In the EBRD 2010 assessment, PPL scored at a low to medium level of compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of law are presented in Chart 2.

Regulatory institutions
FYR Macedonia established the Public Procurement Bureau (PPA), as a central government body within the Ministry of Finance. The Minister of Finance proposes the Director of PPA who is then appointed by the Prime Minister for a four-year term of office.

The Public Procurement Bureau’s core functions are:

- submitting proposals to the Minister of Finance in the field of public procurement;
- monitoring and analysing enforcement of the law and public procurement;
- initiating amendments for improving the public procurement system;
- preparing standard tender documentation and standard model forms for the contract award procedures;
- keeping and updating records of the public contracts awarded, and publishing them on its website;
- determining minimum requirements for professional qualifications for the persons performing professional activities in the field of public procurement;
- ingorganisation and conducting training for civil servants and other competent persons with respect to public procurement;
- managing and updating its website and the ESPP (Electronic System for Public Procurement).

Chart 3 illustrates the results of the review of the Macedonian PP institutional framework.

Scope of regulation
PPL covers both national and local government procurement and provides

2. Quality of PP legal framework in detail

![Chart showing the scores for extensiveness and comprehensiveness of national PP laws of the country. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.]

3. PP institutional framework

![Chart showing the scores for four institutional provided by national PP laws: Uniformity, Stability, Flexibility and Enforceability. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP laws “on the books” and the benchmark, regarded as optimal for these four recommended regulatory features, is marked in light blue, light orange, light purple and light green respectively.]

Note: The chart shows the scores for extensiveness and comprehensiveness of national PP laws of the country. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.
specific procurement rules for public law institutions. PPL covers the utilities sector, which is regulated in a separate chapter within PPL.

Concessions are regulated by separate legislation. A new Law for Concession and other types of Public Private Partnerships was adopted in January 2008. In spite of recent legislation, PPL has failed to introduce a clear differentiation between public procurement contracts and procedures and concessions.

Generally, PPL provides a decentralised procurement function and may establish a Central Purchasing Body, at the government’s discretion.

Eligibility rules
In principle PPL establishes primary eligibility rules. Among the grounds for exclusion are:

- bankruptcy, liquidation procedure;
- lack of fulfilment of obligations regarding payment of taxes or social insurance;
- submission of false data;
- suspension of business activity resulting from professional misconduct and conviction by a final judgement for certain crimes.

PPL allows the contracting entities to assess and verify whether a tenderer is competent, reliable and capable of executing the contract against the minimum qualification criteria, set by the contracting entities in the tender documentation.

PPL determines the following qualification criteria:

- personal situation;
- ability to pursue the professional activity;
- economic and financial standing;
- technical and professional ability;
- quality assurance standards;
- environmental management standards.

To show compliance with eligibility rules and prequalification requirements specified in tender documents, the tenderers may be obliged to provide appropriate evidence, such as certificates.

The procurement procedures
PPL provides for various types of procedures:

a) open tender;
b) restricted tender;
c) negotiated procedure with publication;
d) competitive dialogue;
e) negotiated procedure without publication;
f) direct contracting;
g) design contest.

Open and restricted tenders are the default procedure. Following EU PP Directives, PPL incorporates a clear test as to the choice between tendering and negotiated procedures. The contracting entity may apply other procedures only in situations where the law allows. As far as negotiated procedures are concerned, PPL allows the selection of tender type or method based on the specifics of the purchase and contract profile.

Open procedure is carried out in one phase and the contracting authority may use electronic auction as an additional phase. Moreover, PPL allows the selection of tender type or method to be based on the specifics of the purchase and contract profile.

PPL has introduced some e-Procurement solutions, but conducting PP electronically is not mandatory for Macedonian contracting entities.

The contracting entities may conduct open and restricted tenders electronically using the central e-Procurement
platform, Electronic SPP(System for Public Procurement (ESPP)). ESPP es contracting entities and tenderers to:

• publish contract notices and contract award notices;
• publish and access all tender documents;
• ask and answer questions during the procurement procedure;
• submit and evaluate tenders;
• conduct auctions.

f. The procurement time and cost effectiveness

PPL does not allow for an estimation of the standard length of the procurement process. PPL determines several specific deadlines but does not require PP procedures to be finalised in a reasonable time. Following EU PP Directives, deadlines for submitting tenders are well regulated. Yet, PPL does not provide any deadlines for tender evaluation or for concluding a contract after award decision.

The value and scope of contracts are not aligned to the formality of the procedure. PPL does not provide contract valuation methods taking into account all-life costs of the purchase or works; however, it requires mandatory aggregation of lots. The contracting entity may not divide the public contract into multiple separate contracts with lower value, nor apply methods for calculating the estimated value of the contracts to avoid certain PP procedures. PPL does not require the contract terms and conditions to be fair and balanced, reflecting best available business practice.

If a tender is not conducted on the e-Procurement platform, communication may be traditional or modern, as chosen by the contracting entity.

The contracting entity also determines the currency or currencies in the tender documentation, as well as the base currency to be used in the evaluation of tenders. PPL does not establish any clear guidelines regarding languages; it is assumed that tenders can be submitted only in the official language.

PPL does stipulate that costs of participation in the process should be kept low. In addition, PPL provides clear test as to when the contracting entity should seek a tender security.

Tender security should be valid at least 14 days after the tender validity period and its value should not exceed 3% of the tender value.

Review and remedies

The law in FYR Macedonia provides administrative review mechanisms, with a judicial review of the remedies decisions.

Tenderers who suffered or could suffer damage by an alleged infringement PPL may lodge a complaint against the decisions and other actions or failures to undertake action during PP procedure.

All complaints should be submitted to and are reviewed by the State Appeals Commission, an independent PP remedies body. Submitting a complaint suspends the signing and execution of the public contract. The review decision of the State Appeals Commission is final, unless appealed to the administrative court.

