



# COMMERCIAL LAWS OF LITHUANIA

February 2006

# AN ASSESSMENT BY THE EBRD

*This Assessment was last updated during the preparation of the 2005 EBRD Strategy for Lithuania 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](mailto:ltt@ebrd.com)*

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**Basis of Assessment:** *The assessment contained in this document is grounded on the experience of the Office of the General Counsel in working on EBRD investment and legal reform activities in Lithuania. The assessment also draws on legal assessment work conducted by the Bank (see [www.ebrd.com/law](http://www.ebrd.com/law)). This publication does not constitute legal advice.*

## 1. Overall Assessment

In recent years, Lithuania has made substantial progress in the transition process and EU accession in May 2004 has further contributed to the transition to a market-oriented economy. The pace of reform has been dictated by efforts to upgrade and harmonise legislation with EU standards and regulations.

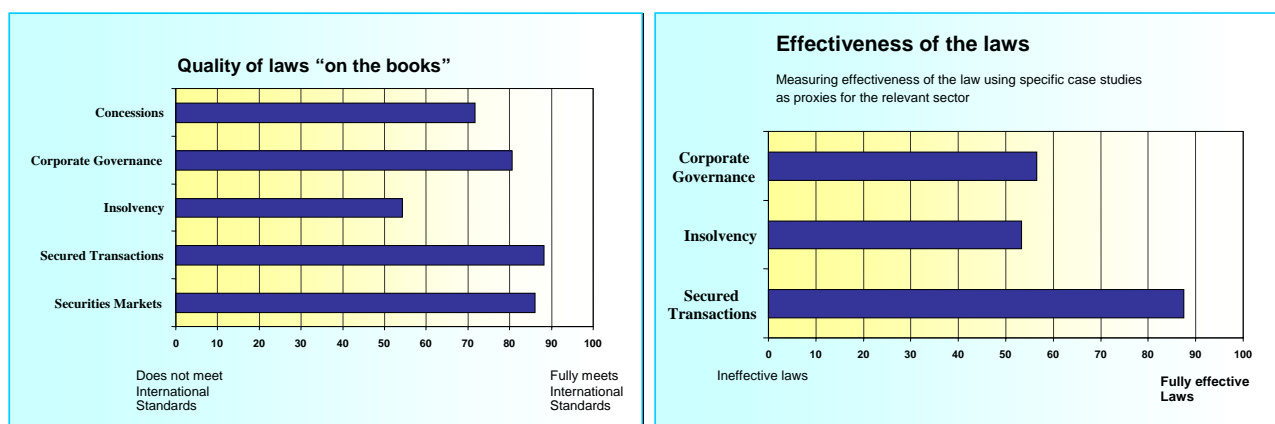
In most areas related to investment activities, Lithuania has overall reached a fairly high level of compliance with international standards. Specifically, at the end of 2004 and during 2005, a range of amendments have been made to capital markets and corporate governance legislation dealing with *inter alia*; information disclosure matters, insider trading, introducing squeeze out rules, and issue of a prospectus. According to EBRD Legal Assessments conducted in both sectors, Lithuania's legislation scored "high compliance"; revealing just minor flaws in certain areas, such as, related party transactions, the responsibilities of the board and rights of shareholders.

The concessions sector is governed by the recently adopted Concession Law, developed with the EBRD's technical assistance and widely regarded as one of the best laws of its kind in the region. However, the major focus for achieving notable results in this sector must be on the successful implementation of the law and on inserting appropriate incentives into the public-private partnership policy framework. Lithuanian insolvency law was rated as having achieved "very low compliance" in a 2004 EBRD assessment of insolvency legislation. The law appears to fall short in regulating the core areas of insolvency, such as estate treatment, treatment of creditors, and fails to establish a clear balance sheet tests for insolvency.

In terms of secured transactions, there have been not been any significant changes over the past two years to the legislation in place, and legislation is generally well implemented and enforcement of security seems to be efficient. All registration of collateral can be found on-line which considerably enhances the transparency of secured transactions. Some improvements may be necessary to the registration procedure of collateral and the establishment of a charge over fluctuating collaterals. The EU regulatory framework in the telecommunications sector was successfully transposed into Lithuanian legislation; however, promotion of meaningful competition in the fixed line communication area is required to contribute to the development of this sector.

Considerable progress has been achieved in improving administrative and judicial capacity and most administrative structures. However, further sustained efforts to reinforce administrative capacity are required, and, in particular, with respect to the hiring and training of qualified staff and the effective co-ordination of agencies. Overall, Lithuania has developed a strong body of legislation and it should now concentrate on its proper implementation. Chart 1 provides a comparative assessment of the quality of the laws on the books with their functioning in practice.

**Chart 1 – Snapshot of Lithuania’s commercial laws**



Source: EBRD legal assessments 2002-2005

## 2. The Legal System

### 2.1. Constitution and courts

The Constitution of the Republic of Lithuania was adopted by a referendum in 1992. According to the Constitution the legislative body is the unicameral Seimas (Parliament) having 141 members elected for a four-year term. The right of legislative initiative belongs to members of the Seimas, the President, the Government and the citizens of Lithuania, if a draft is submitted by 50,000 citizens.

The President of Lithuania is the Head of State, directly elected by the citizens. The President is empowered *inter alia* to: implement foreign policy, appoint and remove the Prime Minister upon approval by the Seimas, appoint and dismiss ministers upon the recommendation of the Prime Minister, dissolve the Seimas, contingent upon certain circumstances, and return legislation to the Seimas for review. The Seimas can remove the President by impeachment, subject to a three-fifths majority vote by the members of the Seimas. The Government of Lithuania holds executive power in the country.

The Constitution and the Law on Courts established a four-tier court system of general jurisdiction: the Supreme Court, the Court of Appeals, district courts and local (trial) courts. The local courts try in the first instance most civil, criminal and administrative cases. The district courts hear in the first instance civil, criminal and administrative cases attributed to its competence and appeals against the decisions of the local courts. The Court of Appeals serves as a further appellate court for the decisions in first instance by the district courts. The Supreme Court is the cassation instance for the effective decisions of the district courts and decisions of the Court of Appeals. The Supreme Court can also provide guidance to ensure uniform application of the law. Recently, the decisions of the Supreme Court have played an increasing role in proper application and interpretation of provisions and are published on a regular basis.

The Constitution allows for the establishment of specialised courts, such as administrative, labour, family and other. A two-tier system of administrative courts was created in Lithuania, comprising regional administrative courts (first instance courts) and the Supreme Administrative Court (appellate court). Administrative courts hear cases concerning complaints against administrative acts and actions of the state agencies and state officials.

The Constitutional Court of Lithuania has a separate status from the judicial system and supervises the compliance of laws and other regulatory acts issued by state officials with the provisions of the Constitution.

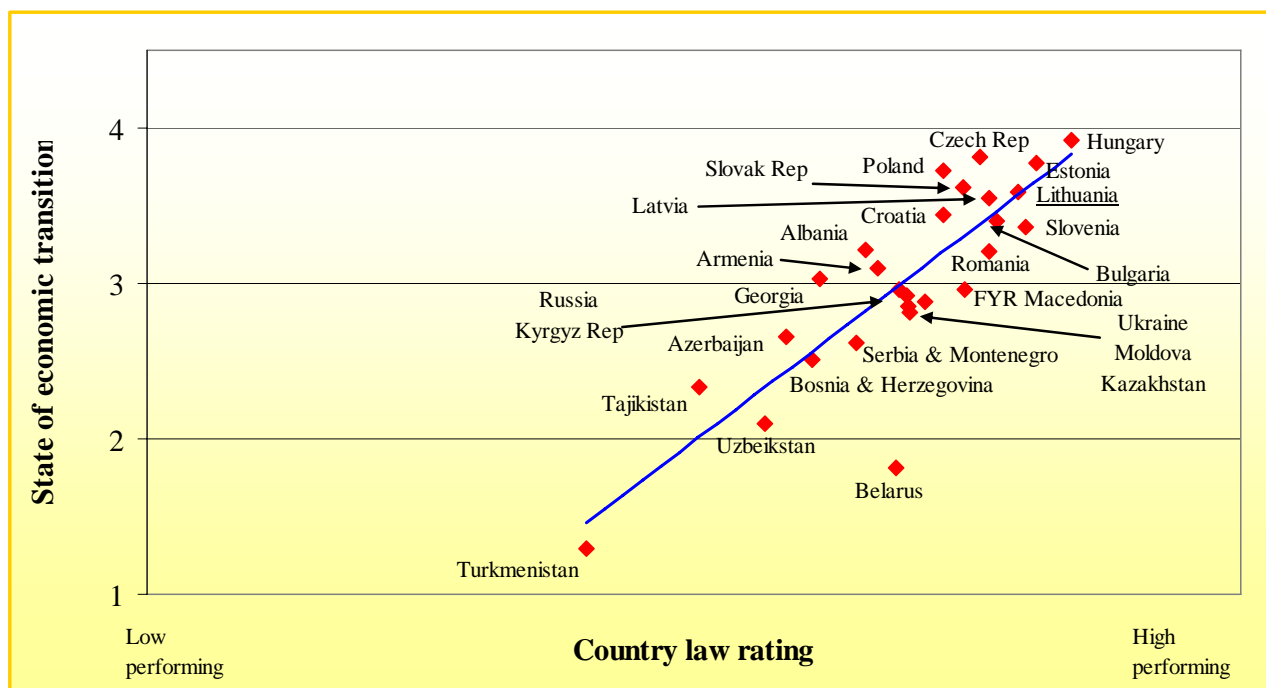
The autonomy of the courts and judges is ensured by the General Meeting of Judges, a self-governing body. Judges of the local, district courts and specialised courts are appointed by the President. Judges of the Court of Appeals are also appointed by the President but with the approval of the Seimas. Judges of the Supreme Court are appointed by the Seimas.

