**November 2006**

# AN ASSESSMENT BY THE EBRD

*This Assessment was last updated during the preparation of the 2006 EBRD Strategy for Slovenia 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 legal reform and investment activities in Slovenia. This publication does not constitute legal advice.

# 1. Overall Assessment

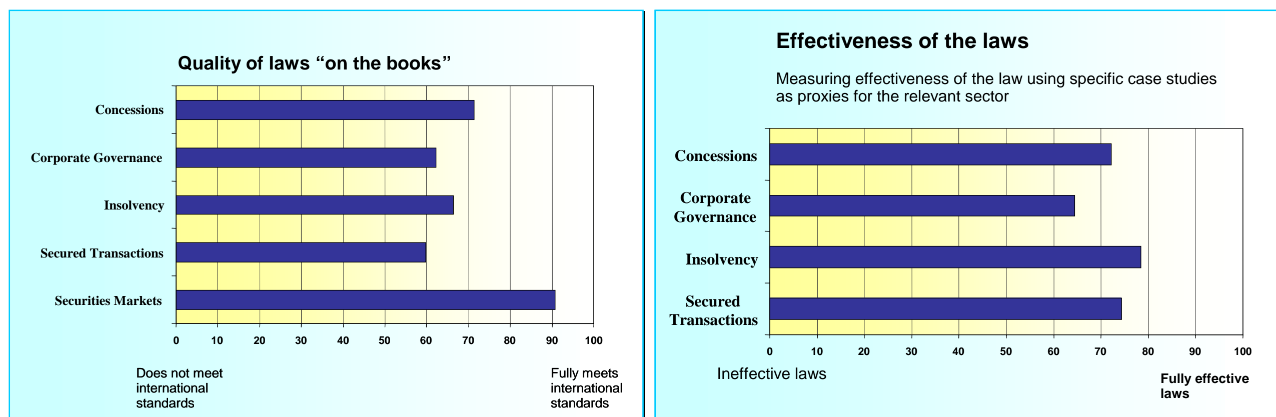
Slovenia has made significant reforms in the legal system it inherited from the former Yugoslavia, leading to major improvements in the country's economic environment and allowing for European Union (EU) accession in 2004. The success of the country towards the establishment of a market-oriented economy and stable democratic institutions has been coupled with significant progress in the legislative alignment to the *acquis communautaire*. The legislative framework is now very nearly harmonised with that of the EU, with a number of key restrictions having been removed in the last two years. Slovenia has adopted the Euro as of January 2007, making Slovenia the first of the new EU member states to adopt the EU's single currency.

A general assessment of commercial laws reveals that Slovenia has developed a legal system comparable to that of other advanced transition countries of Central and Eastern Europe. The results of the various EBRD legal assessment projects (detailed in the following sections) suggest that there have been improvements in the country's effort to comply with international standards and principles in the main areas of commercial law. Thus the capital markets framework evidences major developments towards establishing higher criteria for market professional participants, improvements in the clearance and settlement section, as well as positive changes to the Takeover Act. Similarly, recent changes to the Companies Act, introducing more detailed provisions regarding the duties of company' directors and executives, new squeeze out rules and the European company format, demonstrate the efforts of the country to improve the commercial framework.

However, there are still areas which could benefit from further development, such as the general concession law or insolvency law. The dispersal of the concessions legal provisions into various sector specific laws makes the framework subject to inconsistencies and irregularities. Adoption of a general law will lead to greater harmonisation within the concessions system. The EBRD has provided assistance with the preparation of the draft law; however no further progress has been made since the draft was prepared. The Insolvency law is missing many elements necessary for a well-functioning insolvency regime (e.g. reorganisation process, notification of creditors, interim protective measures). In this regard, the government has included the need for improvement in the insolvency process in its agenda. Additionally, the secured transactions framework contains unnecessary limitations impeding the sophistication of the market.

Furthermore, the implementation of the legislation and regulations which are in place continues to pose a challenge. In particular, this is the case in the telecoms market, where the incumbent telecoms operator remains majority state-owned and dominant across most elements of the telecom market, five years after the market was formally liberalised. (See Chart 1 that compares implementation to the laws on the book)

**Chart 1 – Snapshot of Slovenia's commercial laws**




***Source:*** *EBRD legal assessments 2002-2005*

# 2. The Legal System

## *2.1. Constitution and courts*

The current Constitution was enacted in 1991, following the declaration of independence from Yugoslavia, and has had a few amendments since adoption. The Constitution proclaims Slovenia as a democratic republic with an independent judiciary. The legislative power vests with the National Assembly, a representative body composed of ninety deputies. The deputies are elected by a universal, direct and secret vote for a period of four years. One deputy of the Italian and one deputy of the Hungarian national communities will always be elected to the National Assembly. Another representative body in the Slovenian institutional structure is the National Council comprised of forty members. The National Council should include representatives of employees; employers; farmers, crafts and trades, and independent professionals; non-commercial fields and local representatives. The National Council can propose to the National Assembly laws, present an opinion on certain issues, return a law for further discussions to the Assembly, etc. The National Council should be governed by a law passed by the National Assembly.