Public contract management

PPL requires mandatory planning of public procurement. The contracting entity adopts a procurement plan covering its procurement for the budget year by types of goods, services and works, setting out the time it expects to initiate the procedure, the estimated value of the contracts and the type of procedure to be used for each contract. The annual procurement plan may be amended or modified during the year.

The contracting entities are not required to provide contract management of a public contract. There is no mechanism to introduce amendments or modifications in the post tendering phase.

5. Quality of PP remedies practice in EBRD countries of operations

Notes: The chart shows the score on basic function features of PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

Assessment overview

Strengths

In the 2010 assessment the FYR Macedonia PPL scored a medium level of compliance with the benchmark, with exceptionally high scores in uniformity and enforceability indicators (92.5% compliance rate) and good marks for competition measures (compliance rate).
PPL provides for modern and uniform regulation in accordance with EU PP Directives. PPL introduces dedicated public procurement enforcement mechanisms and an independent remedies system is in place.

**Weaknesses**
The 2010 assessment revealed that PPL shows some significant regulatory deficiencies. PPL is not comprehensive; the pre-tendering and tendering phases of PP are regulated, but no contract administration regulations are are provided. There are substantial regulatory gaps in recommended integrity safeguards (39% gap) and efficiency instruments (37% gap). PPL is not stable, but this is due to the recent alignment with EU PP Directives. The legal framework is also lacking in terms of flexibility, a 32.5% regulatory gap has been observed.

**Opportunities**
Efficiency instruments are slightly better regulated in FYR Macedonia than integrity safeguards. Establishing an e-Procurement platform is a step in the right direction. If use of the e-Procurement platform was made mandatory, it would significantly improve compliance with integrity and transparency standards.

The assessment results confirm that a modern efficiency-oriented approach to PP regulation has been adopted, and PP reform is underway in FYR Macedonia. With further improvements, a high level of compliance with international PP standards can be achieved.

**Risks**
The assessment revealed that PPL does not sufficiently curb corruption in the PP process and the accountability of contracting entities should be improved. Currently, not all efficiency instruments recommended by EU PP Directives have been adopted.

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**II. Public Procurement Practice Review Summary**

**Legal framework**
In the local PP practice survey, local practitioners reported that the PP framework is considered to be clear and comprehensive. In order to eliminate legislative gaps, the contracting entities frequently introduce internal procurement rules rules covering the pre-tendering and post-tendering phases of the PP process, which are updated following amendments of PPL, usually once per year. The local contracting entities claim that internal roles in the procurement process are, in principle, clearly allocated and contracting entities generally disclose procurement rules and decisions to the public.

It is not common practice to provide regular training for procurement staff only some contracting entities organise such training.

Chart 6 presents the scores for the general quality of local PP practice in FYR Macedonia (average 84% compliance rate).

**Regulatory institutions**
Compliance with PPL is monitored by a unit in the Ministry of Finance, the PPA, as well as a dedicated and independent PP remedies body. Chart 3 illustrates how the Macedonian institutional framework has been evaluated by local contracting entities and PP practitioners.

**Scope of regulation**
A survey of local practice confirmed that, in the FYR Macedonia, both the government and utilities sector entities apply PPL to their procurements. Exceptions and exclusions are compliant with EU PP Directives.

**Eligibility rules**
In practice, eligibility rules are adhered to. Contracting entities will usually set prequalification criteria, regarding experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as financial position. False declarations are grounds for exclusion from the procurement procedure.

Finally, in practice, affiliates of the contracting entities will tender for public contracts, as there is no restriction to forbid their participation.

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**6. Quality of PP practice in EBRD countries of operations**

Note: The chart shows the scores for extensiveness and comprehensiveness of national PP laws of EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.
The procurement procedures
Tenders are typically used though negotiated procedures can be used for specific or complex contracts. In most cases, it is necessary for the contracting entity to explain their choice of procurement method.

The procurement time and cost effectiveness
In practice, a test to ensure that the scope and subject of public procurement is economically justified is mandatory. PP plans are prepared to coordinate procurement each budget year using internally produced templates or standard software packages. For most contracting entities it is mandatory to complete the PP plan before a process is started. As a consequence, technical, financial and procurement planning is coordinated. Reasonable assessment of relevant procurement risks is not always mandatory; however, each procurement is evaluated by a specially appointed evaluation panel and monitored by the relevant supervisor.

The contracting entities establish internal procurement rules and auditing and monitoring arrangements, which monitor changes in the procedure as well as amendments to public contracts once the procurement process has been launched. The local contracting entities reported that modifications or waivers of the terms and conditions of a contract are, in principle, subject to a public hearing. However, local practitioners claim that frequently some procurement reports are not disclosed to the remedies body.

Public contract management
In practice, contract administration is generally mandatory for public contracts. Contracts generally completed on schedule, within the originally approved budget. Procurement evaluations or audits are conducted and followed by periodic reports on PP function. Typically, contracting entities adopt ies public cancellation. Compensation, in cases when a public contract is cancelled, is not available available. However, in a case of cancellation, the contracting entity is required to specify a reason.

Assessment overview
Strengths
Local procurement practice in the FYR Macedonia scored a high level of compliance (average 84% compliance rate), better than the evaluation of contract), In principle, sufficient time is allowed to prepare and submit tenders. There are no delays in tender evaluation: normally tender evaluation is completed within the original tender validity period.

Finally, tender documents are available but not free of charge.

Review and remedies
In the survey of local practice the remedies proceedings were evaluated by local contracting entities as effective, straightforward and not discriminatory. This statement is, however, in contrast to the reports of local practitioners who perceive the remedies body as corrupt.

The cost of the remedies is mostly bearable and the speed of the proceedings is considered timely, but it takes more than 45 days to obtain a review decision.

In principle, tenderers have access to all remedies proceedings and may defend their position, as public hearings are conducted and duly recorded. However, local practitioners claim that frequently some procurement reports are not disclosed to the remedies body.