The judicial process has seen substantial improvements in recent years due to Lithuania’s continuing effort to streamline and speed up procedures. In addition, Lithuanian judges have benefited from comprehensive training to facilitate understanding and implementation of the new provisions, laws and regulations aligned with EU law. However, there is still room for improvement with regard to the effectiveness of the courts and enforcement procedures.

## 2.2. Relationship between legal transition and economic progress.

Experience in transition countries suggests that advances in law reform and economic development progress or regress hand in hand. Since the start of the economic reforms, Lithuania has progressed considerably with respect to developing a stable and functioning market economy, and is now regarded as one of the advanced transition countries in Central and Eastern Europe. The country has made significant progress in establishing the rule of law and democratic institutions. As a result, Lithuania’s relatively good performance in the following comparative chart on combined legal and economic indicators is not surprising (see Chart 2).

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 2003, with 1 referring to very early transition stages, and 4 referring to an advanced transition level.

### 2.3. *Implications for the investment climate*

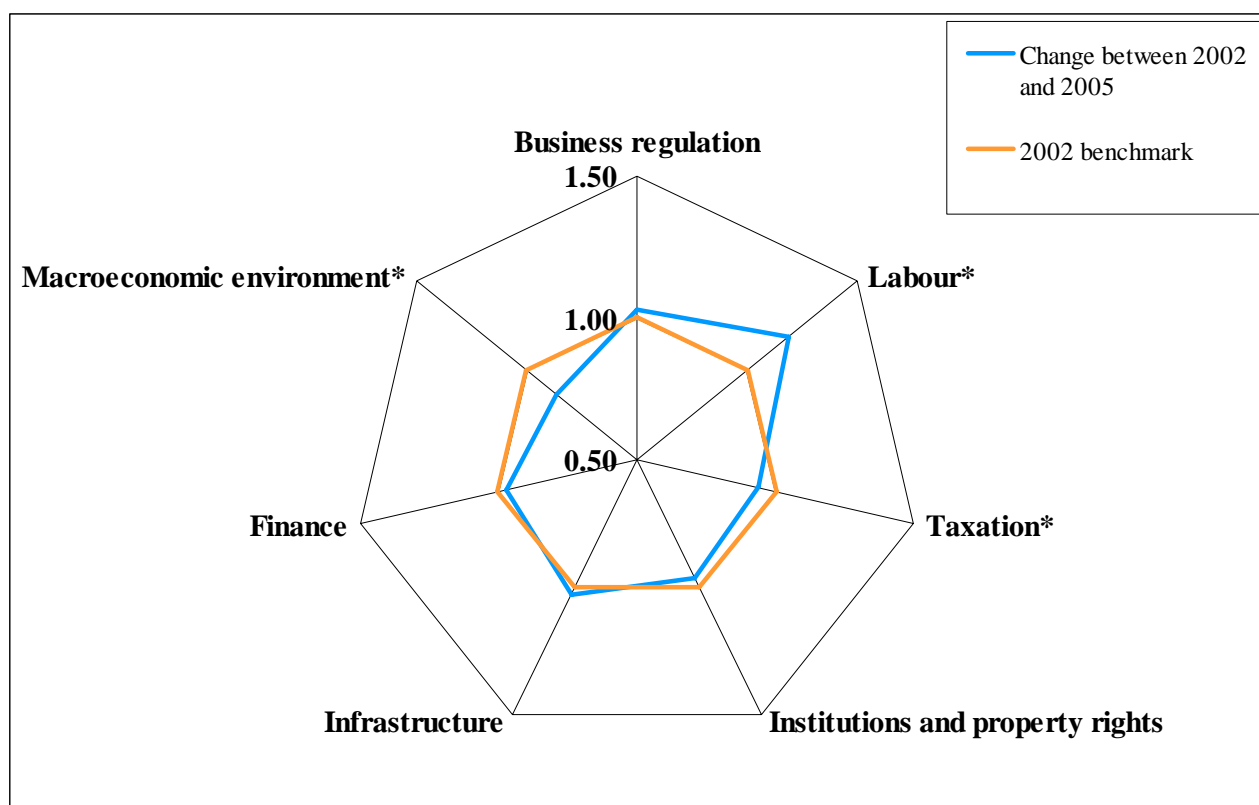
Overall the business environment in Lithuania is satisfactory and investors continue to be encouraged by the stable political situation, the sustained effort of the government to facilitate the flow of investments and the strategic geographical position of the country. Rapid harmonisation of legislation with EU standards and regulations as well as accession to the EU has considerably increased its attractiveness to investors. To maintain this reform impetus, the country will now need to ensure the effectiveness and proper implementation of existing legislation.

Foreign investors do not require special permits to invest and may freely repatriate profits and dividends. According to a recent World Bank report, *Doing Business in 2006*, Lithuania was ranked 15<sup>th</sup> out of 155 countries with regards to the ease of doing business, outscoring its Baltic neighbours. Recent initiatives aimed at improving the business environment include building the 'information society' requiring publication of comprehensive on-line data, clarifying competition law issues and improving tax treatment. In addition, Lithuania's membership of the World Trade Organization (WTO) is expected to expand the country's business relationship and co-operation with more remote markets. Lithuania is regarded as a relatively safe place to do business. The country has established good relationships with neighbouring countries; in particular the relationship with Russia has improved in recent years.

Continuing challenges to sound development of the investment climate are the perceived bureaucracy and corruption. However, the Government is acutely aware of these drawbacks and is undertaking measures to tackle the problem. In order to benefit in full from financial assistance by the EU, Lithuania needs to develop its administrative capacity. Additional effort is required to develop infrastructure, particularly in the regions outside the capital city.

As shown in Chart 3 below, the comparative results of the 2002/2005 Business Environment and Enterprise Performance Survey (BEEPS) indicated improvements in almost all areas of Lithuania's business environment. Some shortcomings are identified regarding infrastructure and labour relationships. In 2005 Lithuania strived to tackle the labour related problems by adopting regulations on works councils (as an alternative to trade unions) and by implementing related EC provisions.

**Chart 3 – Changes in the business environment in transition countries, Lithuania, 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 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 such laws (also referred to as "effectiveness").

All available results of these assessments can be found at [www.ebrd.com/law](http://www.ebrd.com/law).

#### 3.1. Capital markets

The primary legislation governing the securities market in Lithuania includes the Law on Securities Market, the Law on Collective Investment Undertakings and the Law on Companies.

The Law on Securities Market was originally enacted in 1996 and then amended several times, most recently in June 2005 in order to bring it in line with EU Directive 2003/71. The Law on Collective Investment Undertakings was adopted in July 2003 and aims at harmonising the regulation of collective investment undertakings with EU legislation. The Law on Companies entered into force

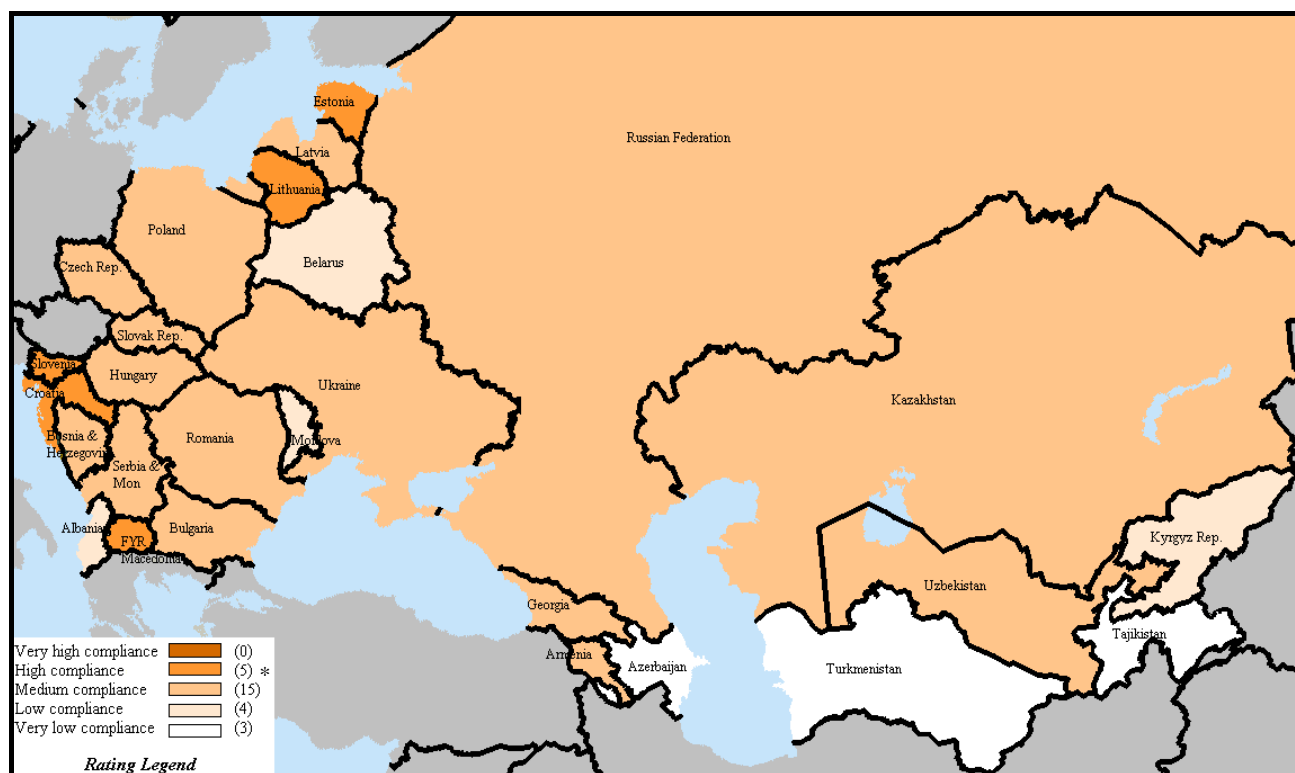
on 1 January 2001, with the most recent amendments made in June 2005, in order to harmonise its wording with the new regulations regarding the securities market.

