

COMMERCIAL LAWS OF ESTONIA

July 2006

AN ASSESSMENT BY THE EBRD

This Assessment was last updated during the preparation of the 2006 EBRD Strategy for Estonia and reflects the situation at that time. It does not constitute legal advice. It was prepared by the Office of the General Counsel of the EBRD. For further information please contact ltt@ebrd.com

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Basis of Assessment: *The assessment contained in this document draws on legal assessment work conducted by the Bank (see www.ebrd.com/law). The assessment is also grounded on the experience of the Office of the General Counsel in working on EBRD investment and legal reform activities in Estonia.*

Overall Assessment

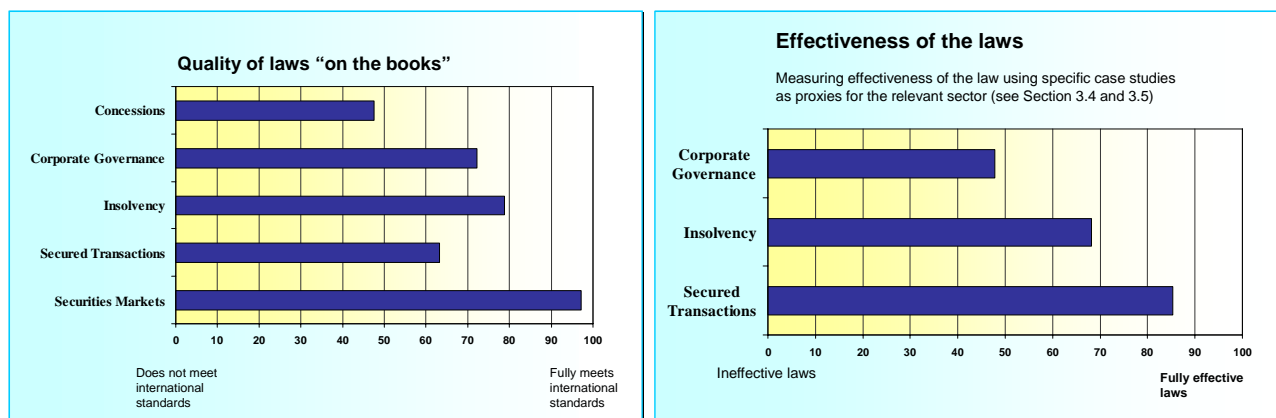
Estonia formally acceded to the European Union on 1 May 2004, following a referendum which both ratified accession and approved the necessary amendments to the Estonian constitution to permit this. Following its accession, Estonia has continued to develop its legal environment, notably in the improvement of judicial and administrative procedures, for example through the computerisation of its land registry and the removal of some burdensome corporate requirements.

The framework for capital markets has been amended to reflect EU requirements and regulations; main changes concerning the prospectus for the public issue of securities and enhancing the powers of the relevant supervising authority. The business environment has benefited from recent (2005) changes in the Commercial Code that aimed to clarify and simplify corporate procedures and reduce the formalism of the regulations. Additionally, Tallinn Stock Exchange adopted the Corporate Governance Code, which will contribute to the transparency of listed companies and improve management practices.

In the concessions sector there is no general law covering basic concessions rules. Concession related provisions are scattered through specific sector regulations, thus failing to provide a clear, comprehensive framework for an efficient concession regime. The insolvency framework needs further improvement in the area of rehabilitation provisions, cross-border insolvencies and cases of insufficiency of insolvent estate. Similarly, practical implementation of the insolvency regime needs attention, especially regarding relevant infrastructure. The secured transactions regime may need to be updated in order to keep pace with market development and offer more flexible solutions to the market. The enforcement system, however, seems to work efficiently in this sector. The Estonian telecommunications market is one of the most developed in Eastern Europe, being fully liberalised and competitive. Despite this, some improvements in telecommunications infrastructure would encourage further development of the market.

Major improvements to the legal system came about with the enactment in June 2005 of New Codes of Civil Procedure and Enforcement Procedure providing for a simpler and more effective process for civil debt recovery and greatly enhancing the efficiency of the court and enforcement proceedings. An overall assessment of commercial law reveals that Estonia has written laws which are generally comparable to international standards. Further effort should focus on sound implementation of such legislation. The chart below (see Chart 1) represents the correlation between the quality of laws and their efficiency.

Chart 1 – Snapshot of Estonia’s commercial laws



Source: EBRD legal assessments 2002-2005

The Legal System

2.1. Constitution and courts

The constitutional system of Estonia is based on the 1992 Constitution, adopted by referendum and amended in 2003 to reflect accession to the European Union. The Constitution vests legislative power with the unicameral Parliament (Riigikogu). The 101 members of the Parliament are elected every four years by citizens’ vote on the basis of proportional representation.

The President is the head of the state, elected for a five-year term by the Parliament. In the event that Parliament fails to elect the president after three attempts, a special electoral body composed of 374 members is formed to elect the President. The President designates the candidate for Prime Minister and appoints the members of the Government. The candidate then has to select members of the Government and submit his programme to the Parliament. The Parliament has to make a decision regarding the candidate with the proposed cabinet. During the term of the Government, the Parliament can express a vote of no confidence in the Government, Prime Minister or any other member of the cabinet, which may result in the resignation of the Government or of a specific Minister. If no confidence is expressed in the Government or the Prime Minister, the President of the Republic may, upon proposal of the Government call extraordinary elections to the Parliament.

The court system of Estonia has three layers: 1) country and city courts, and administrative courts; 2) circuit courts; and 3) the Supreme Court. County, city and administrative courts are courts of first instance. Circuit courts are appellate courts and review judgments of the courts of first instance. The Supreme Court is the highest state court and reviews judgments by lower courts within the cassation proceedings. The Supreme Court is also the court of constitutional review and has the power to invalidate any legislation that is in conflict with the Constitution.

The judges are independent and are appointed for life. The President nominates and Parliament confirms the Chief Justice of the Supreme Court. Supreme Court judges are nominated by the Chief Justice and their appointment endorsed by Parliament. The Chief Justice also nominates the judges to all other courts who are then appointed by the President. Judges may only be removed from office by the decision of a court.

The Constitution also provides for the position of the Legal Chancellor who shall review the laws and regulations adopted by the legislative and executive powers and by local governments for conformity with the Constitution and other laws. In the event the issuing body does not comply

with the recommendations of the Legal Chancellor, he/she will refer the document to the Supreme Court for invalidation.

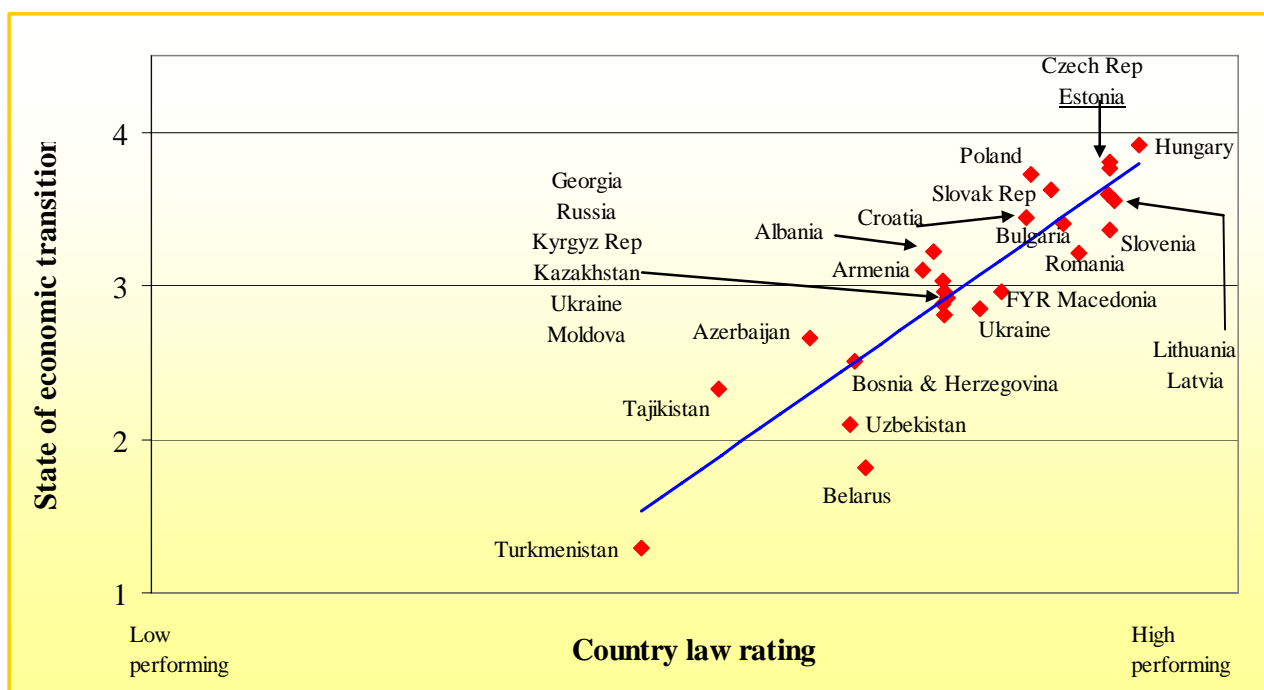
Overall, the judiciary is considered to be relatively efficient and impartial. The adoption of a new Civil Procedure Code and Execution Procedure Code has helped to speed up proceedings and reduce the number of disputes related to procedural law. An interesting feature introduced by new provisions is the ability to file actions electronically.

2.2. Relationship between legal transition and economic progress

Since its independence, Estonia made considerable progress in developing a stable and functioning market economy, and it is now considered one of the advanced transition countries in Central and Eastern Europe.

Moreover, the country has made significant progress in establishing the rule of law and democratic institutions. Experience in transition countries suggests that the degree of legal transition and economic development of the country advance or regress hand in hand, which is borne out in the case of Estonia (see Chart 2 for Estonia's position compared to other countries of operation.)