8. PP institutional framework in practice
 conceives the remedies body as corrupt.

Note: The chart shows the score for four institutional factors provided by national PP laws: Uniformity, Stability, Flexibility and Enforceability. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each of these benchmark indicators.
9. PP policy-making in practice

Local PPL. Local contracting entities have supplemented PPL with internal procurement rules, so PP procedures are perceived to be competitive and transparent. Usually, in practice, there are appropriate internal procedures in place to plan procurement, manage the PP process and monitor delivery of public contracts.

Weaknesses

In the local PP practice survey, there is no element of practice which scored low compliance (below 50% compliance rate). However, the assessment revealed that the economy of the PP process is insufficient and scored a relatively low compliance rate of 59.38%. In the practice survey, the Macedonian institutional framework got lower marks than the regulatory framework, with increasing gaps in the implementation of PPL (gaps in implementation are twice the size of gaps in legislation). The 2010 assessment revealed that implementation of PP laws is still problematic and capacity building efforts should be increased.

Opportunities

Local PP practice in the FYR Macedonia is generally of good quality and scored a high level of compliance in 9 out of 11 key benchmark indicators (80% to 89.47% compliance rates).

Local contracting entities aim to achieve ‘value for money’ and supplement national PP regulation with internal procurement rules, increasing the transparency and efficiency of procurements. This has resulted in better scores for both integrity and efficiency indicators in the quality of practice evaluation.

In addition, due to a wide range of standard forms and guidelines on drafting tender documents, a good level of uniformity of local PP practice has been achieved.

Risks

Based on the assessment results, there are major risks arising from inadequate enforcement and failure to use the e-Procurement solutions available. Although the contracting entities confirm that PPL provides for electronically conducted PP procedures, not all of them are keen to conduct their PP procurements electronically on the central e-Procurement platform. Some
disincentives to international trade were also observed, as typically tender documents are formulated only in the contracting entity’s official language and they are not usually available in other languages. Only rarely do contracting entities allow the tender or proposal to be submitted in a language commonly used in international trade.

III. Conclusions

PPL in FYR Macedonia achieved a medium level of compliance in the assessment of the quality of legal PP framework (63% compliance rate). In spite of the medium level of compliance, the Macedonian institutional framework is comprehensive and no substantial regulatory gaps in the institutional framework were identified. Local PP policy making is somewhat responsive to local market challenges, but several of the recommended integrity safeguards and efficiency instruments have not been incorporated. Substantial regulatory gaps were identified in the assessment.

In the assessment of local practice FYR Macedonia scored an 84% compliance rate (high compliance). This is significantly higher than in the assessment of quality of legislation (medium compliance). In spite of this assessment, several implementation gaps were identified and the general conclusion is that there are substantial gaps in the implementation of PP laws and enforcement capacities.

Finally, local PP practice in FYR Macedonia scored a 33% compliance rate in the PP sustainability survey. This mark is similar to the scores of other EU member states in the EBRD region.
I. Public Procurement Legislation Review Summary

1. Quality of PP legal framework in EBRD countries of operation

Legal framework
Public procurement law in Kazakhstan is regulated by Law on Public Procurement enacted on December 29th, 2009 (PPL). In the EBRD 2010 assessment PPL scored low to medium compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions
In Kazakhstan, there is no independent regulatory authority for public procurement. A unit in the Ministry of the Finance is assigned with some regulatory functions in the field of procurement; however, we were not able to identify its core functions or regulatory responsibilities. Chart 3 illustrates the results of the review of the Belarus institutional framework.

Scope of regulation
PPL covers national and local government public procurement. However, there is no distinction between general PP rules and rules for public law institutions or utilities sector procurement. Concessions are regulated by a separate body of law and PPL clearly distinguishes between concessions and public contracts. PPL provides for a decentralised PP function as well as establishes a Central Purchasing Body.

Eligibility rules
PPL establishes some general eligibility criteria. The potential tenderers will be excluded from the PP process if:

- they are declared bankrupt or are in the process of declaring bankruptcy
- they fall behind with payment of taxes or other obligatory payments
- they are close relative of public procurement officer involved in procurement procedure
- they were involved in preparation of tender documents.

In addition to the general eligibility criteria, PPL establishes regulations governing how qualification criteria for tenderers shall be established by contracting entities.

Tenderers may be requested to demonstrate professional and technical competence, experience and reputation, financial resources, equipment and other physical facilities necessary to perform the activities specified in...
4. Adequacy of PP policy making

Procurement procedures
PPL provides for various types of procedures:
- open and restricted tender;
- request-for-quotations;
- direct contracting;
- electronic procurement;
- via regulated exchange.

Open tender is the default procedure. The contracting entity may apply other procedures only in situations where the law allows. The only negotiated procedure is direct contracting. There is no direct link between the type of contract and the type of PP procedure.

Procurement time and cost effectiveness
PPL requires PP procedure to be accomplished in a reasonable time, but does not require formalities to be kept simple. The formality of the procedure is not corresponding with scope and value of the contract. PPL provides for mandatory aggregation of lots and contract valuation methods taking into account primary cost and additional expenses (e.g. taxes and other due payments) of the purchase, although it does not provide for whole life cost valuation method.

PPL allows for accurate estimation of procedure duration to sign a public contract of significant value. PPL provides clear rules regarding methods of communication to be used during the procedures and sets forth possibility to use electronic communication. According to PPL two stage procedures can be conducted via electronic platform.

When it comes to the cost of the procedure, contracting entity is entitled to request a nonrefundable fee for providing tender documents, but it may decide not to request it, as it is not obligatory.

Review and remedies
PPL does not provide for a dedicated PP review or remedies system. All PP related complaints and disputes may be referred to the civil court. Any tenderer may appeal from the action of contracting entity or evaluation panel member, if their actions (or omissions) violate the legal rights and interests of the tenderer. The tenderer may not file a complaint about:
- choice of the procurement procedure
- rejection of all tenders

Public contract management
PPL requires contracting entities to prepare PP plan annually, in accordance with the budget planned for the next year. Such plan shall contain information on the range of goods, works and services planned to purchase; planned methods of purchase, and provisional timing. The plan may be a subject to change and information about it shall be disclosed within five working days after the approval.