The Securities Commission of the Republic of Lithuania (the "LSC") is the supervisory authority of the securities market. The LSC was established in September 1992 and is funded by the state budget. In September 1996 the LSC joined the International Organisation of Securities Commissions (IOSCO) and in 2004 became a full member of the Committee of European Securities Regulators (CESR), enjoying wider possibilities for the exchange of information with its counterparts on issues related to securities market surveillance.

Following its accession to the EU, Lithuania joined the Exchange Rate Mechanism 2 (ERM II) in June 2004, a precursor to full implementation of the Euro; its scheduled date for joining is January 2007. In 2004, the Vilnius Stock Exchange was privatised and integrated into the OMX group, a common Nordic and Baltic trading system with harmonised trading rules, securities listing and stock exchange membership principles, providing members of the stock exchange access to the common trading platform through a single access point.

According to the EBRD Securities Markets Legislation Assessment conducted in 2004, the country's relevant legislation was found to be in "high compliance" with the Objectives and Principles of Securities Regulation published by the IOSCO. (See Chart 4)

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

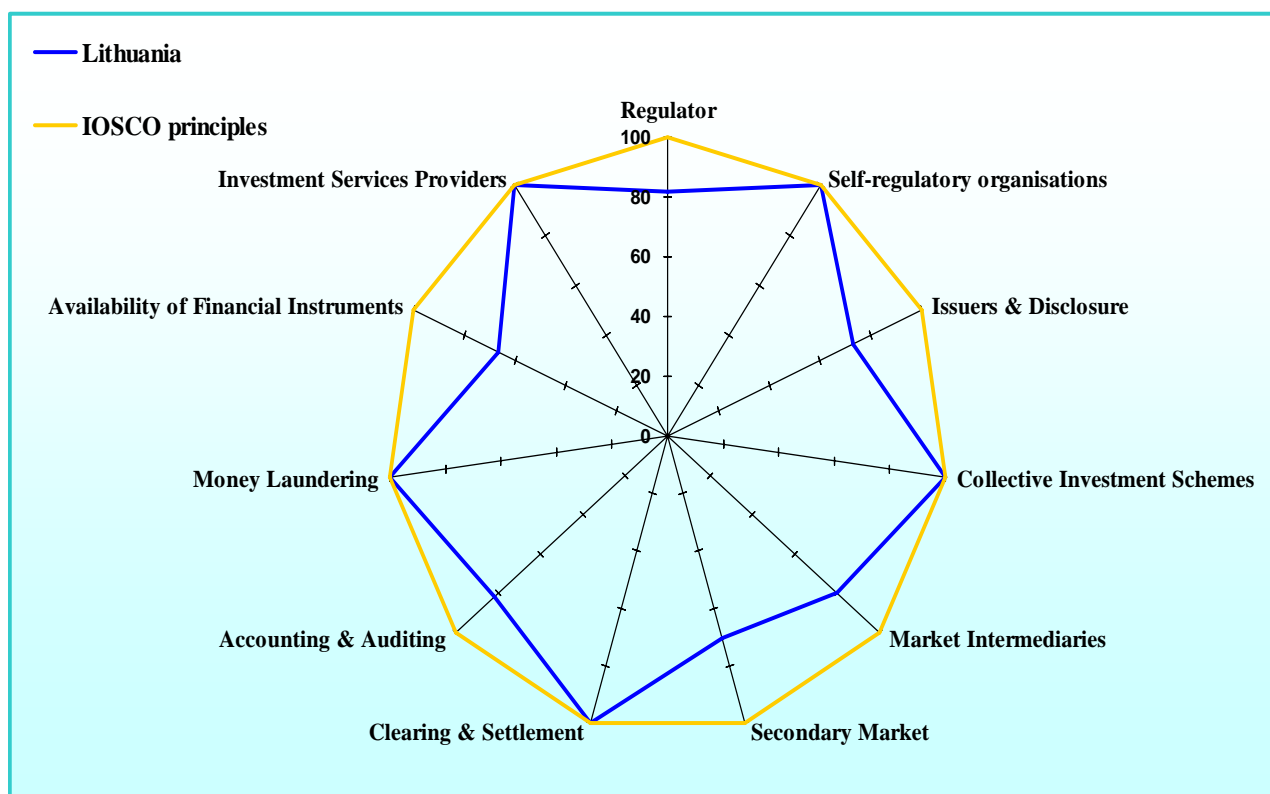


*Source: Securities Markets Legislation Assessment 2004*

**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 Lithuania ranks.

Based on the information gathered during the aforementioned Assessment only minor flaws were revealed in the sections related to "issuers and disclosure", "market intermediary", "secondary market" and "availability of security instruments". (See Chart 5) Among those, the lack of adequate legislation on prospectuses was found to be the major weakness.

**Chart 5 - Quality of securities market legislation – Lithuania, 2004**



*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.

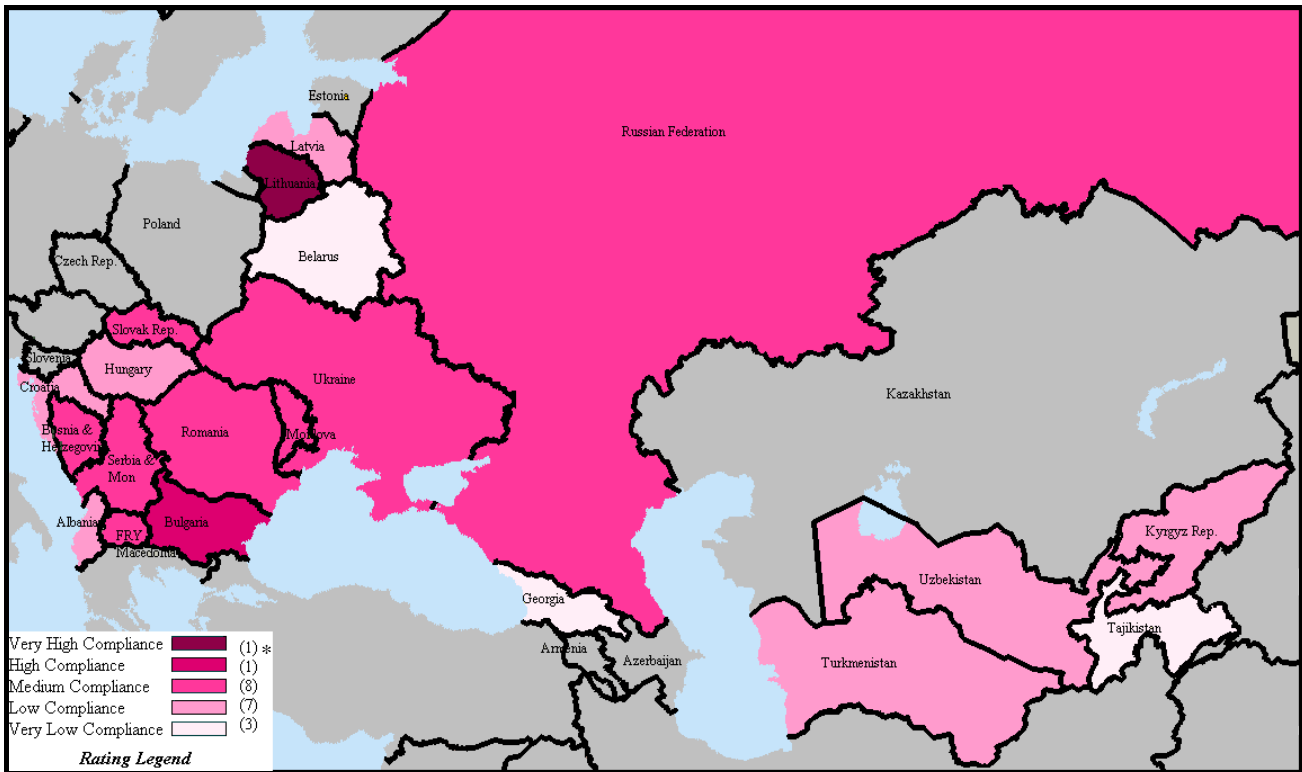
The Assessment was updated in 2005 and the results confirmed the high compliance rating. In 2005 new legislation on listing documents and prospectuses were issued. The possibility for a public offer of securities and their listing in a regulated market is now associated with the publication of a prospectus rather than with registration of the securities with the Securities Commission. Other regulations issued in 2005 set additional requirements for auditors of listed companies and have improved the disclosure of the identity of major shareholders and shareholders who have reached certain thresholds.