Chart 2 – Rule of law and progress in transition in the EBRD countries of operations



Source: EBRD Transition Report 2005, Table 1.1; EBRD Composite Country Law Index, 2005

Note: The horizontal axis measures the performance of commercial and financial laws. The vertical axis displays the EBRD transition index as an average of transition indicators between 1997 and 2005, with 1 referring to very early transition stages, and 4 referring to an advanced transition level.

2.3. Implications for the investment climate

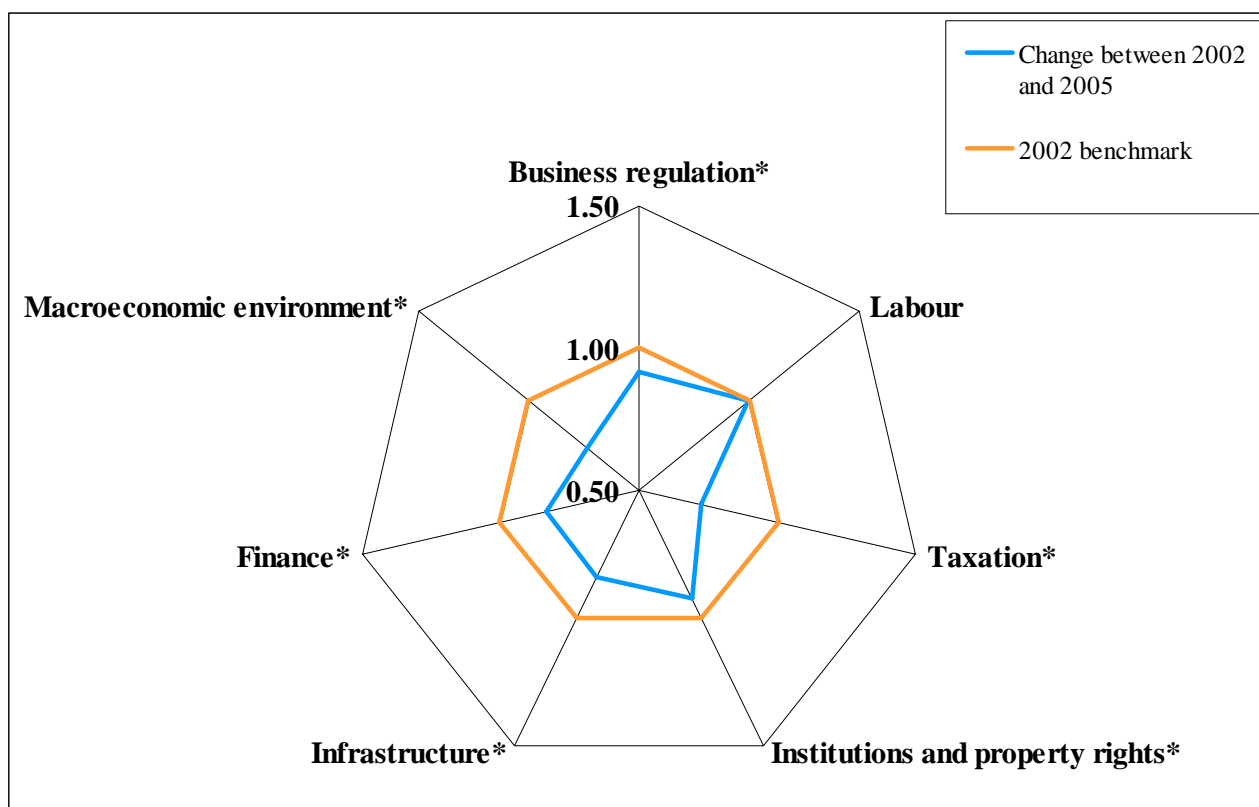
Following independence, Estonia has made significant progress towards developing a market economy. Accession to the European Union in 2004 reasserted Estonia's success in terms of legal and economic development. (See Chart 3 for improvements made by Estonia since 2002 with regard to the key macroeconomic elements).

Attitudes towards foreign investment have been favourable throughout the transition period. Estonia's Governments, despite frequent changes and collapses, has followed policies supportive to and welcoming of foreign investment. Foreign and domestic companies are treated equally. Estonian law allows 100% foreign ownership of local companies.

The business environment has benefited from recent changes to the commercial and corporate framework. Commercial legislation is not overly formalistic, is efficient and does not create barriers to domestic and foreign investments. The tax burden has fallen to relatively low rates making the market more attractive to investors. In addition, Estonia benefits from a highly IT-literate society.

Further implementation measures for the new block of legislation recently adopted as part of the EU accession process are necessary. The country still faces a number of issues related to excessive bureaucracy in certain areas. Overall however, Estonia is considered as demonstrating stable growth prospects.

Chart 3 – Changes in the business environment in transition countries, 2002-05



Sources: BEEPS 2002 and 2005

Notes: The spider charts show changes in seven aspect of the business environment between 2002 and 2005. The 2002 data represent a benchmark of no change. Where the line falls inside the benchmark, this represents an improvement in that aspect of the business environment. Where the line falls outside of the benchmark, this represents a deterioration in the business environment. Wherever the changes are statistically significant, the relevant categories are marked with an asterisk. The business environment was assessed on a scale from 1 (no obstacle) to 4 (major obstacle).

3. Evaluation of selected commercial laws

The EBRD has developed and regularly updates a series of assessments of legal transition in its countries of operations, with a focus on selected areas relevant to investment activities: capital markets, concessions, corporate governance, insolvency, secured transactions and telecommunications. The existing tools assess both the quality of the laws "on the books" (also referred to as "extensiveness") and the actual implementation of laws (also referred to as "effectiveness").

All available results of these assessments can be found at www.ebrd.com/law.

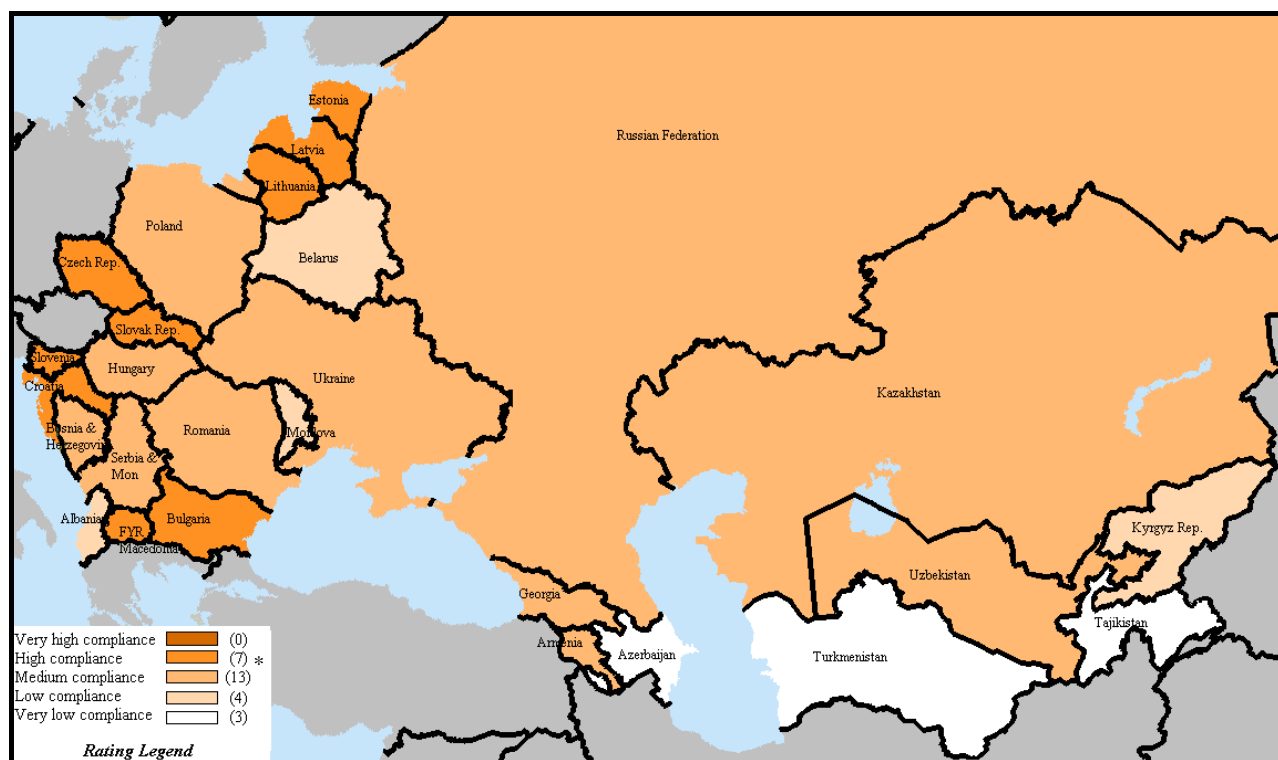
3.1. Capital markets

The primary legislation governing the Estonian securities market includes the Securities Market Act (adopted in 2001 and last amended in October 2005), the Investment Funds Act (issued in 1997 and amended in October 2005), the Financial Supervision Authority Act (issued in 2001), the Guarantee Fund Act (issued in 2002 and last amended in October 2005) and the Estonian Central Register of Securities Act (issued in 2000 and last amended in March 2005).

According to the EBRD Securities Markets Legislation Assessment conducted in 2004, the country was found to be in "high compliance" with the Objectives and Principles of Securities Regulation published by the IOSCO

The assessment was updated in 2005 and the results confirmed Estonia's "high compliance" rating, almost reaching the "very high compliance" category. (See Chart 4).