In principle, there is no requirement for local contracting entities to provide for public contract management.

5. Quality of PP remedies practice in EBRD countries of operations

The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light orange and light green, respectively.

Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.

Notes: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light orange and light green, respectively.

Note: The chart shows the score for integrity safeguards as compared with the efficiency instruments provided by national PP legislation. Total scores are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum score for each indicator. A regulatory gap, as above, is marked in light orange and light green, respectively.
Kazakhstan

II. Assessment overview

Strengths
PPL in Kazakhstan, originally based on the 1994 UNCITRAL Model Law, scored very high in the competition indicators (90% compliance rate), with average medium compliance with international PP standards (69% compliance rate). Local PP policy focused on adopting transparency safeguards and providing enforcement; it’s less comprehensive when it comes to accountability, efficiency, and economy instruments.

Weaknesses
PPL does not provide for a dedicated PP enforcement mechanism and remedies system; general public administration deals with procurement function. The PP framework has been based on sound principles but it is now outdated; it does not distinguish small and high value contracts, short and long term contracts nor provides for different procurement procedures suitable for different contract types.

Opportunities
A very positive feature of the Kazakhstan PP legal framework is establishment of the national eProcurement portal and the development of local procurement capacities by the Central Purchasing Body. Still under development, the Kazakh eProcurement portal, run in Kazakh and Russian, is designed as comprehensive and provides the following functions:

- providing procurement planning
- providing information on procurement opportunities through the web portal
- registration of tenderers
- conducting e-procurement procedures, including the exchange of electronic documents between clients and potential tenderers
- collecting and archiving procurement records

III. Conclusions

Kazakhstan regulatory and institutional framework is rudimentary and several substantial regulatory gaps were identified. Specifically, Kazakh PPL does not provide for independent PP review and remedies system. In addition, PPL did not adopt several integrity safeguards and efficiency instruments recommended by current international PP standards. The PP sector in Kazakhstan is generally closed to international trade.

All efforts were made to interview local contracting entities. In spite of several attempts, it turned impossible to obtain any feedback from any local contracting entity in Kazakhstan. Data on implementation of sustainable public procurement is also not available.

Regulatory risks
In the 2010 assessment some significant regulatory gaps were identified (27%-29%), as in the local PP legislation several integrity safeguards and efficiency instruments recommended by international PP standards has not been incorporated.

In addition, PPL allows for domestic preferences and recommends that the contracting entities shall strongly consider the support of domestic entrepreneurs when evaluating the tenders.

Kazakhstan scored medium compliance in quality of the legal PP framework (average 69% compliance rate). The local PP legislation is outdated and insufficiently regulates PP processes.
I. Public Procurement Legislation Review Summary

1. Quality of PP legislation in EBRD countries of operation

Legal framework
Public procurement in Tajikistan is regulated by Law of the Republic of Tajikistan on Public Procurement of Goods, Works and Services, adopted in March 2006 (PPL). In the EBRD 2010 assessment PPL scored low to medium compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions
In Tajikistan, an Authority for Public Procurement (PPA) has been established as a central government authority responsible for the national policy in the sphere of public procurement (PP) of goods, works and services.

The PPA’s core functions are:
- developing PP legislation;
- coordinating PP activities of local contracting entities;
- monitoring of compliance of contracting entities with PP legislation;
- deciding on complaints regarding public procurements;
- developing standard PP tender documents;
- advising on application of the PP legislation;
- arranging for training of public procurement specialists;
- conducting PP procedures for goods, services and works of a value exceeding the minimal threshold on behalf of the contracting authorities.

Chart 3 illustrates the results of the review of the Tajikistan institutional framework.

Scope of regulation
PPL covers national and local government procurement and does not contain any special procure-ment rules for public law institutions or utilities sector procurements. Concessions are regulated by a separate body of law, but PPL doesn’t provide a clear differentiation between public procurement contract and concessions.

2. Quality of PP legal framework in detail


Note: The chart shows the score for extensiveness and comprehensiveness of national PP laws of the country. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles on an Efficient Public Procurement Framework. Total scores are presented as a percent-age, with 100 per cent representing the optimal score for these benchmark indicators.

3. PP institutional framework

Note: The chart shows the score for four institutional provided by national PP laws: Uniformity, Stability, Flexibility and Enforceability. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles on an Efficient Public Procurement Framework. Total scores are presented as a percent-age, with 100 per cent representing the optimal score for each of these benchmark indicators. A regulatory gap, a difference between the ranks for observed quality of national PP laws “on the books” and the benchmark, regarded as optimal for these four-recommended regulatory features, is marked in light blue, light orange, light purple and light green respectively.
PPL provides in principle for a decentralized procurement function (Qualified Contracting Authorities), as well as for a Central Purchasing Body (this function may be delivered by the PPA, based on the specific government decision).

Eligibility rules
PPL doesn’t provide a distinction between general public procurement eligibility criteria and technical requirements to be met by tenderers.

Contracting entities individually establish qualification requirements for specific tenders and by the decision of the contracting entity ten-derers, who failed to fulfill their obligations on at least one public procurement contract in last two years from the date of initiation of the procurement procedure, declared insolvent or being under the insol-vency process, or those who knowingly submitted false or inaccurate information regarding its qualifications are excluded from the public tender.

The procurement procedures
PPL provides for several PP procedures:

- Open tender
- Restricted tender
- Request for quotations
- Direct contracting
- Electronic procurement
- Short-list method for procurement of consultancy services

In addition, simplified procurement methods can be established by the PPA for small value contracts of the rural communities.