### 3.2. Concessions

Lithuania has a modern Concessions Law (the “Concessions Law”) developed with the EBRD’s technical assistance and enacted in 2004. The Concessions Law is based on best international standards and practices, particularly, the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects and is in line with EU recommendations and standards. At the same time the Concessions Law is consistent with other Lithuanian laws, being based on and taking into account specificities of the local legal and judicial systems as well as the Civil Code.

The recent EBRD Concession Law Assessment project undertaken to evaluate applicable regime throughout the 27 countries of EBRD operations (the laws on the books only, rather than how they work in practice), revealed that Lithuanian laws had “very high compliance” with internationally accepted good standards in this sector. In fact, Lithuania is the only country that has currently achieved that level of compliance. (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 Lithuania ranks.

The definition of a concession under the Concessions Law covers a full range of activities, assets and services. Eligible bidders and sectors concerned are clearly identified. Under the Concessions Law, any domestic or foreign entity including consortia and joint ventures may bid for and be granted concession contracts. Remarkably, it is one of the few concession laws in the region that expressly refers to the commercial value of concessions, including risk-taking, in the definition of a concession. It is also one of the few laws in the region stating that a concessionaire has the right to create security over its property, rights and assets and that the parties are free to agree (subject to the Lithuanian Civil Code) on the governing law applicable to the project agreement. According to the Concessions Law parties have a choice of dispute resolution procedure and forum, including domestic or international arbitration.

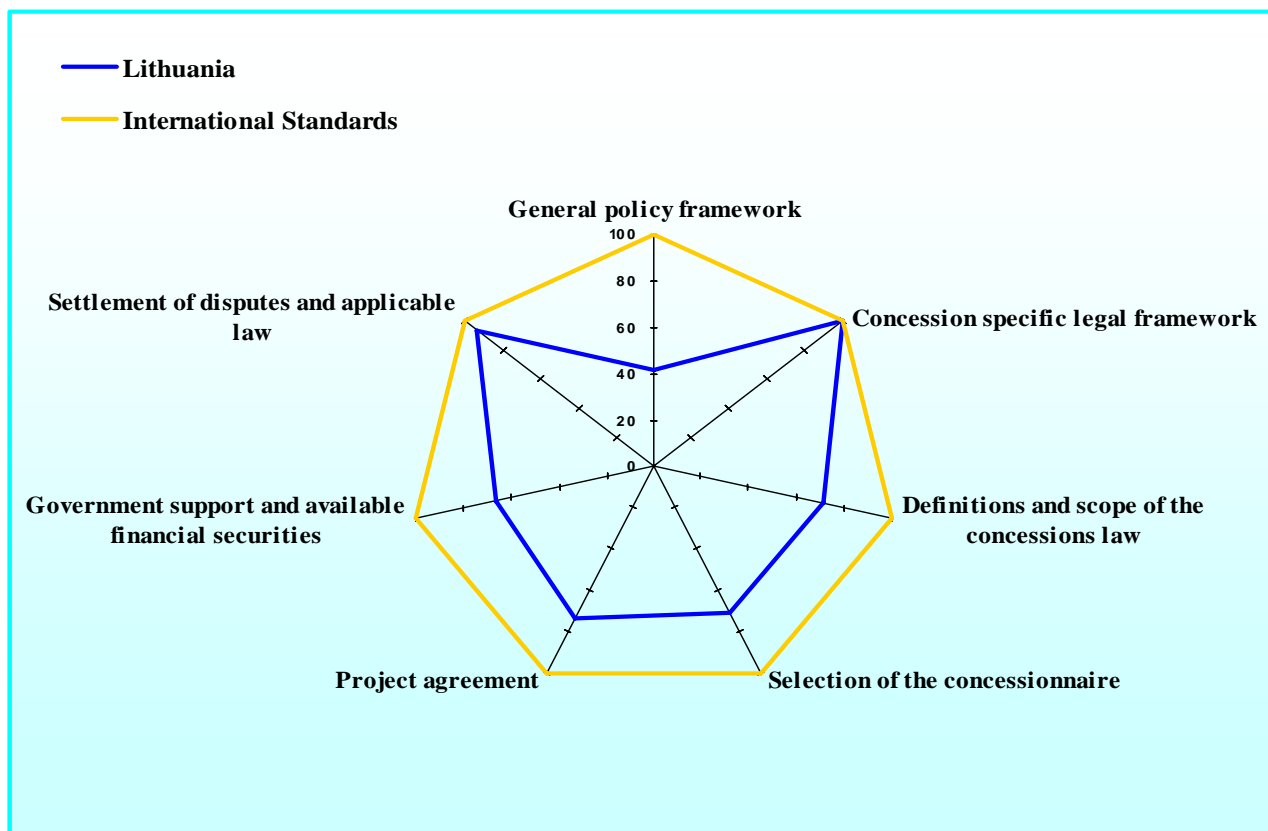
The provisions regulating the project agreement give clear guidance on the main issues to be covered yet remain sufficiently flexible, thus allowing the parties to freely negotiate its terms and the arrangements' structure, which brings desirable flexibility to both investors and the authorities. The tendering rules are sufficiently simple and clear. The Concessions Law contains provisions assuring a fair and transparent selection process (pre-selection of bidders, procedures for requesting proposals - with a distinction drawn between technical and financial proposals-, possibility of a two-stage procedure, publication of concession awards, limited exceptions to concession awards without competitive procedure, existence of review procedures, parameters for the negotiation process, etc.).

In line with best international practices, direct selection of the concessionaire is allowed by the Concessions Law in specific cases.

As can be seen from the graph below (Chart 7), while nearly all core dimensions of a legal concession framework are regarded as fairly extensively regulated, there is still some room for

improvement in terms of ‘availability of financial instruments and state support’ rules and “general policy framework”.

**Chart 7 - Quality of Concessions legislation – Lithuania, 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.

The area most in need of further improvement is PPP policy framework. The absence of a clearly defined policy may become a significant factor preventing investors from being attracted to infrastructure and municipal programmes. The EBRD is developing a project to follow up with the authorities, building on the success of earlier technical assistance, aimed at defining further needs, including policy, improvement in the institutional framework, training, and advising on practical steps to translate the good quality comprehensive legal framework into practical implementation.

### 3.3. Corporate Governance

The Law on Companies is the most important legislative document dealing with corporate governance in Lithuania. In April 2004 the Vilnius Stock Exchange approved a Corporate Governance Code<sup>1</sup> and the Securities Commission of the Republic of Lithuania (the "LSC") endorsed it. The Code includes a set of requirements that listed companies are invited to observe on a voluntary basis. A new version of the Code is being drafted to incorporate a new "comply or explain" approach.

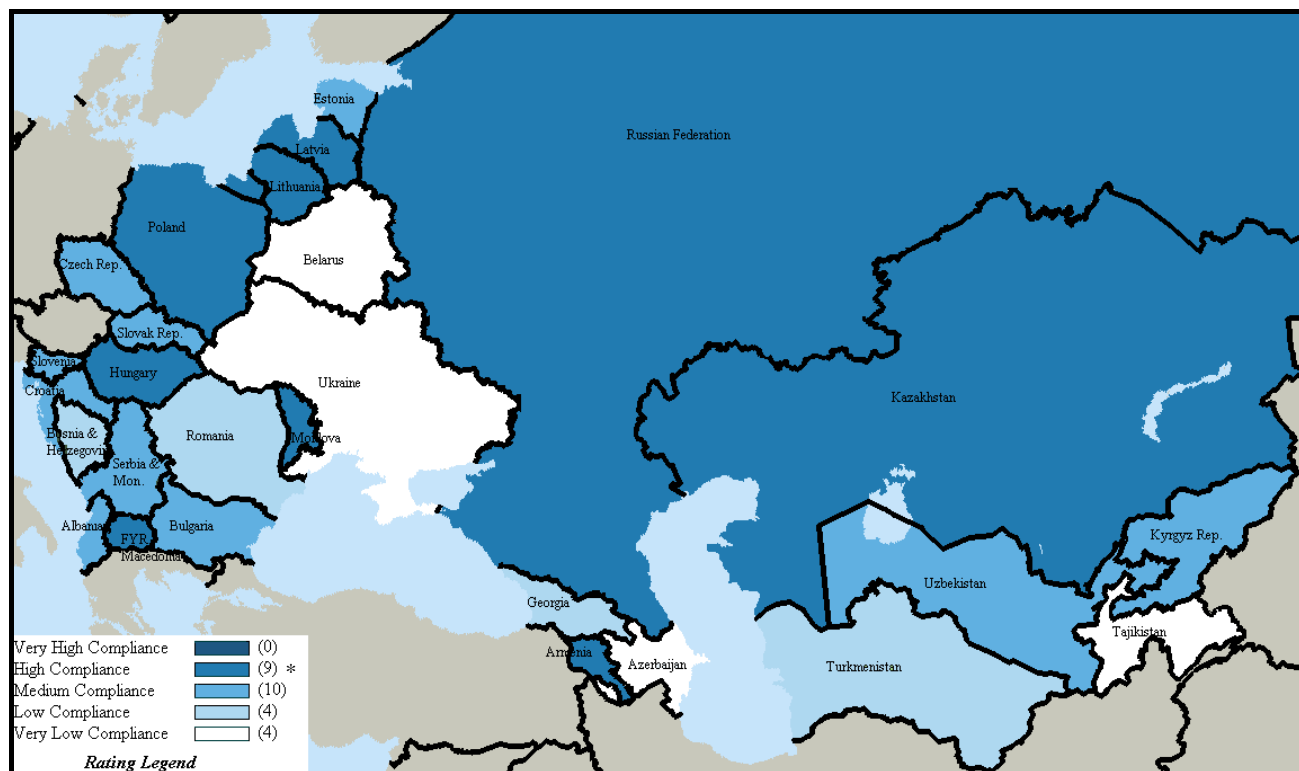
Joint stock companies can be incorporated in private or public form. Private companies cannot have more than 100 shareholders and the amount of the authorised capital cannot be less than LTL

