





# WELL-GOVERNED

EBRD investments and policy dialogue seek to improve the quality of governance at the national, subnational and company level in the economies where we operate. The Bank engages in work aimed at legal and institutional reform and provides support for higher standards of corporate governance.

## DELIVERING INNOVATION AND IMPACT

# How to solve the corporate governance jigsaw puzzle

Since 2006, the OGC has been helping companies in which the EBRD invests to improve their corporate governance practices. Moreover, we work closely with regulatory authorities and lawmakers to improve corporate governance laws, regulations, codes and guidelines and to train various institutional stakeholders in their implementation.

For the EBRD, in particular, it is important that the companies receiving our financing are properly set up under applicable laws and that their treatment of shareholders, customers and other stakeholders is transparent and compliant with legislation.

As part of our due diligence process for each individual investment project, we conduct a corporate governance analysis. This looks at the company's commitment to good corporate governance, the structure and functioning of the board, internal control mechanisms, transparency and disclosure, and the rights of minority shareholders. If deficiencies are detected, we work with the company to address them and improve its practices, often by developing a corporate governance action plan.

Our approach is in line with the toolkit for assessing corporate governance in investee companies, as established by the development finance institutions that are signatories to the Corporate Governance Development Framework.<sup>1</sup> The EBRD is a founding signatory.

A crucial piece of the corporate governance jigsaw puzzle consists of effective laws, regulations and various types of soft law – including corporate governance codes to be applied on a so-called comply-or-explain basis. We work with policymakers to ensure that a country's company law allows for the effective enforcement of the legal rights of minority shareholders – including the EBRD, which only takes minority equity stakes.

Furthermore, we have worked extensively on legal and regulatory frameworks for state-owned enterprises (SOEs), whose ownership structure adds a distinctive layer of governance challenges atop the standard corporate governance issues faced



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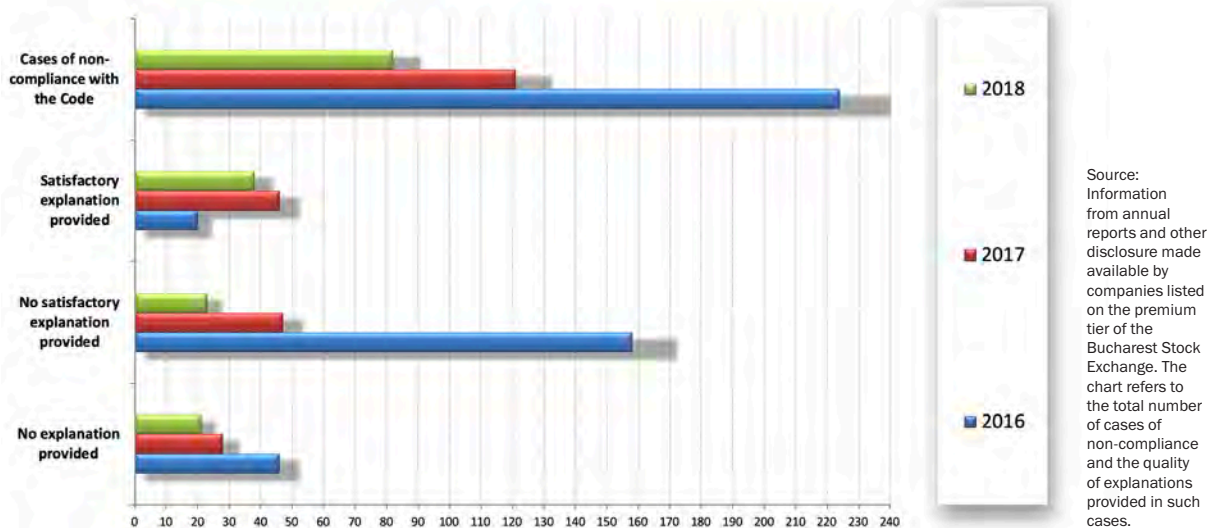


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## COMPLIANCE OF COMPANIES LISTED ON THE PREMIUM TIER OF THE BUCHAREST STOCK EXCHANGE WITH THE BVB CORPORATE GOVERNANCE CODE



by private companies. Our efforts typically focus on eliminating or reducing differences between the rules governing SOEs and those for other companies. We also help SOEs to develop corporate governance practices that are more aligned with those of their private counterparts.

In addition, we work with securities regulators and stock exchanges on the development and implementation of corporate governance codes to be applied to listed companies, as well as with national banking regulators on supervisory regimes focused on governance. Sound risk management is a key pillar of good governance for banks and, in Slovenia, we worked with the central bank on the development of the country's Guidelines on Risk Appetite Practices for Banks, now deemed an example to follow by other jurisdictions.

Admittedly, laws and regulations are a dead letter without courts to expound and define their true meaning and operation. Our work on good governance would, therefore, be incomplete without our extensive training of regulators, state officials and the judiciary. This is an area where many transition countries continue to have demonstrable needs.

An example of OGC work in the field of corporate governance is the assistance we provided to the Bucharest Stock Exchange (BVB) in developing a new corporate governance code, which came into force in January 2016. Compared with its

predecessor, the new code is much more precise in what it requires from listed companies.