Open tender is the default procedure. The contracting entity may apply other procedures only in situations where the law allows and for high value contracts in co-ordination with the PPA. The only negotiated procedure is direct contracting. There is no direct link between the type of contract and the type of procedure with the exception of consultancy contracts.

The direct contracting may be conducted in following cases:

- If the procurement is an additional order to public procurement contract, within six months from the date of concluding the con-tract, and is not exceeding 15 percent of the amount of primary procurement contract, and maintains the same norms, parameters and standards;
- Signing of a contract while conducting research, experiments or preparation of a scientific opinion;
- If procured goods, works or services are available only from a particular supplier or the supplier possesses exclusive rights to them;
- At procurement for execution of creative works in the area of art or culture;
- In case of an urgent need to conduct procurement due to circumstances, which the contracting authority couldn’t foresee.

PPL provides that electronic procurement may be introduced by the decision of the Government of the Republic of Tajikistan.

The procurement time and cost effectiveness
PPL does not allow for an estimation of the standard length of the procurement process for works or goods contracts of a significant value. There is also no requirement for the procurement process to be accomplished in a reasonable time. Also, PPL does not stipulate maxi-mum tender validity periods.

PPL doesn’t require mandatory aggregation of lots. There is no distinc-tion between long and short term contracts.

PPL doesn’t provide for tender participation costs to be kept low. PPL stipulates, that contracting authority may require tender security to be submitted with the offer. Tender security value shall not exceed 3 per cent of the contract value. PPL, allows for other than written form of communication in public procurement procedure, like facsimile or electronic communication, although such a communication shall be confirmed in written form.

PPL stipulates that PP procedures shall be conducted in official lan-guage, if necessary procedure may be conducted in Russian or English. Regarding currencies, all offers are converted into one currency for tender evaluation and the exchange rate is recorded in the procurement report.

Review and remedies
PPL provides for administrative and judicial review of complaints regarding PP procedures, based on the 1994 UNCITRAL Model Law.

Any tenderer has the right to submit complaint to the contracting entity while...
PP procedure is still ongoing. Contracting entity within three days shall review it, and if needed, in cooperation with the PPA decide about suspending the PP procedure. If the contracting authority fails to issue the review decision within prescribed time or the tenderer is not satisfied with the decision, he has the right to appeal to the PPA or, alternatively, to the commercial court.

The PPA may suspend the PP procedure for up to 10 days in order to decide on the complaint within this period. The review decision of the PPA is final, unless appealed to the commercial court.

Public contract management
PPL requires contracting authorities to prepare annually public procurement plans, but there is no requirement that these plans should be based on detailed and unbiased assessment of contracting entity’s needs. Contracting entity needs to receive appropriate budget authorization prior to the publication of contract notice. There is no regulation regarding budget authorization for contract payments falling due beyond current budget year. PPL does not require contracting entity to provide for contract administration nor implement monitoring procedures. PPL doesn’t require PP officers to have adequate contract management capabilities, but these skills are generally required from public officers.

II. Assessment overview

Strengths
In the 2010 assessment the Tajikistan PP framework did not demonstrate any specific strengths; uniformity, with a score of 77 per cent compliance, is the strongest point of the local framework. PPL provides for basic features of the PP framework and embraces some instruments promoting competition and transparency. There are some regulatory and review institutions established and the review and remedies procedures are based on sound principles. PPL allows a tenderer to seek compensation in a case where a public contract has been cancelled.

Weaknesses
The Tajikistan PP legislation scored below 50 per cent compliance on economy of the process and efficiency indicators. Substantial regulatory gaps were identified; just a few out of recommended integrity safeguards and efficiency instruments were adopted in the local PP legislation. In general, PPL is based on the outdated 1990 standards.

Opportunities
Basic features of the local PP framework are sound but insufficient when evaluated against current international PP standards. There are several positive features in the regulation of the evaluation process and pre-tendering and post-tendering phases of procurement.

Regulatory risks
PPL provides for domestic preferences. Local tenderers may be granted preference in the amount of 20 percent while evaluating tenders for goods, as well as 10 percent while evaluating tenders for works, while other conditions remain equal. In addition, if domestic preferences were granted:

- works contracts resources and not less than 30 percent of domestic raw and construction materials for works,
- service contracts shall be delivered using not less than 70 percent of domestic labor.

III. Conclusions
Tajikistan scored low to medium compliance in quality of the legal PP framework (average 61 per cent compliance rate). The PP legislation provides for basic regulatory features but is outdated and insufficiently regulates PP processes. In addition, it does not incorporate integrity safeguards and efficiency instruments recommended by current international PP standards. Due to domestic preferences the PP sector in Tajikistan is generally closed to international trade.

All efforts were made to interview local contracting entities. In spite of several attempts, it turned impossible to obtain any feedback from local contracting entities in Tajikistan. Data on implementation of sustainable public procurement policies is also not available.

5. Quality of PP remedies practice in EBRD countries of operations

Notes: The chart shows the score on basic function features of PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.
I. Public Procurement Legislation Review Summary

1. Quality of PP legislation in EBRD countries of operation

![Chart showing quality of PP legislation in EBRD countries of operation]

Note: The chart shows the scores for extensiveness and comprehensiveness of national PP laws of EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework
Public procurement in Turkmenistan is regulated by the Law of Turkmenistan on Public Procurement from March 5th, 2002. In the EBRD 2010 assessment Turkmenistan had the lowest score in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of law are presented in Chart 2.

Regulatory institutions
In Turkmenistan there is no independent regulatory body for PP functions. The Ministry of the Economy is responsible for organising public tenders and the dedicated permanent unit, the Tender Committee.

The Ministry of the Economy’s core PP related functions are:

a) the organisation of committee meetings;
b) the preparation of tender documents for tender notices;
c) the publication of tender notices and the delivery of invitations;
d) supervising the Tender Committee and reviewing complaints arising from Tender Committee decisions.