<sup>1</sup> The Code is available in English on the Vilnius Stock Exchange webpage <http://www.lt.omxgroup.com>

10,000. The shares of a private company cannot generally be offered for sale or traded in public. The amount of authorised capital of a public company cannot be less than LTL 150,000 while shares can be offered for sale and traded in public. All companies are subject to registration in the Register of Enterprises of the Republic of Lithuania. A company is deemed incorporated and acquires the rights of a legal person as from the day of its registration.

According to the results of the EBRD's 2004 Corporate Governance Sector Assessment, in which the quality of corporate governance related “laws on the books” were assessed, Lithuania was rated as having achieved “high compliance”, when compared to the OECD Principles of Corporate Governance. (Chart 8)

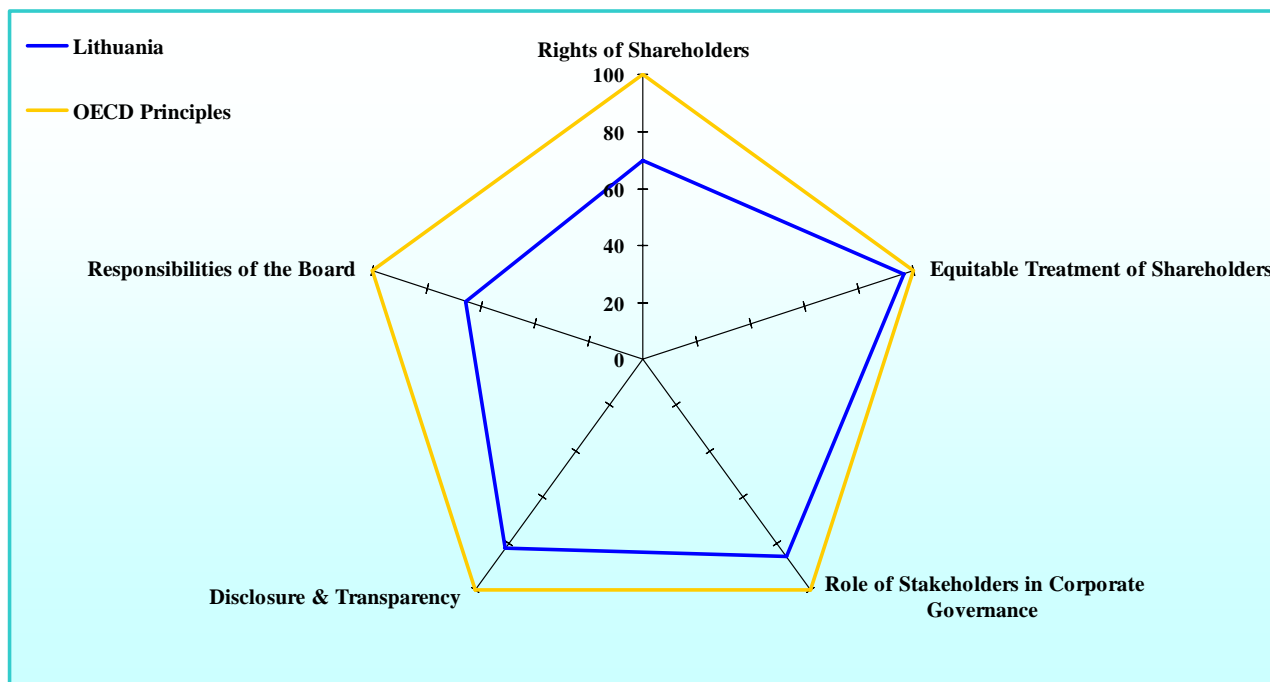
**Chart 8 – Quality of Corporate Governance legislation in the EBRD Countries of operation**



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 Lithuania ranks.

**Chart 9 – Quality of Corporate Governance legislation – Lithuania, 2004**



*Source: EBRD Corporate Governance Sector Assessment 2004*

*Note: The extremity of each axis represents an ideal score in line with international standards such as the OECD Principles of Corporate Governance. The fuller the ‘web,’ the more closely the country’s corporate governance laws approximate these standards.*

As shown in Chart 9 above, based on the results of the assessment, only minor shortcomings were found in the sections relating to the responsibilities of the board” and “rights of shareholders”. The assessment found that the law is silent on the board’s functions as ensuring the integrity of the corporation’s accounting and financial reporting systems and does not require the board to include a sufficient number of non-executive and independent directors.

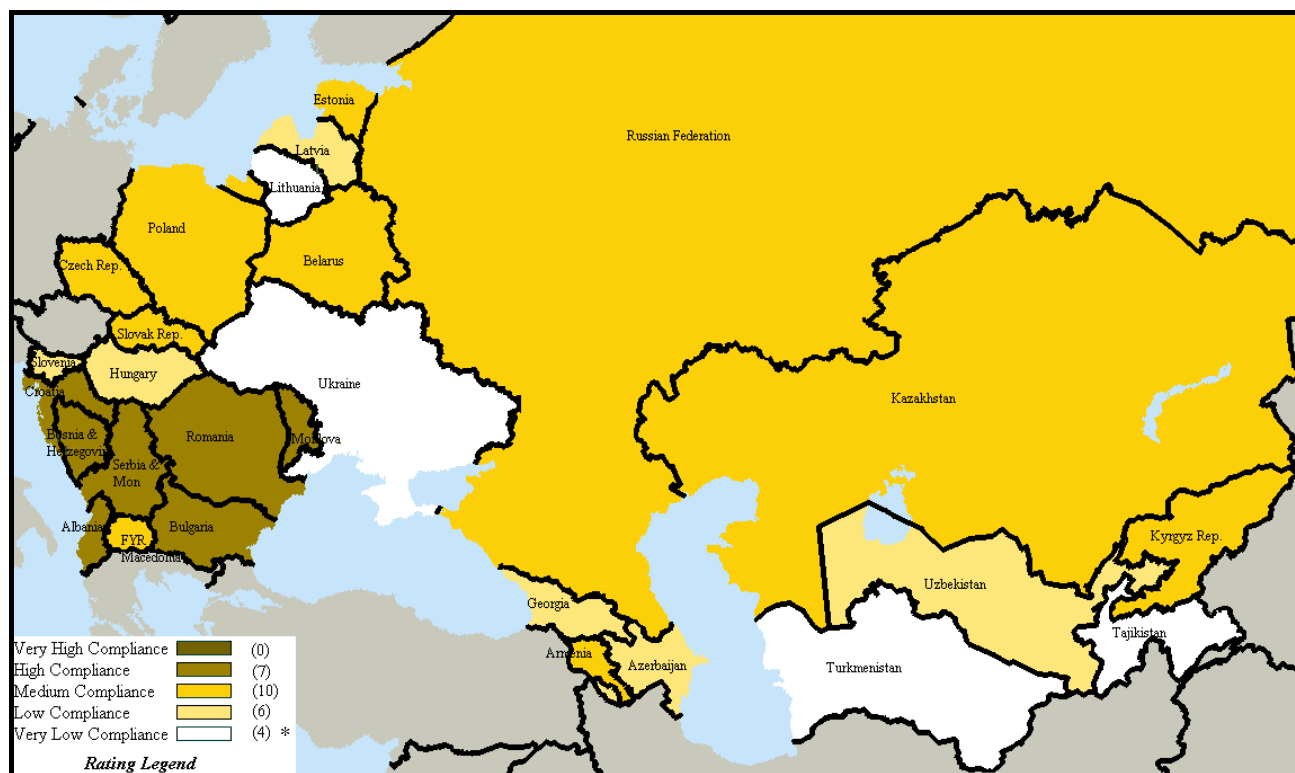
In 2005, the EBRD launched a survey for testing the effectiveness of corporate governance (how the law works in practice). A case study dealing with related-party transactions was designed. The case study investigated the position of a minority shareholder seeking to access corporate information in order to understand if a related-party transaction has indeed been entered into by the company and on how it was possible to obtain compensation in case damage was suffered. The effectiveness of legislation was then measured according to four principal variables: complexity, speed, enforceability and institutional environment. The survey revealed that legislation in Lithuania is quite effective and only minor problems have been evidenced. Related-party transactions are however not well detailed in the legislation and this might render the procedures complex and the burden of proof heavy. The time needed to conclude the proceedings is usually under 6 months when seeking disclosure although in case of an appeal the time needed to obtain an executable judgement can exceed two years.<sup>2</sup> Enforceability of judgements is not considered to be a problem. With regards to the institutional environment, the survey found that company information is considered generally reliable, which enhances the possibility to obtain disclosure. When considering redress, the survey reported a lack of experience of the lower courts in corporate law cases.