The President is elected by direct, general vote for a term of five years. The President is the head of the state and represents the Republic of Slovenia. The Government is constituted by the Prime Minister and proposed by the President. All government ministers are proposed by the Prime Minister and have to be approved by the National Assembly.

Judges in Slovenia shall be independent in the performance of the judicial function. The office of a judge is permanent. Judges for all levels of courts are elected, appointed and can be dismissed by the National Assembly based on the proposal of the Judicial Council; which is an autonomous administrative body for the judiciary.

The general court system in Slovenia is comprised of four levels: county courts, district courts, high courts and the Supreme Court. County and district courts are the courts of first instance for criminal and civil cases. Country courts have general jurisdiction, except for cases designated to the district courts. The district courts have jurisdiction over categories of cases established by the law, basically representing cases of higher complexity or importance. High courts can try some cases established by law in the first instance, but mostly presides over the appeals against decisions of lower courts. The Supreme Court is the highest judicial authority in the state that hears appeals against decisions of the lower courts and decides on other issues provided by law. There is also a system of specialized courts in Slovenia dealing with administrative, social and labour matters.

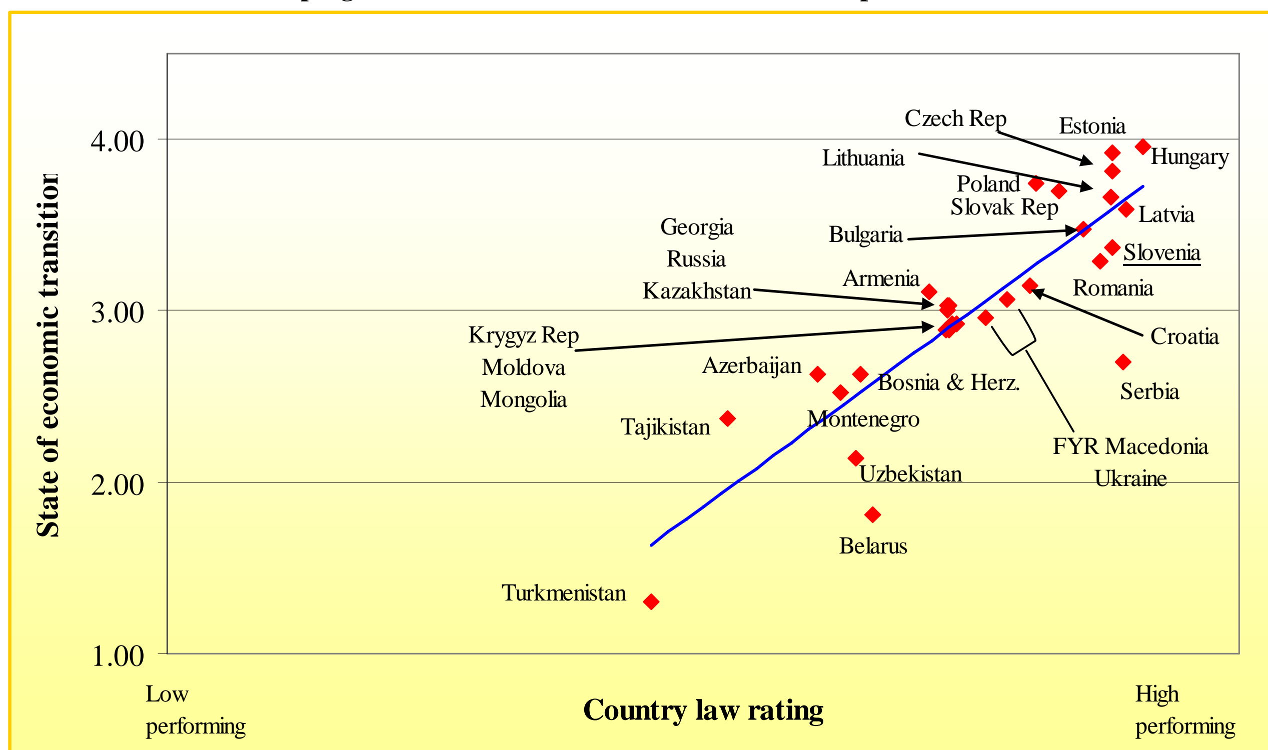
The Constitutional Court is a separate judicial authority that supervises the conformity of the laws and regulations issued on state and local level with the provisions of the Constitution. Additionally, it controls the compliance of the laws and regulations ratified by Slovenia in the context of treaties that the state has signed and decides on certain jurisdictional disputes among state authorities.