The Tender Committee is responsible for all operational activities directly related to tendering, including:

- collecting documents for prequalification, if required, and reviewing them;
- approval of tender documents;
- distribution of tender documents and managing changes in them;
- ensuring the compliance of tender documents with the requirements of the contracting entity;
- providing assistance to the tenderers regarding tender documents and their clarification;
- collection, storage and evaluation of submitted tenders;
- overseeing compliance with tender procedure and contract award;
- issuing of the tender decision and submitting it for approval.

2. Quality of PP legal framework in detail

![Chart showing quality of PP legal framework in detail]

Note: The chart shows the scores for extensiveness and comprehensiveness of national PP laws of the country. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

3. PP institutional framework

![Chart showing PP institutional framework]

Note: The chart shows the score for four institutional factors provided by national PP laws: Uniformity, Stability, Flexibility and Enforceability. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP laws “on the books” and the benchmark, regarded as optimal for these four recommended regulatory features, is marked in light blue, light orange, light purple and light green respectively.
4. Adequacy of PP policy making

Although the Ministry of the Economy has overall control of the Tender Committee, the committee determines its own rules of work independently.

Chart 3 illustrates the results of the review of the Turkmenistan institutional framework.

**Scope of regulation**

PPL covers both national and local government procurement. PPL does not provide any specific rules for procurement within the utilities sector or public law institutions; state owned entities follow general PP rules in their tenders. The public procurement function in Turkmenistan is fully centralised and PPL applies to all public contracts with enterprises and organisations not owned by the state, with an estimated value that exceeds 30,000,000 TMM (1,530 Euros).

The laws of Turkmenistan do not regulate concessions.

**Eligibility rules**

PPL establishes grounds for exclusion, which include, inter alia:

- bankruptcy,
- a tenderer in a state of liquidation or reorganisation, or
- presentation of false information.

In Turkmenistan, enterprises and other entities not owned by the state are eligible to tender for a public contract, if they satisfy the following conditions:

- They have submitted their tender within the stipulated dead-line;
- They have declared that their capacities are sufficient to comply with tender requirements;
- They have successfully completed the prequalification procedure (if applicable);
- They have paid the participation fee for the evaluation of tenders.

**The procurement procedures**

Turkmenistan PPL provides for various types of procurement procedures:

a) Open tender;

b) Closed tender;

c) Primary tender;

d) Recurrent tender.

PPL does not provide for negotiated procedures; however, after the contract has been awarded, the tenderer and contracting entity may negotiate the contract terms and conditions further.

Choice of procedure is discretionary; the Ministry of the Economy, as the body responsible for the organisation of tenders, decides on which tendering method should be applied for a specific contract. There is no test to clarify which procedure will be followed.

There is no provision in PPL for any form of e-Procurement.

**The procurement time and cost effectiveness**

PPL does not allow for an accurate estimation of the length of the public procurement process for the procurement of works and goods of a significant value. There is no requirement to finalise the PP process in a reasonable time; however, three main deadlines have been established:

- Time limits for submitting tenders: tenderers have a minimum of one week from the publication of the contract notice.
- Time limits for evaluation of tenders: there is a one month maximum limit for the evaluation of tenders (from the dead-line for submitting tenders).
- Time limits for submission of documents for approval by the successful tenderer: there is a three day limit for the
submission of the tender evaluation record with tender results to the contracting entity for approval.

Due to the centralised system, procedures are kept simple but most procurement decisions are at the discretion of the Ministry of the Economy. There is no delegation of authority to contracting entities. There are no cascaded thresholds, nor a distinction between short and long term contracts. There is also no mandatory aggregation of lots nor any requirement for contract terms and conditions to be fair and balanced reflecting the best available business practice. PPL does not regulate ceiling thresholds for the cost of participation in a PP procedure; a participation fee is also discretionary.

**Review and remedies**

In Turkmenistan, PPL does not provide for a dedicated review or remedies system. However, the Ministry of the Economy of Turkmenistan reviews complaints regarding Tender Committee decisions. No specific administrative review procedure is provided; review decisions are as discretionary as the PP process itself.

**Public contract management**

Turkmenistan PPL does not provide any provisions regarding public contract management.

**II. Assessment overview**

**Strengths**

In the 2010 assessment the Turkmenistan PP legal framework did not demonstrate any strengths. The only good marks are for uniformity indicators, with a 50% compliance rating, perhaps an obvious outcome for a country with a fully centralised but unaccountable PP system.

**Weaknesses**

Turkmenistan’s institutional PP framework scored very low in all benchmark indicators. The lowest marks were for integrity and transparency safeguards (10% and 12.5% compliance rate) and competition indicators (7.5%). PPL does not offer a transparent process or ensure fair competition.

**Opportunities**

In spite of all the deficiencies uncovered by the assessment, efficiency instruments are better regulated in PPL than integrity safeguards. The assessment revealed an 87% gap in adopting anti-corruption safeguards and a 79% gap in adopting efficiency measures.

**Regulatory risks**

PPL provides only rudimentary regulation; in the 2010 assessment all key PP regulatory features were scored as high risk areas. In addition, it was not possible to conduct an interview with a contracting entity or obtain any data on the conduct of PP procedures in practice. Local legal advisers we approached reported that in the case of contractual disputes regarding a public contract, the case would be handled by a court, but refused to comment on key fairness indicators or provide an opinion about whether the administration and courts are perceived as corrupt.

The quality of Turkmenistan PP regulation scored, on average, a 26% compliance rate and stands for the lowest result in the EBRD region. In the assessment methodology the result of 25% compliance rate shows that local regulation does not, in general, provide any of the recommended PP features.

**III. Conclusions**

Turkmenistan scored low compliance in the assessment of legal PP framework (26% compliance rate), receiving lowest marks in the EBRD region.

The analysis of local institutional framework revealed substantial gaps from 50% to 67% in all key indicators. In addition, almost none of the integrity safeguards and efficiency instruments recommended by international PP standards were adopted in national PP legislation.