<sup>2</sup> The new Code of Civil Procedure – in force since 2003 – has introduced certain effective measures to avoid unfair delay of the process.

### 3.4. Insolvency

Bankruptcy and insolvency in Lithuania are governed by the Enterprise Bankruptcy Law (as amended, 2003) (the “Insolvency Law”). The Insolvency Law achieved “very low compliance” when compared with international standards in the EBRD’s 2003 Sector Assessment Survey and is one of the least extensive insolvency laws in the EBRD’s countries of operations (See Chart 10).

Chart 10 – Quality of Insolvency legislation in the EBRD countries of operation

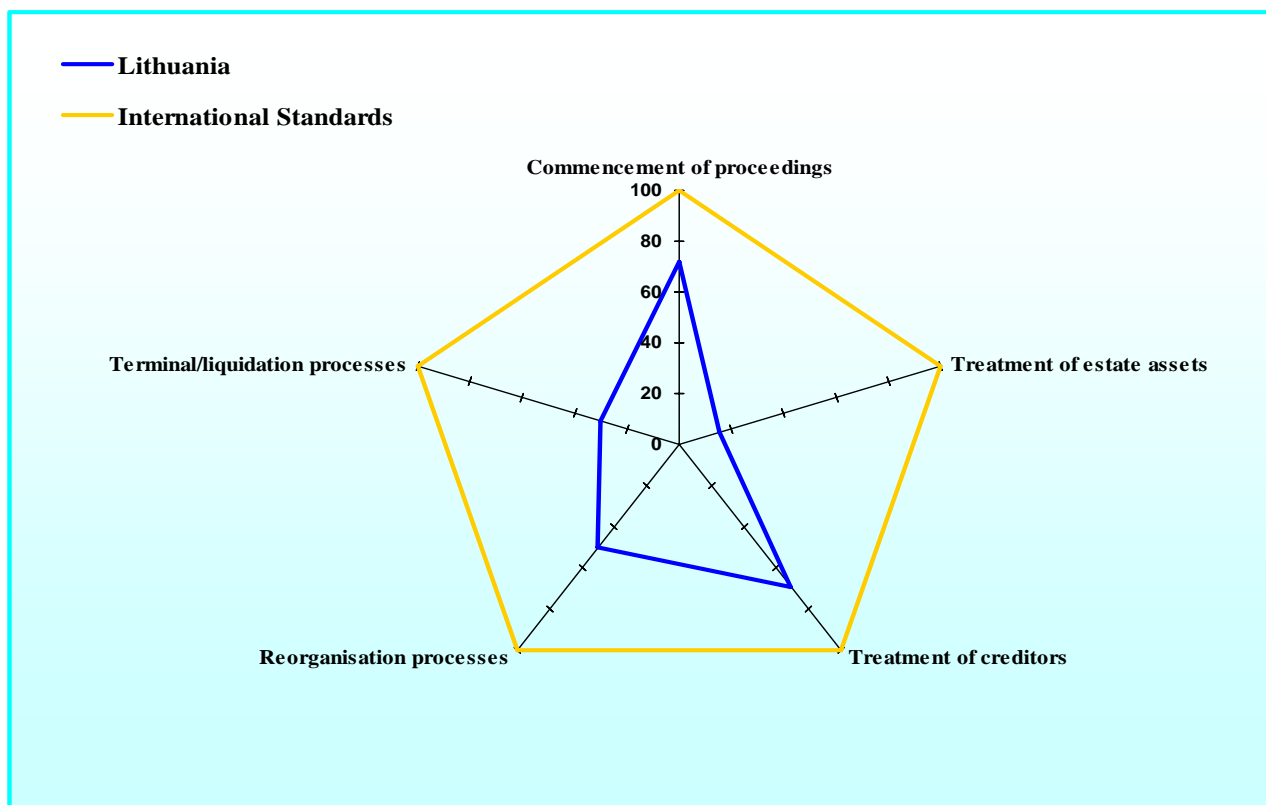


Source: EBRD Insolvency Sector Assessment 2004

**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 Lithuania ranks.

Chart 11 displays the data collected in the aforementioned project and shows the level of compliance of the Insolvency Law with international standards in five core areas.

Chart 11 – Quality of Insolvency legislation – Lithuania, 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, this law is deficient in many key areas of insolvency. Specifically, the Insolvency Law does not recognise debts owed to creditors (for the purposes of commencing insolvency proceedings) until those debts are three months overdue. This timeline is far too long and is inconsistent with the leading international standards on the topic. In addition, the law does not contain a ‘balance sheet’ test for insolvency. The law also fails to provide any qualifications or requirements for insolvency administrators. Insolvency administrators are the central actors in organising insolvency proceedings and, as such, should be professionally trained in the field of law or accounting and, preferably, should be licensed by some sort of governmental or quasi-governmental authority.

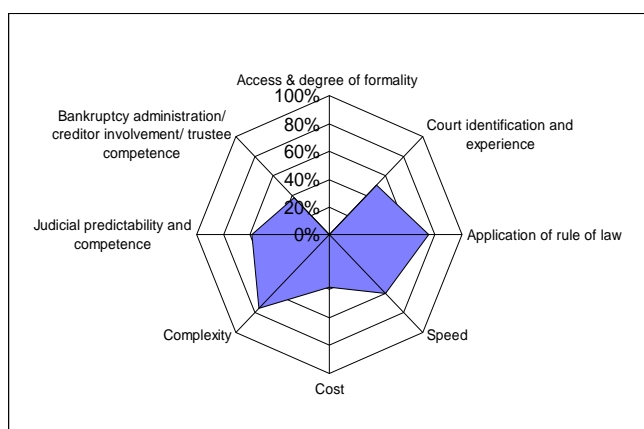
The reorganisation process for enterprises is governed by a separate Law on Restructuring of Enterprises (2001). However, this law has been criticised as vague and not in the capacity to entrench the reorganisation process. A meaningful reorganisation scheme would allow for the compromising of obligations, in a timely fashion, to facilitate recovery. Under the current Lithuanian scheme, virtually no ongoing financing during restructuring will be available and there are no provisions for set-off. Both of these issues must be addressed.

Finally, given Lithuania’s increasing business relationships with foreign countries, it would be worthwhile for the law to address the issue of cross-border insolvency proceedings (although, admittedly, this is not as pressing an issue as the other deficiencies discussed herein).

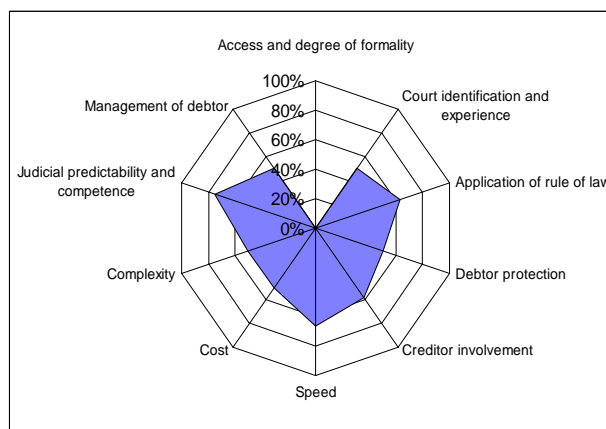
Other concerns appear when one looks at the practical implementation of Lithuania’s insolvency legislation. The graphs below (see Chart 12) display the results of the EBRD 2004 Legal Indicator Survey on Insolvency which examined the ‘effectiveness’ (or how the law works in practice) of insolvency regimes in both creditor-initiated insolvencies (looking at 8 different factors) and debtor-initiated insolvencies (looking at 10 different factors). In particular, the effectiveness of the regime as it relates to the commencement of insolvency proceedings and the granting of an initial insolvency court order (sometimes called the “effective final order”) were measured. The factors were created by looking at the critical questions that users of an insolvency system would want answered and are explained. The better the legal system performed in each area, the higher the score they were awarded. As a result, the fuller the ‘web’ is in the graphs below, the better the system.

**Chart 12 – Effectiveness of Lithuania’s 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.

The results of the survey are unsurprising in revealing that Lithuania’s insolvency system does not operate effectively in practice. In particular, access to the system for both debtors and creditors is unduly formal and difficult. Cases are not handled by specialised courts and the confidence of users of the insolvency system in the competence of judges and insolvency administrators is not high.