Chart 4 – Quality of securities market legislation in the EBRD Countries of operation



Source: Securities Markets Legislation Assessment 2004

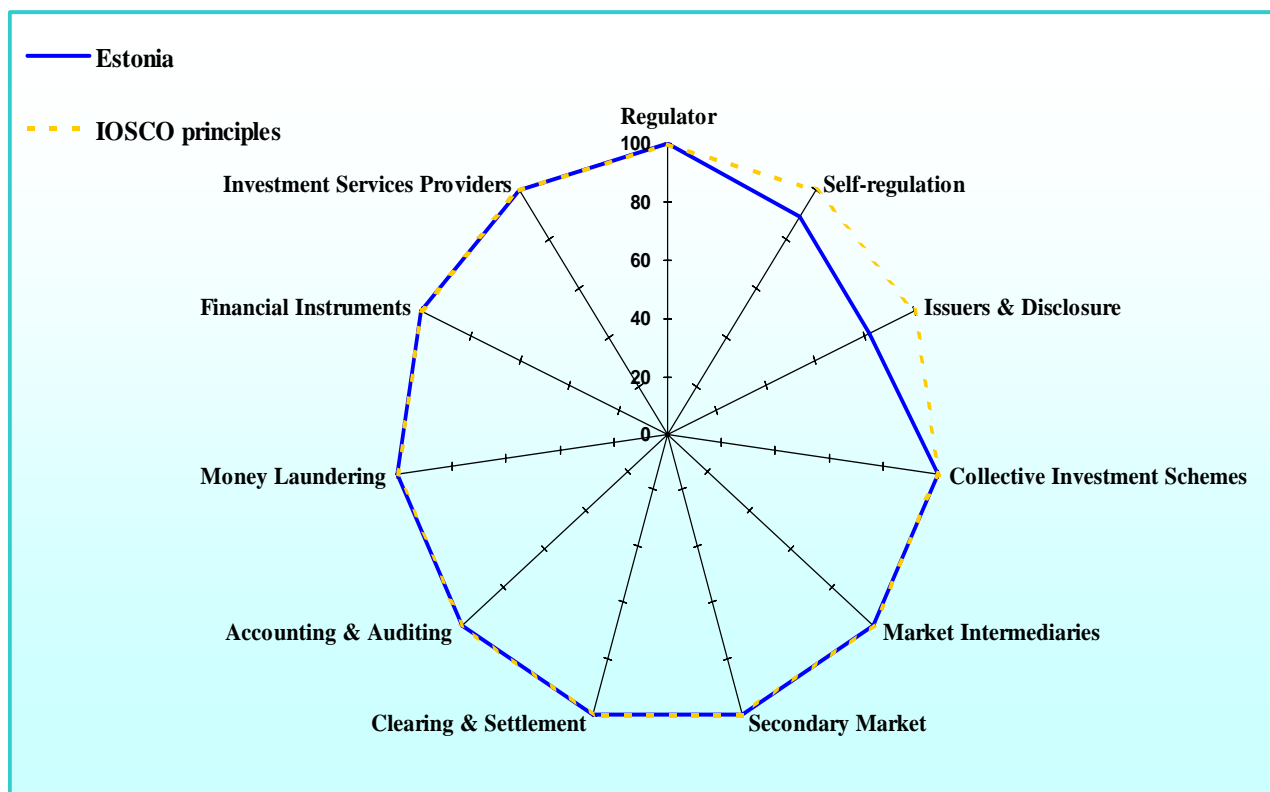
Note: The various categories represent the level of compliance of a given country's legislation (the "laws on the books") with international standards such as the IOSCO Principles. The asterisk indicates in which category Estonia ranks.

Pursuant to the Financial Supervision Authority Act, a unified Estonia Financial Supervisory Authority (the "EFSA") was established in January 2002 as a single supervisory authority for the Estonian financial sector. The EFSA is an agency of the Bank of Estonia, with autonomous competence and a separate budget. It provides supervision over the securities and insurance markets and banking, while the Bank of Estonia is responsible for regulating the banking sector.

The Tallinn Stock Exchange (TSE) was established in 1995 and is the only regulated securities market in Estonia. It is part of OMX Exchanges, which also owns and operates securities exchanges in Copenhagen, Stockholm, Helsinki, Riga, and Vilnius. The number of securities accounts in the TSE increased by 30% in 2005 while the number of stock exchange transactions increased by 106%. The TSE's turnover reached EUR 1,941 million, representing an increase of 190% on 2004.

On 19 October 2005, the Parliament adopted the Act Amending the Securities Market Act, the Investment Funds Act, the Guarantee Fund Act and the Law of Property Act. The changes were to transpose the relevant *Acquis Communautaire* - especially the so-called Prospectus Directive - aiming to enable European companies to issue or list securities in the European Union on the basis of a single prospectus approved in the home EU member state.

Chart 5 – Quality of Securities Markets Legislation – Estonia



Source: EBRD Securities Market Legislation Assessment 2004

Note: The extremity of each axis represents an ideal score in line with international standards such as the IOSCO Principles. The fuller the ‘web,’ the more closely the country’s capital markets laws approximate these standards.

The new Act provides new definitions in the Estonian legal system in line with EU law, although the main changes pertain to the requirements for the prospectus for a public offer of securities. The amendments also prescribe specific rights and duties of the EFSA. These include the power to exercise supervision over the operation of foreign issuers. The amendments entered into force on 15 November 2005, except for certain provisions that came into effect from 1 March 2006.

Following accession to the EU in May 2004, in June 2004 Estonia joined the Exchange Rate Mechanism 2 (ERM II), the obligatory waiting room for the Euro Zone.

With reference to anti-money laundering, in September 2005, the Minister of Finance adopted a new Regulation requiring credit and financial institutions to adopt a code of conduct for internal audit rules. The Regulation, which was issued on the basis of the Money Laundering and Terrorist Financing Prevention Act, prescribes the procedure for identifying, verifying, preserving and updating relevant data and sets forth measures for preventing money laundering and terrorist financing and internal audit rules for monitoring compliance with the code.

3.2. Concessions

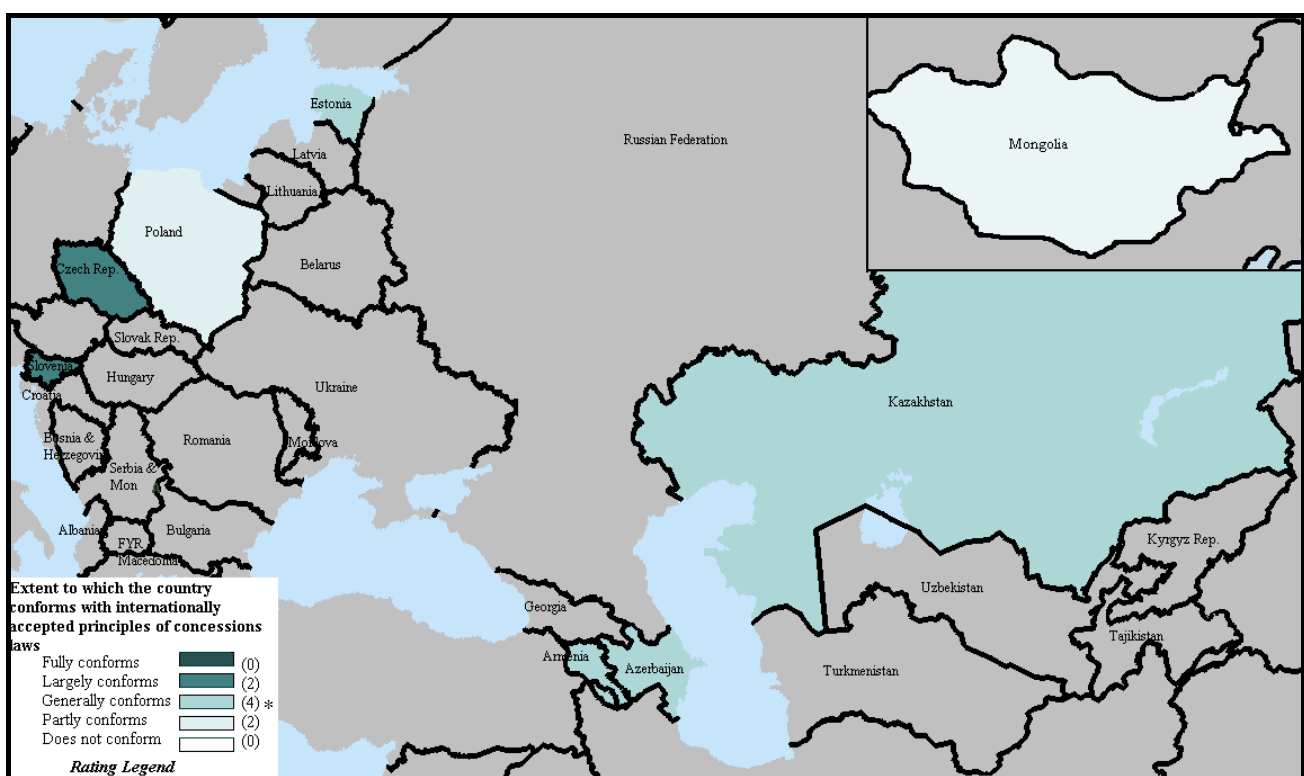
Estonia does not have a general framework Concessions Act. Instead, the country takes a sector by sector approach to the application of privatisation policy and use of concessions. In fact, no clear general policy framework for improving the legal environment and promoting PPP in the country could be found at governmental level.

Several sector specific acts regulate the right of a private legal entity to utilise public assets in order to provide facilities or services to the public. Sector specific legislation does not refer directly to

concessions, even if the regulation of certain activities (e.g. transport) allows concession-type arrangements. Concession-related issues are regulated by the Competition Act (and the Decree adopted on its basis) and the Public Procurement Act. More particularly, the former regulates the granting of "special or exclusive rights" and the latter regulates the granting of a "construction work concession" (and other contracts concluded by public authorities above certain thresholds). However, the application of one general law over the other is not simple to determine. General provisions on contractual arrangements which could be agreed in the context of a concession can also be found in the Contracts and Extra-contractual Obligations Act.

The recent EBRD Concession Laws Assessment assessing the legal framework governing concessions and PSP (laws on the books rather than how they work in practice), rated Estonian concession related laws as *generally conforming* with internationally accepted principles of concessions laws. (See Chart 6).