To help companies disclose corporate governance information as accurately as possible and provide reliable information on any non-compliance with the new code, we delivered several training workshops to listed companies. We also assisted BVB in developing a Manual for Reporting Corporate Governance<sup>2</sup> and a Compendium of Corporate Governance Practices,<sup>3</sup> which were posted on the BVB website.

Following the completion of our project, BVB started to monitor the practices of companies listed on its main market. In October 2017, it published the third edition of its assessment of the quality and accuracy of information provided to the investor community by listed companies.<sup>4</sup>

Based on our review of annual reports published in 2016 to 2019, most companies listed on the premium tier of the exchange appear to have improved both their compliance with the code and the quality of their explanations since their 2016 disclosures (see the above chart). ■

<sup>1</sup> See: <http://cgdevelopmentframework.com>

<sup>2</sup> [http://www.bvb.ro/info/Rapoarte/Diverse/EN\\_EBRD\\_BVB\\_Compendium\\_18.09.2015\\_note%206.01.2017.pdf](http://www.bvb.ro/info/Rapoarte/Diverse/EN_EBRD_BVB_Compendium_18.09.2015_note%206.01.2017.pdf)

<sup>3</sup> [http://www.bvb.ro/info/Rapoarte/Diverse/EN\\_EBRD\\_Manual%20for%20reporting\\_CG\\_18.09.2015\\_note%206.01.2017.pdf](http://www.bvb.ro/info/Rapoarte/Diverse/EN_EBRD_Manual%20for%20reporting_CG_18.09.2015_note%206.01.2017.pdf)

<sup>4</sup> [http://www.bvb.ro/info/Whitebook3\\_EN.pdf](http://www.bvb.ro/info/Whitebook3_EN.pdf)

## DELIVERING INNOVATION AND IMPACT

# An insight into corporate recovery work at the EBRD

**W**hen the EBRD is mentioned in the press, corporate recovery work is probably not the issue grabbing the headlines. At the same time, the EBRD, like any other bank, has to deal with the reality that, for a variety of reasons, not all of its investments go according to plan.

At the Bank, mostly away from the public eye, specialist teams of bankers and OGC lawyers work closely together to manage distressed investments with a view to returning them to health or avoiding further erosion of value and maximising recovery. By promoting best practices in corporate recovery work, the EBRD helps to increase the resilience of the corporate sector and the wider economy in the countries where it operates.

The EBRD set up its specialist recovery teams in 1998 and this focused approach has proved to be successful over the last 21 years, particularly as and when crises have affected the economies where the Bank invests. Specialist OGC lawyers have played an important role in the Bank's corporate recovery work as they help to navigate the complex legal requirements related to restructuring, enforcement and dispute resolution in all of the jurisdictions where the EBRD operates.

The EBRD strives to respond quickly and effectively when projects become distressed. It has developed streamlined internal procedures with the aim of ensuring that the Bank's recovery teams can move swiftly in response to any deteriorating situation. Over the years, the EBRD has demonstrated its ability to successfully apply the different recovery tools at its disposal, including the exercise of its legal rights, managed by OGC corporate recovery lawyers.

For reasons of confidentiality, we can go into little detail of what the recovery teams do in a publication like this and we like to keep a few tricks up our sleeve. We hope, however, to provide some flavour of the commercial and creative edge of corporate recovery work at the Bank.



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## With hard work and perseverance, the EBRD has preserved the underlying assets of the business in a difficult environment



Much corporate recovery work focuses on restructuring. The EBRD has, where appropriate, long adhered to a constructive, cash flow-driven approach to restructuring, which seeks to mitigate distress and maintain a client as a going concern. This is the ideal, win-win scenario for the EBRD and for borrowers, sponsors, employees, co-lenders and other stakeholders who depend on the success of the project. It is, therefore, important that a client engage in an open and transparent conversation with the Bank as early as possible about any problems they face and be prepared to pursue a commercially viable restructuring plan.

There are also situations in which consensual restructuring is not feasible or possible, or where there is a lack of counterparty cooperation, whether this be passive or through the adoption of hostile strategies. If this happens, the EBRD is prepared to assert its legal rights, for example, by enforcing security, instituting arbitral or court proceedings, pursuing court-sanctioned restructuring arrangements (for example, a scheme of arrangement) or commencing insolvency proceedings. The Bank has

successfully taken such action on a number of occasions and will continue to do so where warranted in future.

A notable example is an enforcement related to a fleet of moveable assets. The case has tested the resolve of the EBRD to protect its legal rights and maximise recovery to the full. It is a multi-jurisdictional case in which the recovery teams have faced down severe and persistent opposition from counterparties. This has involved numerous court proceedings in various jurisdictions and prompted the Bank to create bespoke corporate structures to safeguard its collateral in a volatile situation.

With hard work and perseverance, the EBRD has preserved the underlying assets of the business in a difficult environment, defended its position as a secured lender, produced significant transition impact in a recovery scenario and developed and tested new products and tools to assist in the recovery of its money. ■