The poor access for debtors, in particular, suggests not only weakness in the legislation but also an unduly slow and complex legal regime that makes reorganisation (and therefore business continuity) extremely unlikely.

All of these factors, together with the legislation’s deficiencies, militate against the insolvency regime functioning properly as a ‘stick’ to persuade 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.

### 3.5. Secured Transactions

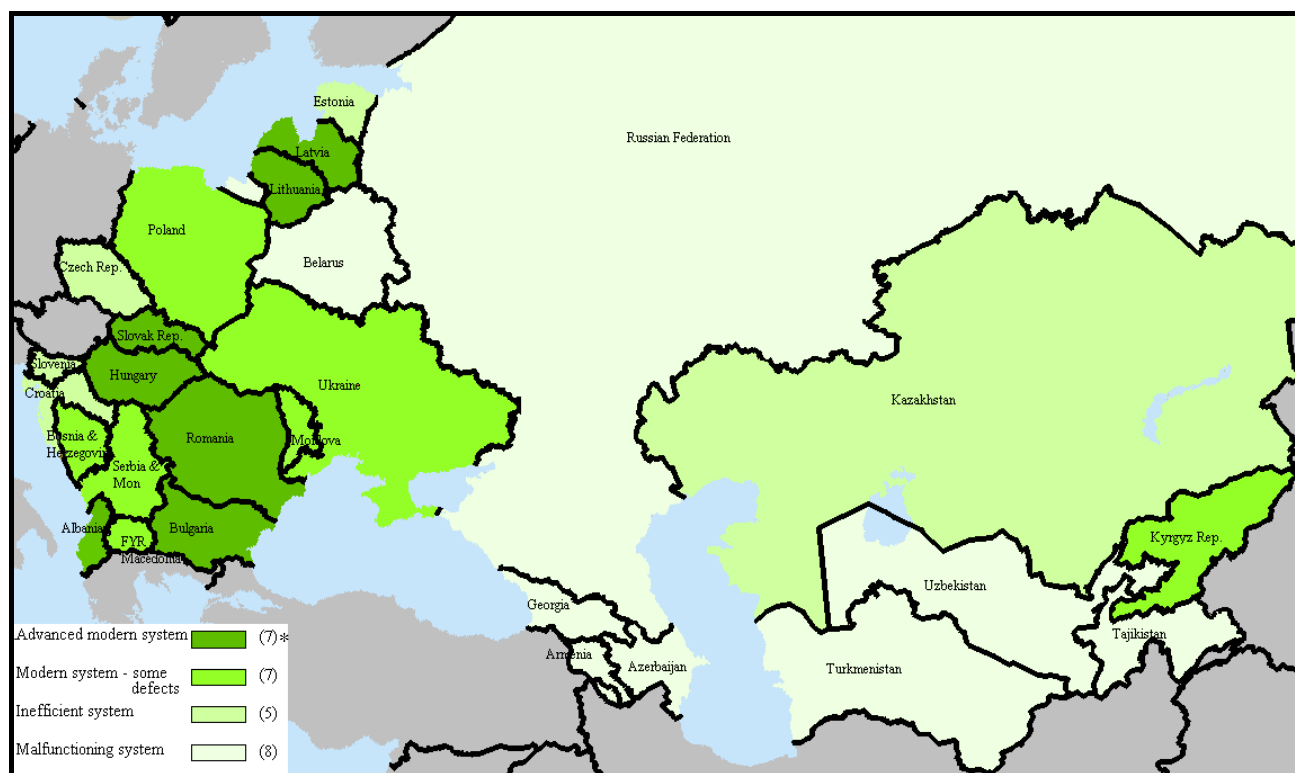
No significant changes have taken place since the preparation of the last EBRD strategy for Lithuania in 2004 and the regime applicable to taking security over movable property has preserved its strengths and minor weaknesses.

Secured transactions over movable assets are governed by Articles 4.198-4.228 of the Civil Code of the Republic of Lithuania; The Law on Establishment of the Hypothec Register adopted in June 1997; Instruction on Filling in the Mortgage, Compulsory Mortgage, Pledge and Compulsory Pledge Bonds, approved by Order no. 46 of the Minister of Justice of the Republic of Lithuania on 20 February 2002; and Regulations of the Hypothec Register of the Republic of Lithuania, adopted by Resolution no. 1246 of the Government of Lithuania on 18 October 2001.

All charges over movable property (except possessory charges) and a number of other transactions which are “quasi” security interests (sales with the right of redemption, leasing agreements, and sales with reservation of title) must be registered with the Hypothec Register. The Register also records mortgages over immovable assets. The system is centralised, fully computerised and easily accessible through the Internet. All interested persons can search the data electronically, including the particulars of a charge.

Generally, the system for taking, perfecting and enforcing security over movable and immovable property has been carefully and thoroughly implemented and is working well. This is confirmed in all EBRD surveys. (See Chart 12) In particular, enforcement of a charge seems to be very efficient (see EBRD Legal Indicator Survey, 2003). (See Chart 13)

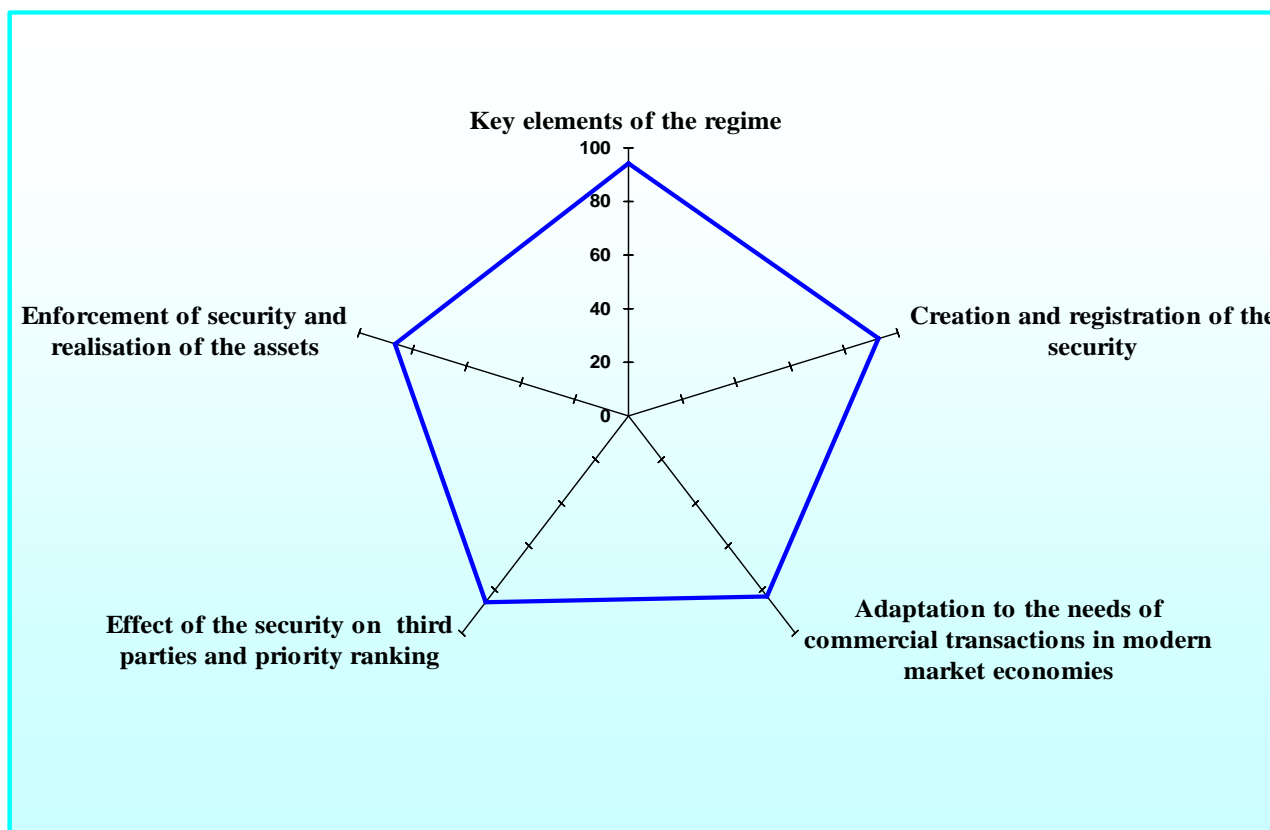
**Chart 12 – Quality of secured transactions legislation in the EBRD Countries of operation**



*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 Lithuania ranks.