Chart 6 – Quality of Concessions legislation in the EBRD Countries of operation



Source: EBRD Concessions Sector Assessment 2004

Note: The various categories represent the level of compliance of a given country's legislation ("the laws on the books") with international standards such as the UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects. The asterisk indicates in which category Estonia ranks.

The procedure to be followed is rather vague in the sector specific laws that refer to the general law (Competition Act or Public Procurement Act). According to the Railways Act, the Railway Administration may grant licences to perform certain activities/services in connection with the operation and/or maintenance of a railway system. The licences may be granted to private entities listed in the commercial register. A foreign company may only be awarded an operational licence if it operates through a branch listed in the commercial register.

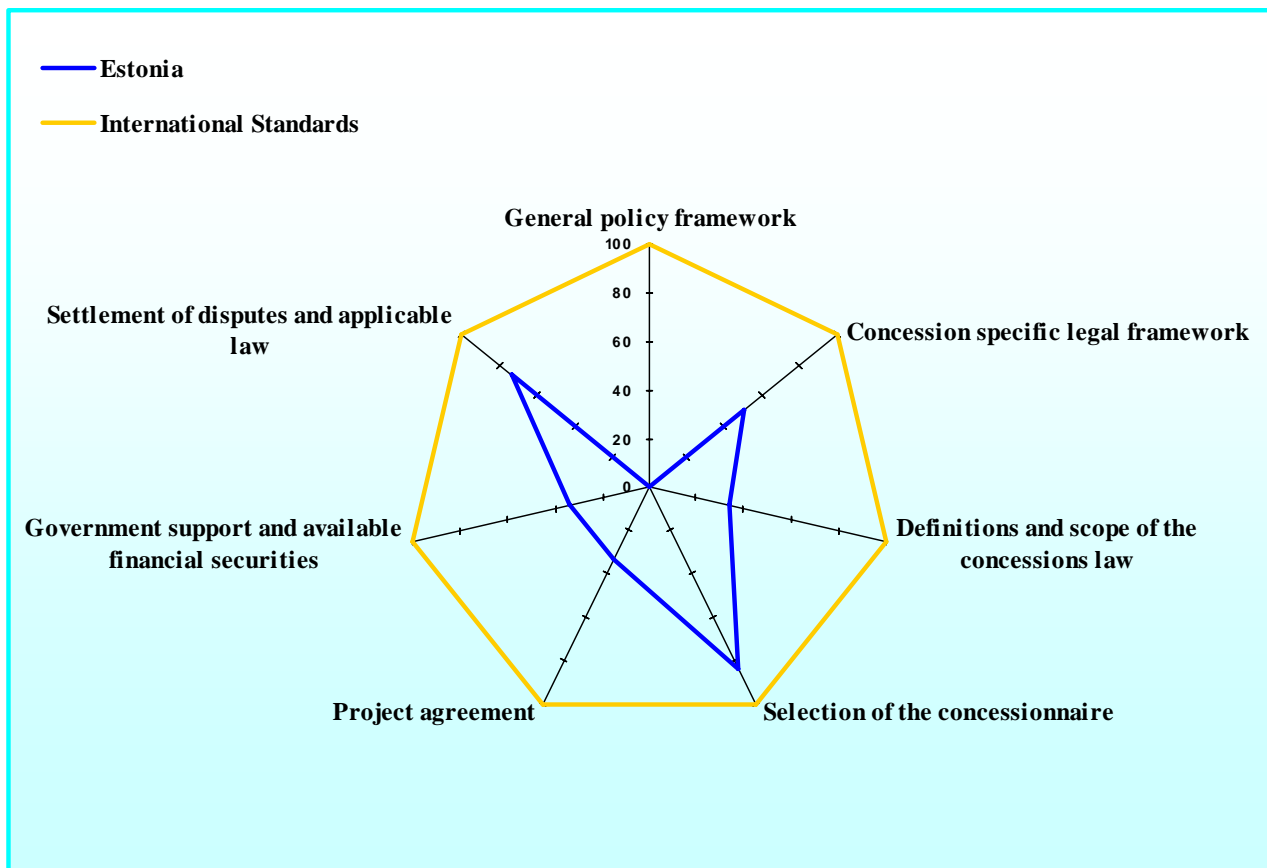
The following types of licence exist: construction, management and the operation of railway infrastructure. Operating licences are issued for an unspecified term and are not transferable. They may be withdrawn under conditions stated in the Railways Act, but the licensee has to be given the opportunity to rectify the deficiencies that constitute the basis for a revocation. In order to obtain a

license, the applicant has to fulfil a number of prerequisites stated in the Railways Act. A tendering procedure, or any other form of selection procedure, is not regulated in the Railways Act. However, this is counter-balanced by the clearly defined prerequisites that have to be met by the licensee thus ensuring a certain level of transparency.

The Water Supply and Sewage Act and the Water Act only provide for a framework for the privatisation of the water supply and sewage sector, and concessions are not awarded in these sectors.

In order to meet the requirements of a modern legal framework facilitating private sector participation, the Government may want to consider improving various PPP enabling provisions or, possibly, drafting a special law on this account. In particular, as can be seen from the diagram below (see Chart 7), there is still much to be improved in terms of definitions and application of concessions, as well as in the area of project agreement and availability of mechanisms and rules governing security instruments and government support. One more dimension that will inevitably require the attention of the authorities is policy framework, the absence of which makes any law, even an ideal one, extremely difficult to implement.

Chart 7 - Quality of Concessions legislation – Estonia 2004



Source: EBRD Concessions Sector Assessment 2004

Note: The extremity of each axis represents an ideal score in line with international standards such as the UNCITRAL Legislative Guide for Privately Financed Infrastructure Projects. The fuller the ‘web,’ the more closely the country’s concessions laws approximate these standards.

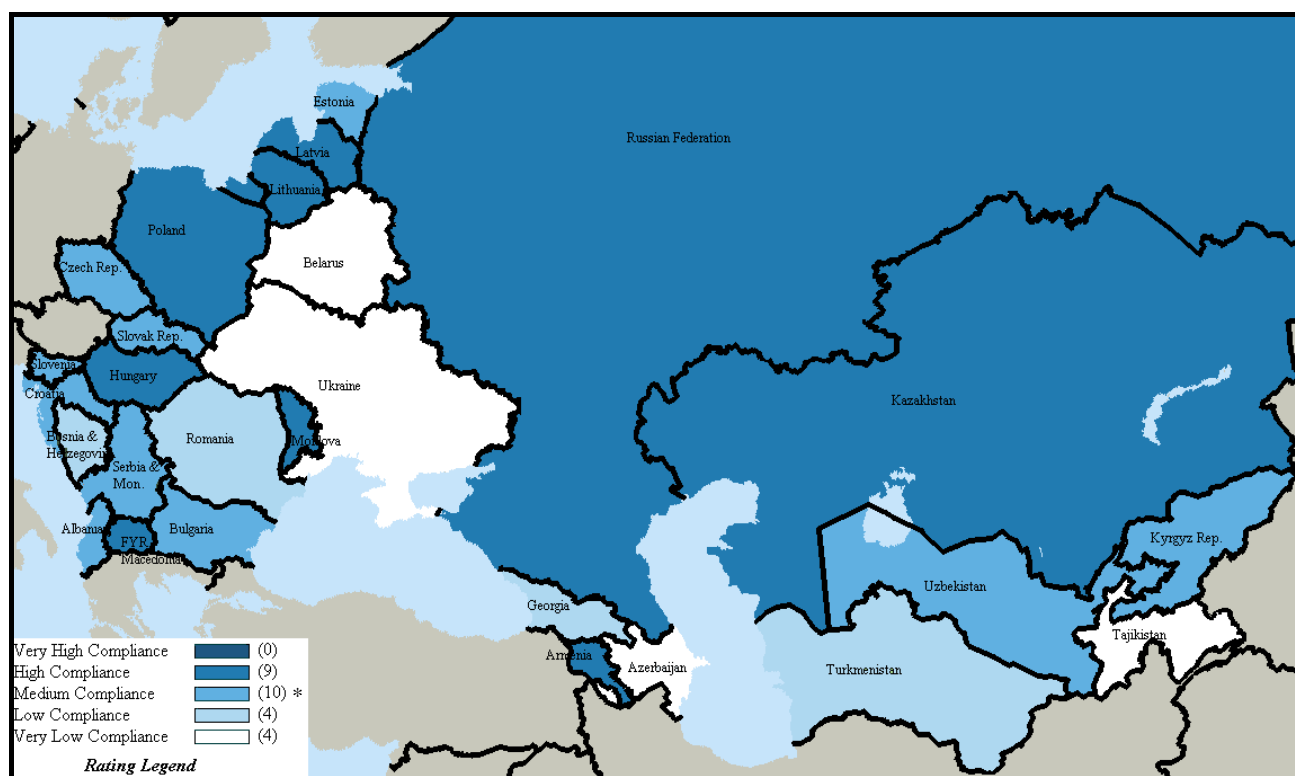
3.3. Corporate Governance

The Commercial Code, issued in 1995 and last amended in October 2005 is the primary legislation concerning corporate governance. Pursuant to the provisions of the Commercial Code, the following types of company can be incorporated: general partnership; limited partnership; private limited company and public limited company. The latter two have their capital divided into shares.

Apart from the Commercial Code, it is worth mentioning the recently adopted Corporate Governance Code. On 1 January 2006 the “Corporate Governance Recommendations” entered into force and are intended to enhance corporate governance and transparency among listed companies. The Recommendations are enforced by regulations of the TSE and are based on the “comply or explain” principle.