In Turkmenistan, although we approached several public entities, we were unable to persuade any contracting authority to answer the questionnaire regarding local PP practice.

5. Quality of PP remedies practice in EBRD countries of operations

Notes: The chart shows the score on basic function features of the PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.
Uzbekistan

I. Public Procurement Legislation Review Summary

1. Quality of PP legislation in EBRD countries of operation

Note: The chart shows the score for extensiveness and comprehensiveness of national PP laws of EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles on an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework
Public procurement in Uzbekistan is regulated by the Resolution of Cabinet of Ministers No 456, enacted on November 21st 2000 (“PPL”). In the EBRD 2010 assessment PPL scored low compliance in the region (Chart 1). The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles for an Efficient Public Procurement Framework. Detailed scores of the quality of legislation are presented in Chart 2.

Regulatory institutions
In Uzbekistan there is no dedicated and independent regulatory body for public procurement (PP) function. The “Uzbektenderconsulting” agency, established by secondary legislation, does not possess full regulatory powers, however performs some PP functions:

- developing standard tender documents for goods, works and services
- providing prequalification of potential suppliers of goods, works and services
- conducting direct contracting
- providing information on the conditions regarding tendering procedures
- studying foreign experience in tendering
- providing consulting services for contracting entities

Chart 3 illustrates the results of the review of the Uzbekistan institutional framework.

Scope of regulation
A regulation of PP in Uzbekistan is incomplete. PP is regulated mainly by the secondary legislation and there is no clear hierarchy of regulatory PP acts. PPL covers government procurement, however it does not provide special provisions for public law institutions procurement and procure-ment in the utilities sector. Concessions are regulated in a separate legal act.

PPL provides for a decentralised procurement function, but “Uzbektenderconsulting” agency has also been authorised as a Central Purchasing Body for Uzbekistan and conducts all major public procurements.

Eligibility rules
Tenderers, domestic or international are excluded from participating in public tenders, if:

2. Quality of PP legal framework in detail

Note: The chart shows the score for extensiveness and comprehensiveness of national PP laws of the country. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles on an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

3. PP institutional framework

Note: The chart shows the score for four institutional provided by national PP laws: Uniformity, Stability, Flexibility and Enforceability. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles on an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP laws “on the books” and the benchmark, regarded as optimal for these four recommended regulatory features, is marked in light blue, light orange, light purple and light green respectively.
4. Adequacy of PP policy making

Note: The chart shows the score for integrity safeguards implemented by national PP laws compared with the score for efficiency instruments, as provided by national PP legislation, for the country. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles on an Efficient Public Procurement Framework. Total scores for integrity safeguards and efficiency instruments are presented as a percentage, with 100 per cent (half of the pie chart) representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP laws “on the books” and the benchmark, regarded as optimal for these two recommended regulatory features, is marked in light orange and light purple, respectively.

- are under ongoing restructuring, liquidation or bankruptcy
- did not submit within the prescribed period all the necessary documents for prequalification
- improperly fulfilled commitments on previous contracts
- were established of at least 6 months prior to the announcement of the tender
- is under dispute before court or arbitration with the contracting entity
- does not meet the requirements of the tender commission on commercial and financial performance

In addition to the general eligibility criteria, specific qualification criteria for tenderers may be established by contracting entities.

Procurement procedures

PPL provides for direct contracting and tendering procurement procedures:

- Open tender
- Restricted tender
- Two-stage tender

Open tender is the default procedure. The contracting entity may apply other tendering procedures only in situations where the law allows. The only negotiated procedure is direct contracting. There is no direct link between the type of contract and the type of procedure with the exception of consultancy contracts. PPL does not allow to conduct tenders electronically.

Procurement time and cost effectiveness

PPL does not allow for an estimation of the standard length of the procurement process for works or goods contracts of a significant value. There is also no requirement for the procurement process to be accomplished in a reasonable time, however, the tender evaluation shall not exceed three months.

There is no general requirement that the cost of participation in the procedure should be kept low. PPL stipulates only that the contracting entity may charge a non-refundable fee for tender participation. In addition to the participation fee, the contracting entity may also require the tenderer to submit, together with the offer, a refundable tender security of 1 to 5 per cent of total estimated contract value, which shall be returned to all tenderers whose offers have not been chosen, within 11 business days after the publication of contract award notice. For small value contracts tender security may not be applied.

PPL remains silent regarding methods of valuation and mandatory aggregation of lots. It only requires that the contracting entity shall engage qualified specialists to prepare tender documents.

There are also no direct provisions regarding communication. PPL states, that contracting entity may send invitations to the tender by mail, registered mail or fax. PPL provides clear currency rules: all local tenders are carried out in the national currency.

Review and remedies

PPL does not provide for a dedicated PP review or remedies system. All PP related disputes may be referred to the court (Civil Code of Republic of Uzbekistan, Article 460).
Public contract management
In principle, there is no requirement of mandatory public procurement planning or unbiased assessment of contracting authorities’ needs. The PP procedure can be initiated if the funding is appropriately secured (the financial authorities or managers of budget funds, signed a loan agreement with foreign creditors under the guarantee of the government’s notification of the provision of foreign grants, etc.). There is no need to obtain budgetary authorisations for contract payments falling due beyond the current financial year.

The contracting authority may require a contract performance security to the amount of 10 per cent of the total contract value. The security may be submitted in the form of bank guarantee, or in cash deposit on the account of the contracting entity.

PPL provides for monitoring of contract performance in order to complete the contract on schedule.

Weaknesses
The Uzbekistan PP framework scored below 50 per cent compliance on several key quality indicators, including transparency, competition, and economy of the process indicators. Substantial regulatory gaps were identified; just a few out of recommended integrity safeguards and efficiency instruments were adopted in the local PP legislation. In general, PPL is based on the outdated 1990 standards.