Chart 13 – Quality of secured transactions legislation – Lithuania, 2002

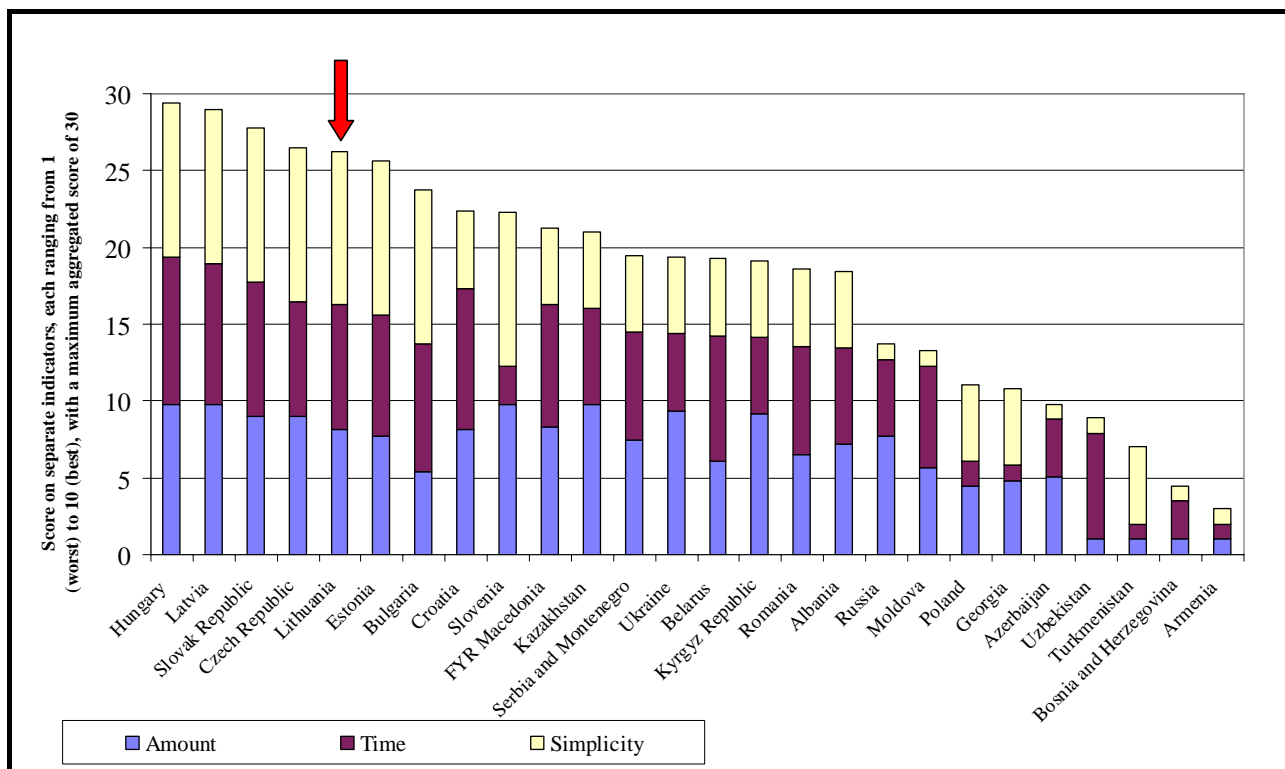


Source: EBRD Regional Survey of Secured Transactions Legislation 2002

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.

Charts 14 and 15 below show different aspects of effectiveness of the secured transactions legal framework displaying overall good performance.

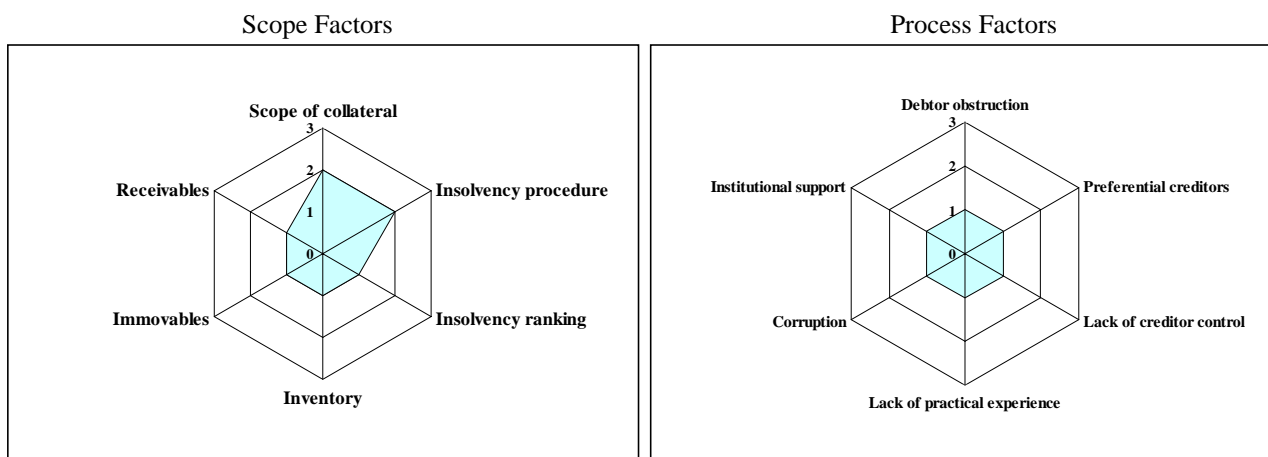
**Chart 14 – Effectiveness of the Charge Enforcement Process – Lithuania (2003)**



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 15 - Obstacles to Charge Enforcement Process –Lithuania (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.

However, further improvements could be made to the regime:

1. There is uncertainty about charging assets that would be described generally in the collateral bond. Although the Civil Code provides that the charge can cover all types of movable assets, both present and future to secure all types of debts, including future debts, so that in theory it would be perfectly possible to create a charge encompassing fluctuating pools of

assets, and even the whole of the enterprise. It seems that in practice the procedure specifically requires that all assets given as collateral be described and identified. Local practitioners report that the only charge over fluctuating assets which could be taken is a charge over stock-in-trade. The Civil Code, ambiguously, provides for a special charge over stock in trade, encumbering only goods and raw materials owned by an enterprise.

2. The registration procedure could be streamlined and simplified. Currently, in order to register a charge with the Register, all transaction documents must be filed at the Register and reviewed, in addition to being previously certified by a public notary. In contrast, in order to register a quasi security interest, it is sufficient to give a simple notice to the Hypothec Register. A term of five working days is usually sufficient to carry out the entire process. It is advisable that this time frame is significantly reduced. This could have an impact on the costs too: currently, fees for registering a charge can amount to LTL 700 (approximately €200, this includes stamp duty and notary fees). The filing of a quasi security interest, in contrast, is only LTL 20.

### *3.6. Telecommunications*

The telecommunications sector in Lithuania is currently regulated by the Communications Regulatory Authority (“RRT”) and is governed by the Law on Electronic Communications 2004. This 2004 Law transposed the 2002 European Union (EU) regulatory framework on electronic communications and came into force on 1 May 2004 upon accession to the EU.

The RRT is an independent institution, formed in May 2001 in accordance with the 1998 Law on Telecommunications, as part of Lithuania’s efforts to harmonise with European Union Telecom Acquis. The 1998 Act defines the responsibilities of the RRT as including supervision of licences; setting requirements for and monitoring interconnection; setting tariff limits in fixed-line telecoms and any other area where there is market dominance or cross-subsidisation; administering the national numbering plan; approving customer contracts; and, examining disputes between operators over interconnection and the joint use of conduits, cable ducts, towers and poles. The RRT’s responsibilities will have been appropriately redefined in accordance with the transposition of the EU 2002 regulatory framework.

The telecoms market was formally fully liberalised on 1 January 2003 when local, domestic and international long-distance telephony were opened up to competition. By the end of Q3 of 2005, 41 companies were reportedly active in the provision of fixed line communications services. However, meaningful competition in the fixed sector appears to be taking longer to emerge, with Lietuvos Telekomas (“LT”), the incumbent operator, still controlling about 95% of the fixed telecommunications market. Fixed line penetration stood at 23.5% at the end of Q3 of 2005 but has been decreasing in recent years mainly due to the entrance of various new technologies to the market place, particularly mobile.

LT was partly privatised in June 1998 with the sale of a 60% controlling stake by international tender. A further 25% was sold by Initial Public Offering (IPO) in June 2000 and 5% sold to former and current employees. The state retains a 10% share. The European Bank for Reconstruction and Development (EBRD) acquired a 7.73% shareholding in LT as part of the June 2000 IPO and sold its stake in July 2005.

There are three GSM mobile network operators in Lithuania, all of whom are privately owned. RRT recently announced a tendering process for 3G licences due for implementation in Q1 of 2006. Mobile penetration stood at an impressive 135% (118% active subscribers) at end of Q3 of 2005, reflecting vigorous competition between mobile market players.

There have been significant advances in the implementation of modern, EU compliant, regulatory standards for telecoms in Lithuania and the resulting development of certain sector markets has been impressive. However, there are currently a number of outstanding issues. Particularly, it is notable that meaningful competition has yet to occur in the fixed market, with LT maintaining overwhelming dominance in that market. Accordingly, RRT should prioritise intervention in this area of the market through full implementation of all relevant regulatory tools at its disposal, including swift resolution by RRT of interconnection issues between LT and alternative operators. In addition, the competitive dynamics of this market could be further enhanced with the full implementation of mobile number portability (MNP). The authorities have so far failed to comply with their obligation to implement a permanent solution in this respect, with the European Commission sending a “letter of formal notice” (step one in the infringement procedure – failure of a Member State to fulfil an obligation) to Lithuania in mid December 2005.