The EBRD's 2004 Corporate Governance Sector Assessment, which assessed corporate governance related “laws on the books”, rated Estonia as having achieved “medium compliance” when compared to the OECD Principles of Corporate Governance. (See Chart 8)

Chart 8 – Quality of Corporate Governance legislation in the EBRD Countries of operation



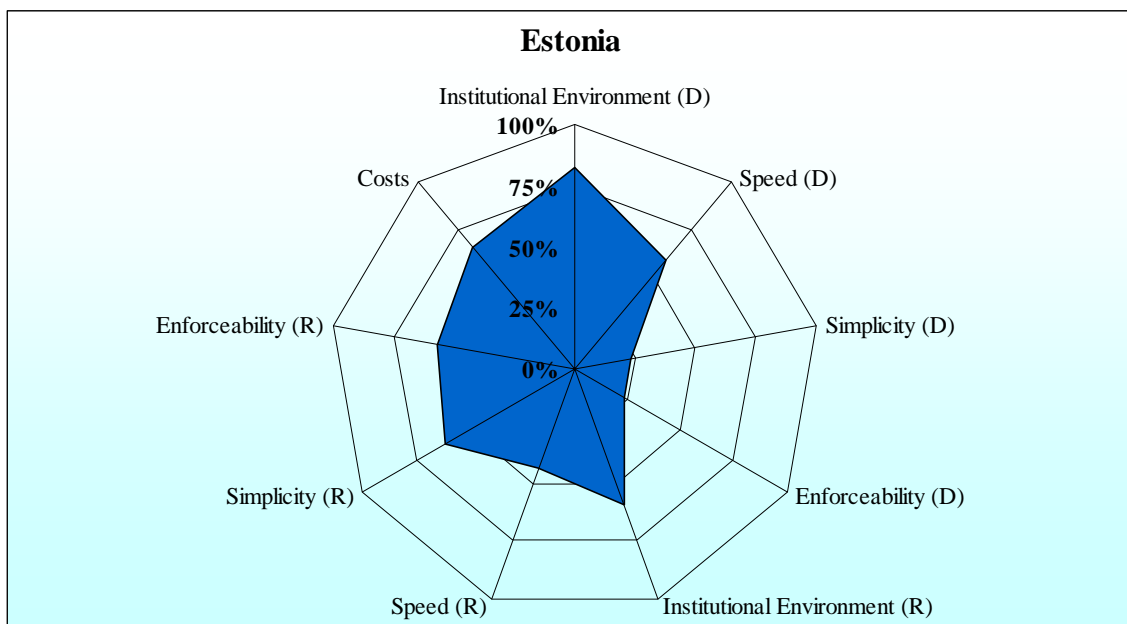
Source: EBRD Corporate Governance Sector Assessment 2004

Note: The various categories represent the level of compliance of a country’s legislation (the “laws on the books”) with international standards as set out in the OECD Principles of Corporate Governance. The asterisk indicates in which category Estonia ranks.

On 12 October 2005, the Estonian Parliament passed a major amendment to the Commercial Code aimed at removing several flaws encountered in implementing the Code and at lifting excessively formal corporate requirements. Some parts of the Commercial Code have been clarified in the light of practice. Regulations concerning the rights and duties of companies’ management bodies have also been improved. The amendments entered into force on 1 January 2006.

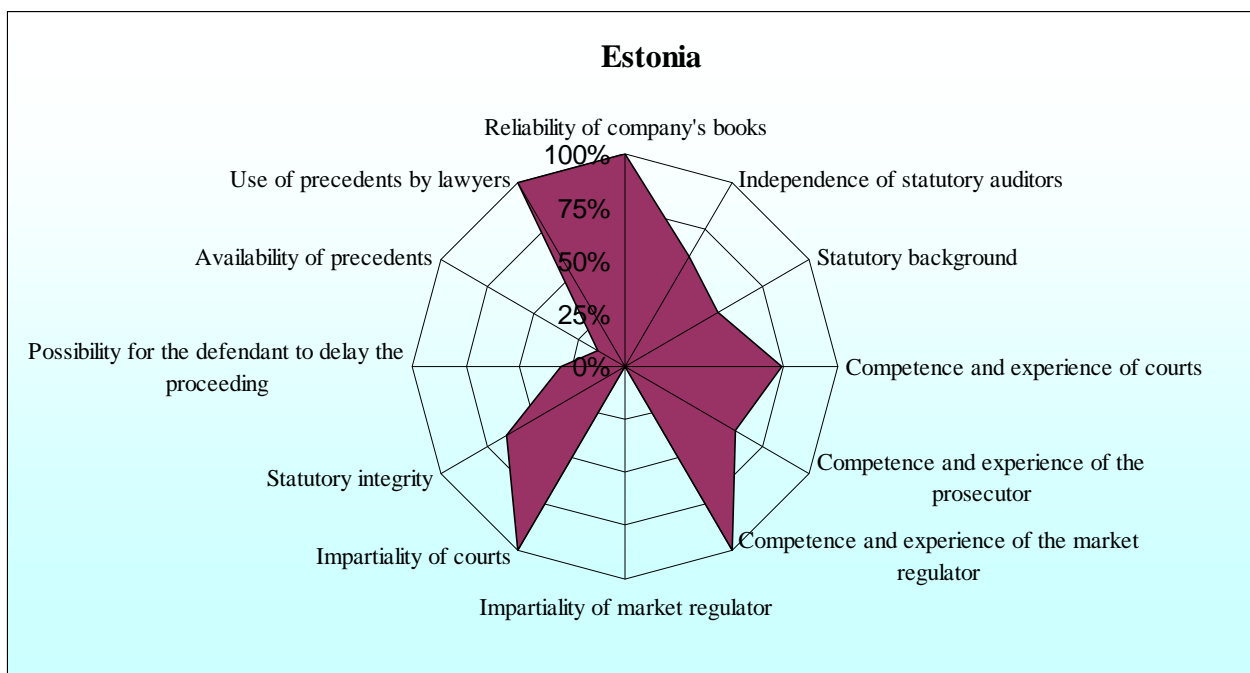
In 2005, the EBRD launched a survey for testing the effectiveness of corporate governance (how the law works in practice). A case study dealing with related-party transactions was designed. The case study investigated the position of a minority shareholder seeking to access corporate information in order to understand if a related-party transaction was indeed entered into by the company and on how it was possible to obtain compensation in case damage was suffered. Effectiveness of legislation was then measured according to four principal variables: complexity, speed, enforceability and institutional environment. The survey revealed that actions available to minority shareholders in JSCs – having less than 25% shareholding - are limited and in general not very effective. The survey found that minority shareholders can call a general meeting to request information from the management, but that they cannot adopt any decisions unless their action is backed by other shareholders representing the majority at the meeting. Also when considering redress, actions available to minority shareholders are limited, although much more effective. In this respect, procedures are deemed clear and enforceability is generally not considered a particular issue, although it might depend on the solvency of the debtor. Obtaining an executable judgement can take more than 24 months if the dispute goes before the Supreme Court and it is considered easy for the defendant to delay the proceedings. Finally the institutional environment is considered sound as courts are deemed impartial and generally experienced and competent in corporate law cases, corporate information is reliable and statutory auditors are deemed fairly independent from the controlling shareholder.

Chart 9 - Effectiveness of corporate governance in Estonia



Note: The graphs show disclosure (D), redress (R) and the institutional environment in the transition countries. The average results from the case study scenarios are shown. Disclosure refers to a minority shareholder's ability to obtain information about their company. Redress refers to the remedies available to a minority shareholder whose rights have been breached. Institutional environment refers to the capacity of a country's legal framework to effectively implement and enforce corporate governance legislation. Costs refer to the expenses a minority shareholder must pay to take legal action. The extremity of each axis represents an ideal score: the fuller the 'web', the better the corporate governance framework.