Opportunities
Despite several weaknesses, PPL sets high standards for evaluation panel and expert advice in conducting tenders. PPL also provides for a mandatory monitoring of public contracts until their full completion.

Regulatory risks
PPL allows for domestic preferences not only for domestic entrepreneurs, but also for products of domestic origin. Domestic preferences may be applied to any type of procurement contract up to 20 per cent price preference. There are several areas in the current PPL that can be pinpointed as significant regulatory risks.

Assessment overview

Strengths
In the 2010 assessment the Uzbekistan PP framework did not demonstrate any specific strengths; stability, with a score of 67 per cent compliance rate, is the strongest point of the local framework.

Notes: The chart shows the score on basic function features of PP remedies legislation for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of the national PP remedies legal framework.
II. Public Procurement Practice Review Summary

6. Quality of PP practice in EBRD countries of operation

Note: The chart shows the score for the extensiveness and comprehensiveness of national PP laws of EBRD countries of operation. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles on an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

Legal framework in practice
Uzbekistan public procurement is fully centralised and thus well monitored. Local PP practice is of low to medium compliance with international standards, as substantial in-ternal procurement rules were adopted by the Central Purchasing Body, setting standards for all procurements in Uzbekistan. Moreover, under “Uzbektenderconsulting” agency’s guidance regular training for procurement staff is provided. Chart 2 presents the scores for the general quality of local PP practice in Uzbekistan.

Regulatory institutions
The compliance of PP procedures is monitored by dedicated units in the Ministry of Finance. Chart 3 illustrates how the local PP institutional framework has been evaluated by local contracting entities and practitioners.

Scope of regulation
PPL covers government procurement. In principle, exceptions and exclusions are compliant with 1994 UNCITRAL Model Law.

Eligibility rules
Affiliates of the contracting entity are eligible to tender, unless it can be demonstrated that there is a significant degree of common ownership, influence or control amongst the contracting entity and the affiliates.

Typically, qualification criteria set up by the contracting entity include experience and past performance on similar contracts and capabilities with respect to personnel, equipment, and construction or manufacturing facilities, as well as financial position.

Significant or persistent deficiencies in performance of any substan-tive requirement or obligation under a prior contract provide grounds for exclusion.

The procurement procedures
Law recommends tenders as a default procedure for contracts of the value over 100,000 US dollars and tenders are most commonly used. Negotiated procedures other than direct contracting are available for specific or complex contract (Resolution of the Cabinet of Ministers on measures to improve the organization of tenders, 15, 16, 17).

The procurement time and cost effectiveness
Standard tender documents for goods, works and services are mandatory. Standard forms of contract notices and procurement re-ports are commonly used. With some exceptions PPL regulation allows use

7. Quality of PP practice in detail

Note: The chart shows the score for the extensiveness and comprehensiveness of national PP laws of the country. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles on an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for these benchmark indicators.

8. PP institutional framework in practice

Note: The chart shows the score for the four institutional provided by national PP laws: Uniformity, Stability, Flexibility and Enforceability. The scores have been calculated on the basis of a legislation questionnaire, based on the EBRD Core Principles on an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum, optimal score for each of these benchmark indicators. A regulatory gap, a difference between the marks for observed quality of national PP laws “on the books” and the benchmark, regarded as optimal for these four recommended regulatory features, is marked in light blue, light orange, light purple and light green respectively.
of international standard contract forms for all types of procurement.

Tender documents are not available free of charge. Sufficient time is provided to prepare and submit tenders. Evaluation of tenders is completed within the original tender validity period in most cases. Contracts are generally completed on schedule.

9. PP policy making in practice

Note: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

10. Quality of PP remedies practice in EBRD countries of operations

Notes: The chart shows the score on basic function features of the PP remedies in practice for each country in the region. The score has been calculated on the basis of a checklist of questions regarding remedies procedures. Total scores are presented as a percentage, with 100 per cent representing optimum quality of basic functional features of PP remedies practice.

Uzbekistan

Software: Modifications or waiver of the terms and conditions of a public contract are subject to review and approval procedure.

Review and remedies
There are no dedicated PP review or remedies systems in Uzbekistan. All PP related complaints and disputes are decided by the courts. In the local PP survey this judicial PP review received rather good marks from local practitioners; unfortunately we were not able to obtain any data from international tenderers.

Public contract management
Public contract monitoring system is well developed and fully centralised in Uzbekistan. There appropriate procedures in place to monitor delivery of goods and services to verify quantity, quality and timeliness. Also there are manual or computerized procurement and contract monitoring systems. Finally procurement audits are conducted.

Assessment overview

Strengths
There is no element of practice in the Uzbekistan which scored high compliance (above 90 per cent); however local PP practice scored well on the efficiency indicators due to the centrally implemented comprehensive contract management procedures.

Weaknesses
Local PP practice scored low on the enforceability, accountability, and stability indicators (slightly above 50 per cent compliance rate).

Opportunities
Local practitioners reported that efficiency in PP is strongly promoted in practice. Centrally administered procedures may be discretionary but information on procurement opportunities is publicly available, contract notices are published electronically and easily accessible to the domestic tenderers.

Risks
Local PP practice in Uzbekistan is mainly outdated and low to medium compliant with current international PP standards. Several implementation gaps were identified in the assessment, as only a few recommended integrity safeguards and efficiency instruments are implemented in practice.

III. Conclusions

Uzbekistan scored low compliance in quality of the legal PP framework (average 49 per cent compliance rate). The PP legislation is outdated and insufficiently regulates PP processes. Uzbekistan institutional framework is rudimentary and in general several substantial regulatory gap were identified. Specifically, Uzbekistan PPL does not provide for independent PP review and remedies system. PPL did not adopt integrity safeguards and efficiency instruments recommended by current international PP standards.

In the assessment of local PP practice, Uzbekistan practice scored low to medium compliance with the benchmark (average 69 per cent compliance). These good marks are mainly due to the implementation of efficiency instruments, including public contract management and the well-managed Central Purchasing Body.