Chart 10 - Institutional Environment Relating to Corporate Governance in Estonia

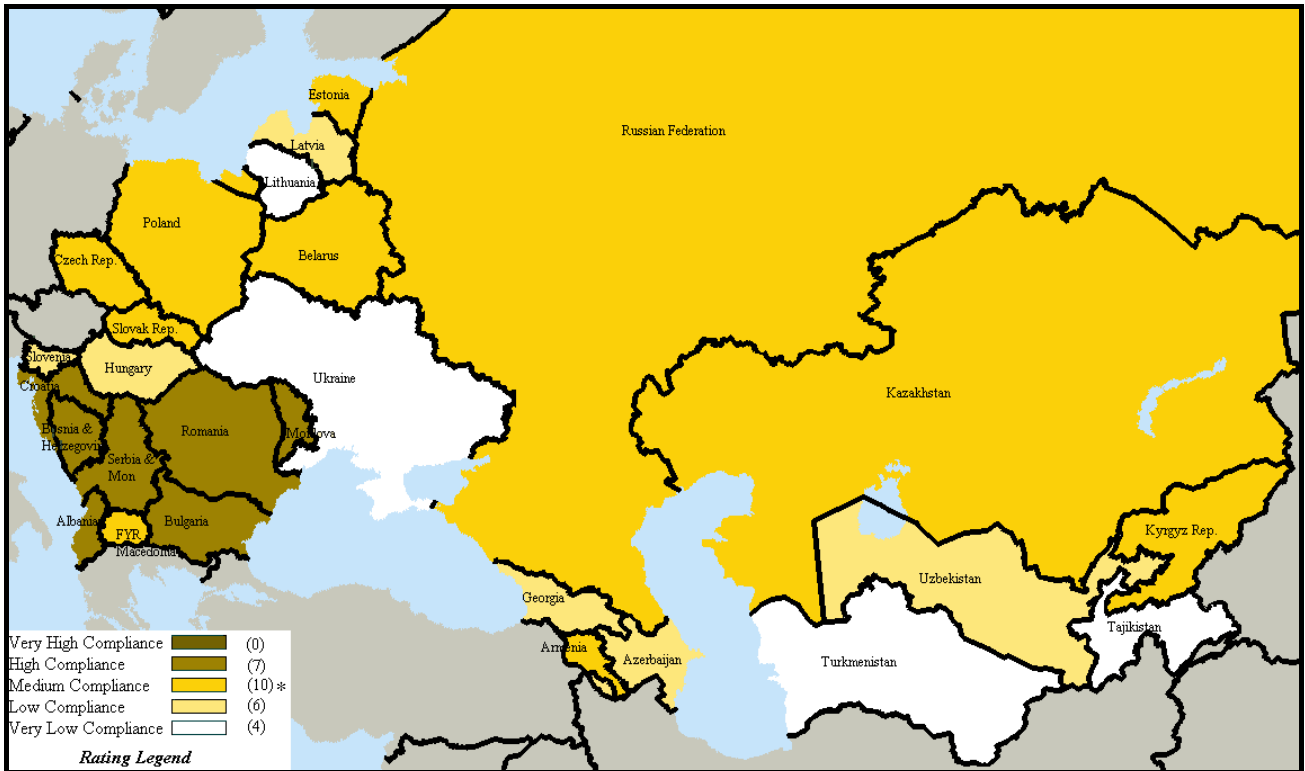


Note: Institutional environment refers to the capacity of a country's legal framework to effectively implement and enforce corporate governance legislation. Statutory background relates to how comprehensive, clear and well structured a country's definition of related-party, self-interested, self-dealing, or conflict of interest transactions is. In particular, whether this definition covers transactions in which the director or the dominant shareholder has an indirect interest (for example, the party to the transaction is a dominant shareholder's subsidiary). Statutory integrity refers to the level of corruption within a transition country, as determined by Transparency International's Corruption Perception Index 2005. This index is measured on a scale from 1 to 10, with 1 being the most and 10 the least corrupt environment. The extremity of each axis on the graph represents an ideal score: the fuller the 'web', the better the institutional environment.

3.4. Insolvency

Bankruptcy and insolvency in Estonia are governed by the Bankruptcy Act 2003 (as amended) (the "Insolvency Law"). This law scored "medium compliance" when compared with international standards in the EBRD's 2003-04 Sector Assessment Survey. (See Chart 11)

Chart 11 – Quality of Insolvency legislation in the EBRD Countries of operation

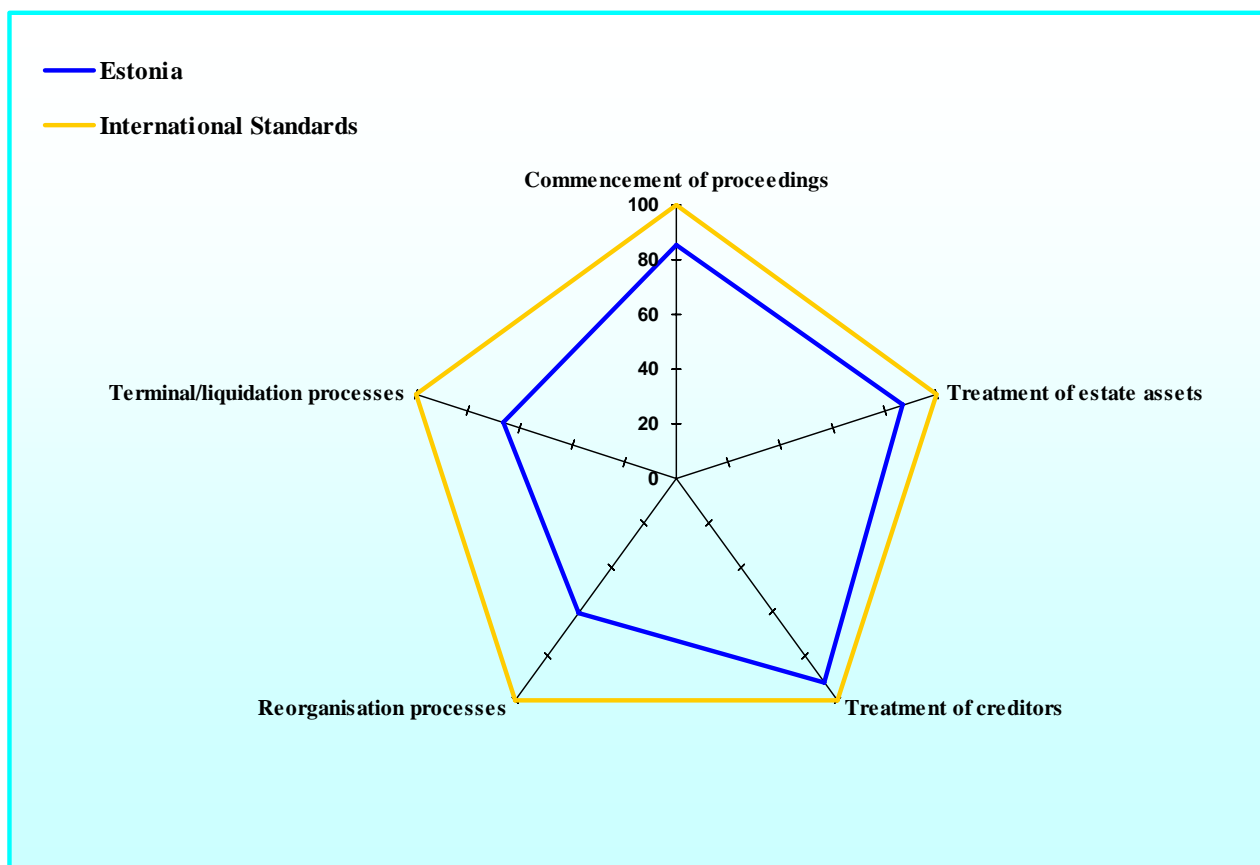


Source: EBRD Insolvency Sector Assessment 2004

Note: The various categories indicate the level of compliance of each country’s legislation (the “laws on the books”) with international standards, such as the World Bank’s Principles and Guidelines for Effective Insolvency and Creditor Rights Systems, the UNCITRAL Working Group on Legislative Guidelines for Insolvency Law, and others. The asterisk indicates in which category Estonia ranks.

Chart 12 below displays the data collected in this project and shows the level of compliance of the Insolvency Law with international standards in five core areas:

Chart 12 – Quality of Insolvency legislation – Estonia 2004



Source: EBRD Insolvency Sector Assessment 2004

Note: The extremity of each axis represents an ideal score in line with international standards, such as the World Bank's Principles and Guidelines for Effective Insolvency and Creditor Rights Systems, the UNCITRAL Working Group on Legislative Guidelines for Insolvency Law, and others. The fuller the 'web,' the more closely the country's insolvency laws approximate these standards.

As the above graph reveals, the law has some strengths in certain areas. Specifically, the law is very strong on the requirement of third parties to deliver assets of the insolvent estate to the insolvency administrator. This generally has the effect of enlarging the pool of assets divisible among creditors thereby increasing the level of recovery for creditors. The law also provides some of the most extensive and well-developed provisions for avoiding pre-bankruptcy transactions. Indeed, these provisions, often lacking in other insolvency laws in the region, could serve as a model for other countries.

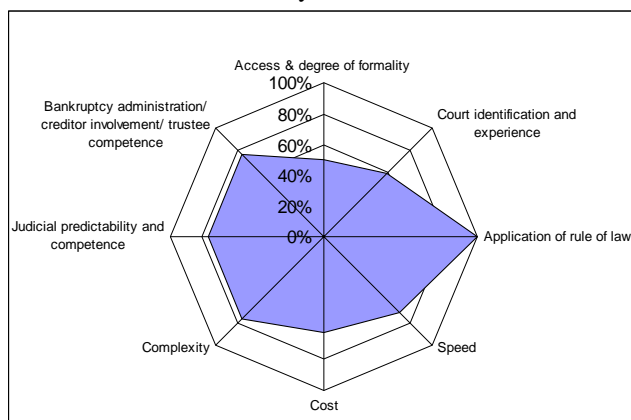
As the above graph also indicates, however, there is much room for improvement in the Insolvency Law. Specifically, and most notably, there is an absence of modern rehabilitation provisions. The rehabilitation provisions that do exist in the Insolvency Law seem to ignore the commercial realities of restructuring (for example, they require that the rehabilitation plan provide for payment in full to creditors). Moreover, the Insolvency Law does not purport to deal with cases in which the assets in the insolvent estate are insufficient to pay the costs of liquidation. Finally, as with many other laws in the region, this law ignores the emergence of cross-border trade between Estonia and its neighbours and does not provide for how to address cross-border insolvencies.

It is important, however, to look beyond mere legislative provisions and to understand how the insolvency regime works in practice. The EBRD 2004 Legal Indicator Survey on Insolvency which examined the 'effectiveness' (or how the law works in practice) of insolvency regimes in both creditor-initiated insolvencies and debtor-initiated insolvencies revealed that the Estonian

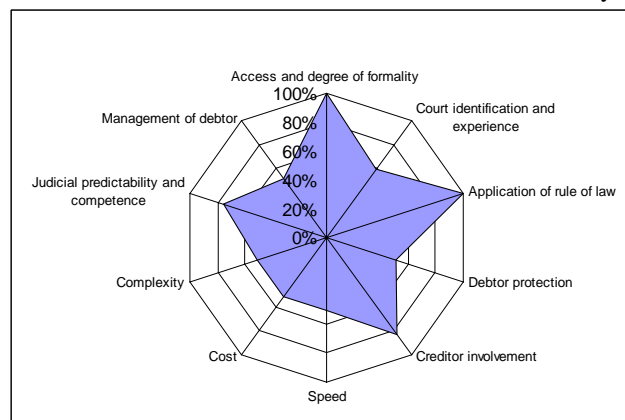
insolvency regime is much more ‘creditor-friendly’ at the expense of allowing debtors to restructure (see Chart 13).

Chart 13 – Effectiveness of Estonia insolvency regime

Creditor-Initiated Insolvency



Debtor-Initiated Insolvency



Source: EBRD 2004 Legal Indicator Survey on Insolvency

Note: The results have been derived from stakeholder responses to questions about the practical functioning of the insolvency regime. The fuller the “web,” the more effective the country’s insolvency regime is.

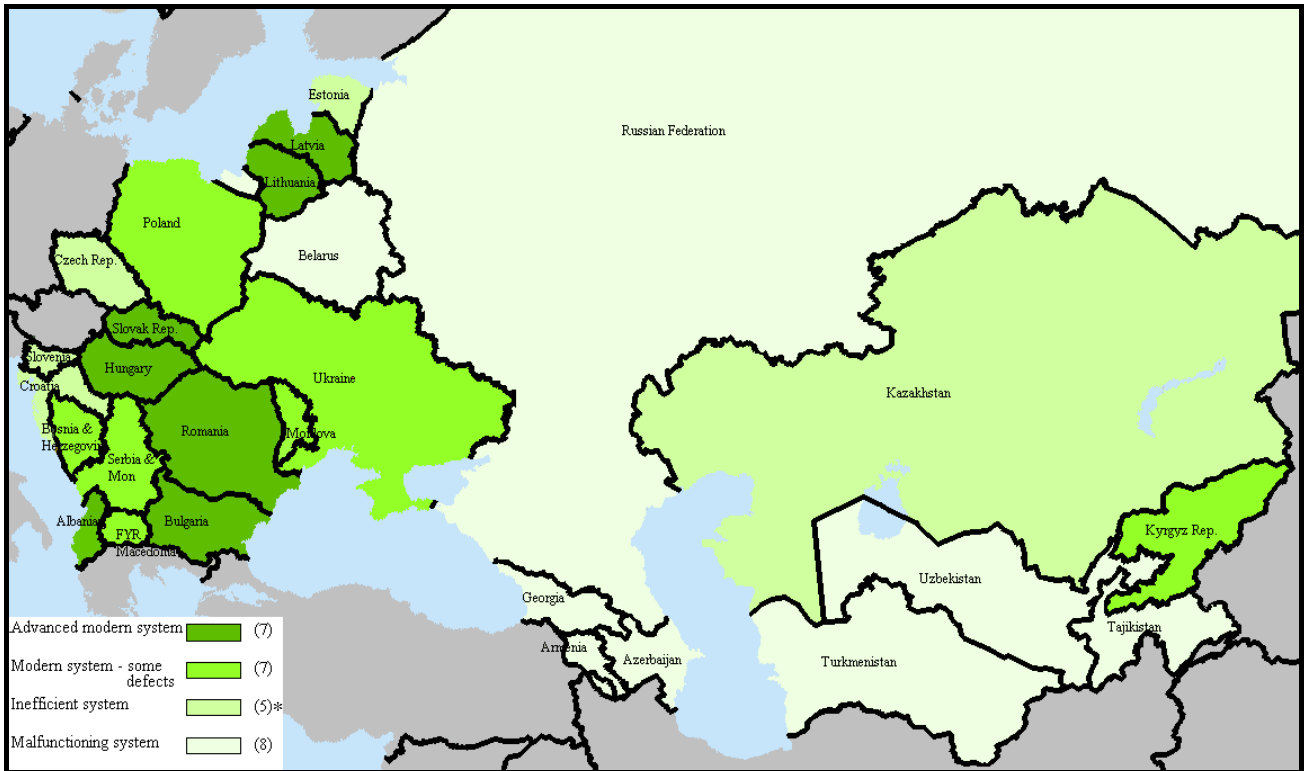
Debtors are much more likely than creditors to find the system slow, expensive and unduly complex. All of these factors, together with the law’s deficiencies, militate against the insolvency regime functioning properly as a ‘stick’ to induce debtors to act in good faith and as a ‘carrot’ to induce insolvency debtors, with businesses that are fundamentally viable, to try to promote the rescue of such businesses. In addition, there seem to be structural problems with the court system, in terms of predictability and competence, that will negatively affect both debtors and creditors.

These studies show that any attempts at reform in Estonia should be made in both the legislative and capacity-building spheres.

3.5. Secured Transactions

Secured Transactions in Estonia are governed by the Law on Property of 9 June 1993 and the Law on Commercial Pledge of 5 June 1996. On 15 January 2003, amendments to the Property Law were adopted, which created a new, advanced system to take security over rights (generally all intangible property). The law entered into force on 1 July 2003. Other, less substantial changes have since been made to both acts. According to the results of the EBRD Regional Survey of Secured Transactions Legislation 2004, Estonia’s secured transactions regime fell in the “inefficient system” category. (See Chart 14)

Chart 14 – Quality of secured transactions legislation in the EBRD Countries of operation

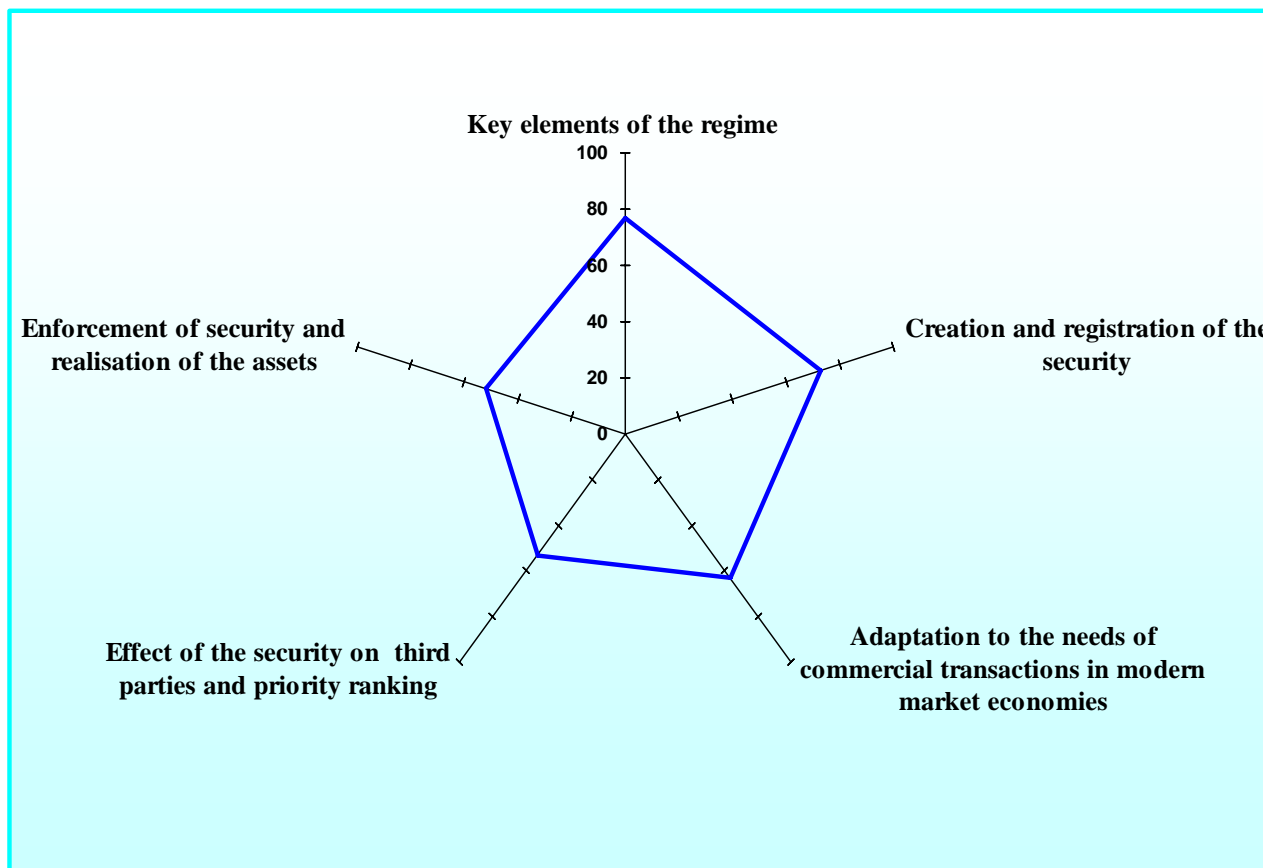


Source: EBRD Regional Survey of Secured Transactions Legislation 2004

Note: The level of reform referred to in the legend above is assessed in relation to the EBRD’s Model Law on Secured Transactions and the ‘ten core principles of secured transactions law.’ The asterisk indicates in which category Estonia ranks.

Main flaws of the secured transactions legal regime lie with the provisions on effect of security on the third parties, priority ranking, enforcement of security and realisation of assets, flexibility of available instruments. (See Chart 15)

Chart 15 – Quality of secured transactions legislation – Estonia 2004



Source: EBRD Regional Survey of Secured Transactions Legislation 2004

Note: Scoring is done on a scale of 1 to 100, with 100 representing the most advanced legal regime. The fuller the 'web,' the more advanced the country's secured transactions legal system is.

In order to take security over personal (movable) property, the three main legal instruments in Estonian law are:

1. (non-possessory) registered charges over assets whose title is already registered in a specific registry (i.e. vehicles, aircraft, boats, intellectual property rights, etc), as governed by the Property Law;
2. so-called commercial pledges, which encumber the whole of an enterprise, hence sometime referred to as enterprise charges, governed by the Commercial Pledge Law and Property Law; and
3. charges over rights (i.e. claims, accounts receivables, rights over real property, etc), governed by the new specific provisions of the Property Law.

This system is fairly strict in that it does not allow the parties to define the collateral as they wish. For instance, the commercial pledge could not cover only part of the enterprise: the object of a commercial pledge must be the "economic unit through which an undertaking operates". Moreover, commercial pledges (enterprise charges) can only be granted by enterprises which are registered in the commercial register.

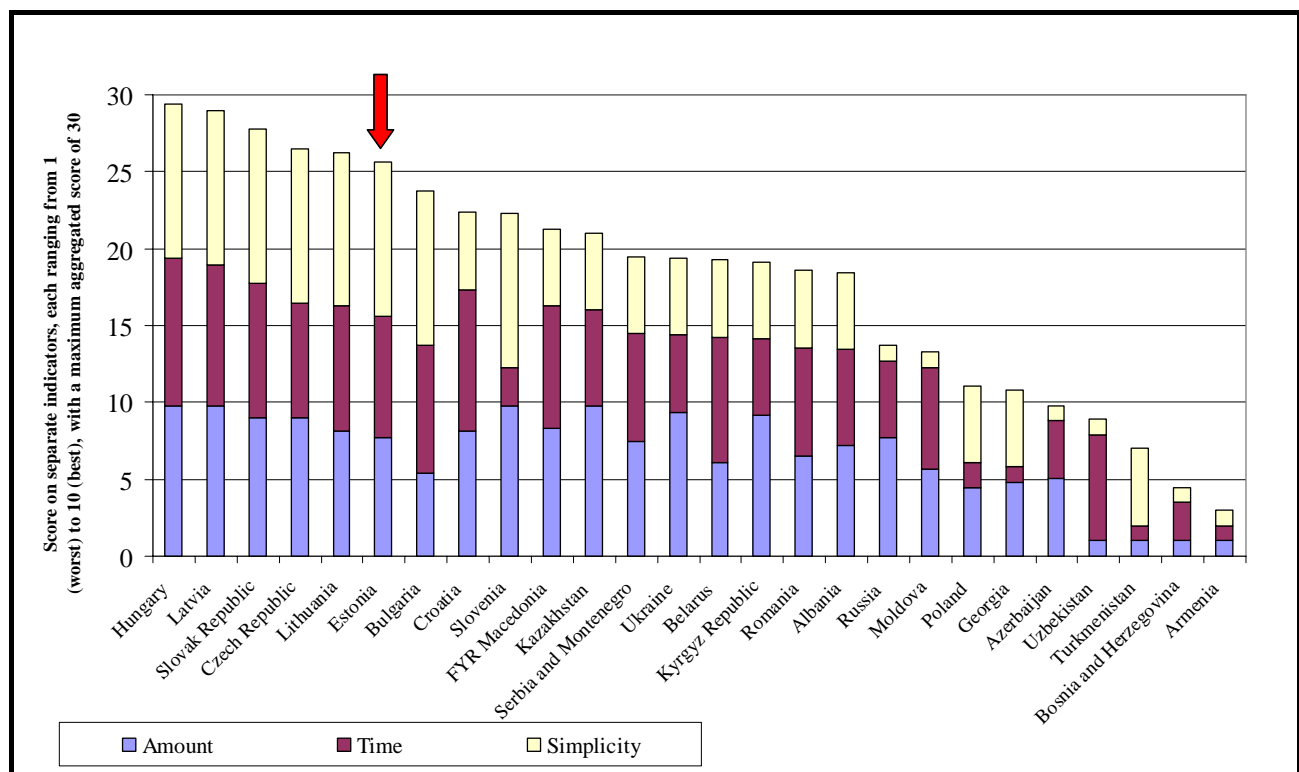
A registered or commercial pledge requires the notarisation of the charge agreement, and the fees vary in proportion to the amount of the secured debt. Commercial pledges (enterprise charges) must be registered in the commercial pledge register, which is run by the Register Centre of the Ministry of Justice ("Kommertspandiregister").

Mortgages are registered in the Registry of Real Property, except when the owner of the building does not own or have the 'building title' over the land beneath (in which case taking security over buildings will be created by way of a "pledge over movables"). There is a continuing process of registration of land in the Registry of Real Property. Mortgage registration takes place at the Real Estate Registry which is maintained at the local court.

The legal regime on charges over rights is comparable to conditional assignment: it requires that the sub-debtor be notified of the existence of the charge and the creditor can enforce the charge by receiving direct payment from the sub-debtor.

The Property Law provides for realisation of the charged assets through a sale by public auction but it also allows the parties to agree to a different method of sale. The creditor is liable for damages if he does not comply with the agreement for the method of sale. The Supreme Court held in 2002 that such an agreement of purchase and sale should be in accordance with fair practice. In a survey on enforcement of charges conducted by the EBRD in 2003 (see Charts 16 and 17), results for Estonia showed that the enforcement system works efficiently: secured creditors are able to realise the secured assets speedily at a good return. In contrast to what happens in neighbouring jurisdictions, secured creditors seem to prefer enforcing through courts rather than directly because of the lack of practice in out-of-court enforcement. Also, should the debtor be insolvent, the secured creditor priority ranking and procedure applicable would put him in a less favourable position.

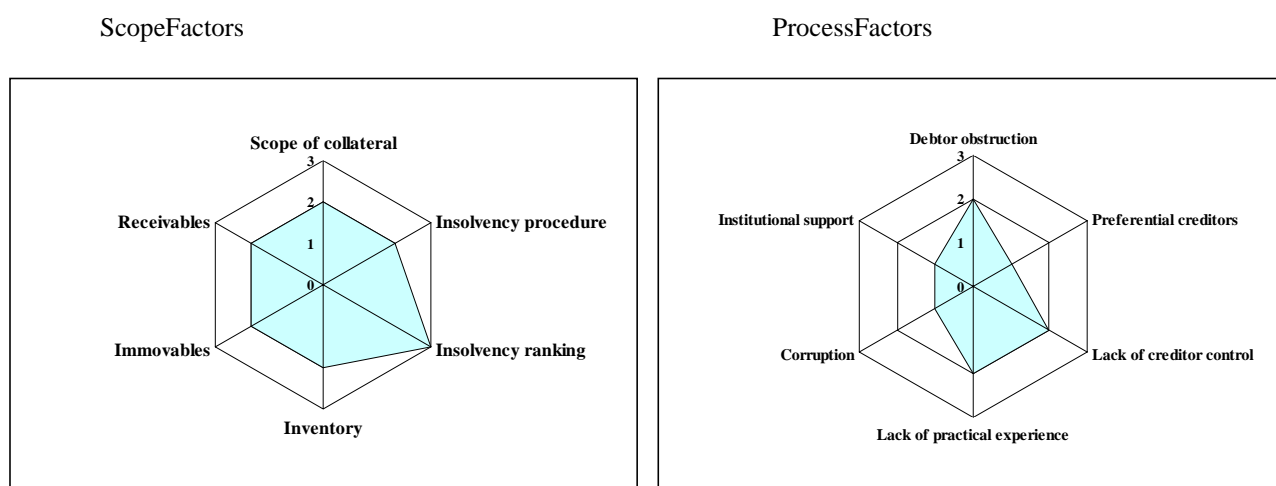
Chart 16 – Effectiveness of the Charge Enforcement Process – Estonia (2003)



Source: EBRD New Legal Indicator Survey 2003

Note: The chart shows how much a secured creditor can expect to recover (amount), how quickly (time), and how simply (simplicity). The higher the bar, the more efficient and creditor-friendly the system is.

Chart 17 - Obstacles to Charge Enforcement Process – Estonia (2003)



Source: EBRD Legal Indicator Survey 2003

Note: “Process” factors measure the impact that specific obstacles would have on the enforcement proceedings. “Scope” factors give an indication of how effective enforcement would be when conducted on various types of collateral and in the context of debtor insolvency. The fuller the coloured area, the more serious the problems are.

Generally, Estonia made a good attempt to reform secured transactions law in 1996 but it has not gone far enough and the scope and effects of the reform have proved to be too limited. The reform of charges over rights evidenced a pressure to offer more flexible solutions; however, a piecemeal approach is not desirable. Estonia could valuably consider a more integrated approach such as the one successfully adopted in both Latvia and Lithuania. The Bank has tried to encourage such reform, so far with no success.

3.6. Telecommunications

The telecommunications sector in Estonia is currently regulated by the Estonian National Communications Board (ENCB) and is governed by the framework imposed by the Electronic Communications Act of January 2005. ENCB carries out the policies set by the Ministry of Economic Affairs and Communications (the ‘Ministry’). ENCB is a sector specific regulatory authority working under the administrative authority of the Ministry with responsibility for licensing, frequency allocation, type approval and elaboration of laws and standards concerning telecommunications. The Ministry is responsible for preparation of telecommunications policy, elaboration of draft laws, representation of Estonia in international bodies and intergovernmental organisations and handles the state budget in the field of telecommunications.

The Estonian market is one of the most developed in Eastern Europe. Following independence in 1989 the country moved quickly to open markets to competition. Estonia was the first central European nation to fully liberalise its market, in January 2001, with the opening up of local, long distance and international markets and the removal of the fixed line monopoly of Elion Enterprises Ltd (formerly Eesti Telefon, the incumbent operator). Estonia was one of the ten countries which joined the European Union (EU) in May 2004, and its telecommunications law has since been brought into line with the relevant EU directives.

While Estonia has achieved significant progress both in terms of liberalisation of the telecommunications market and implementation of its regulatory framework, it is notable that Elion

continues to dominate the fixed-line market, accounting for approx. 80% of the fixed market measured in 2005. Number portability, introduced in January 2004, and reductions in interconnection charges during 2005 should enable alternative operators to achieve more of the dominant operator's fixed-line customers and its voice business. Elion has been partly privatised, with 47.91% owned by TeliaSonera, 27.23% by the state and 23.86% other private investors.

The mobile market in Estonia is home to vigorous competition with three network operators (EMT, Radiolinja and Tele2) competing for market share alongside two Mobile Virtual Network Operators (Bravocom and Diil). Official mobile figures currently report a penetration rate of in excess of 100%, placing Estonia alongside the more developed of European markets. All three incumbent mobile licensees have been awarded 3G licences, with EMT having launched commercial services late in 2005.

While virtually all relevant regulatory measures are in place the attention of the authorities must remain focussed on continuing enforcement of sector specific regulatory measures and broader competition rules to ensure a fully competitive and marketplace for telecommunications. While the progress within the Estonian market has been overwhelmingly positive, one notable element is lack of clarity with respect to the independence of the ENCB. Specifically, the ENCB appears to continue to operate under the administrative authority of the Ministry, with the 2005 Electronic Communications Act providing that the Ministry “exercises supervisory control over the [ENCB]”. Such ambiguity could arguably be perceived as compromising to independence of the ENCB. While the European Commission noted this issue as far back as November 2003, the authorities have yet to address the matter.