Slovenian courts are regarded as being impartial and independent; however the speed of judicial proceedings remains a problem. In early 2006, a bill was passed to facilitate improvements in the proceedings.

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

Slovenia has been very successful in the transition process culminating in accession to the European Union in 2004. Experience in transition countries suggests that legal transition and economic development progress or regress hand in hand, a pattern which is demonstrated in the case of Slovenia (see Chart 2). Further success in implementing the new features of the legal framework and improvements in the judiciary should further advance this progress and maintain the overall development of the country.

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




***Source:*** *EBRD Transition Report 2006, Table 1.1; EBRD Composite Country Law Index, Sept 2006*

***Note:*** *The* ***horizontal axis*** *measures the performance of commercial and financial law. The* ***vertical axis*** *displays the EBRD transition index as an average of transition indicators between 1997 and 2006, with 1 referring to very early transition stages, and 4 referring to an advanced transition level.*

### *2.3 Implications for the investment climate*

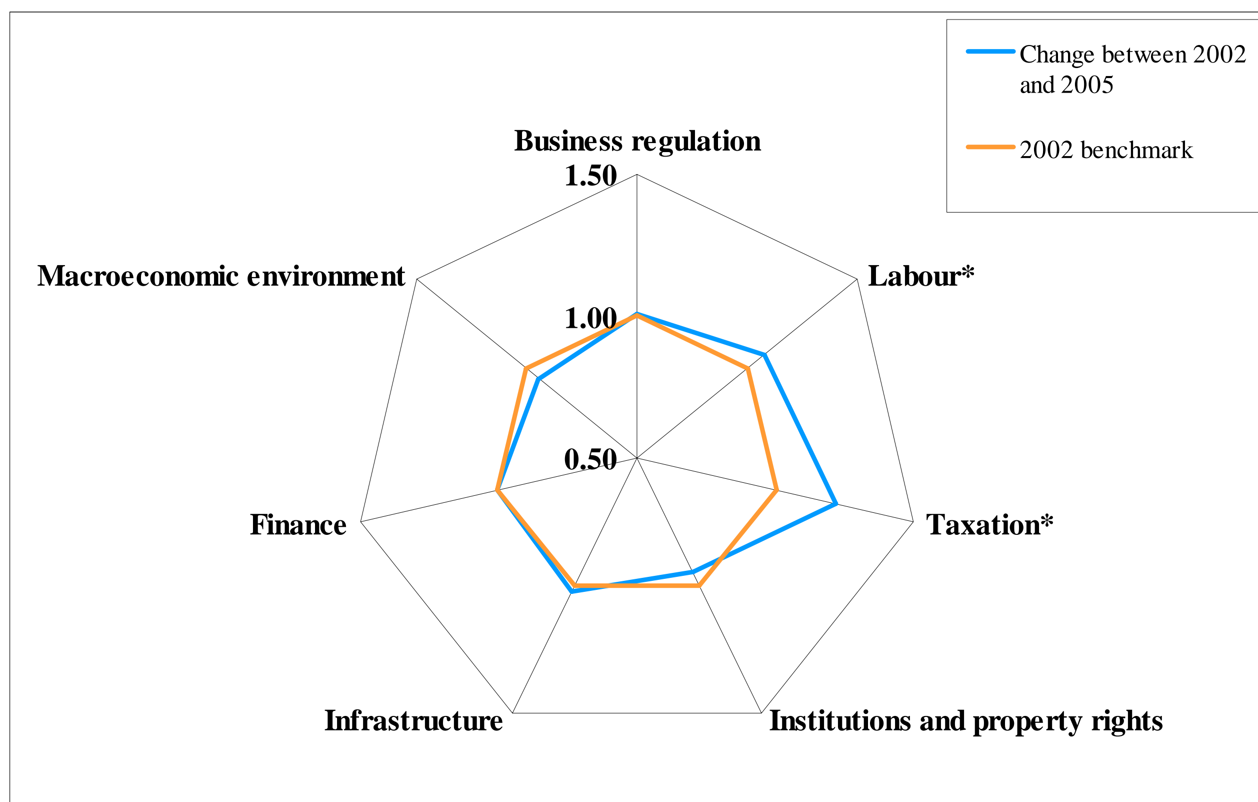
Slovenia has undergone a very successful transition process and is among the most prosperous economies among the newly joined European Union members. Indicating the European Commission's faith in Slovenia's economic progress, the country was scheduled to adopt the euro on 1 January 2007. However, this success should not prevent the country from continuing reform and tackling the issues that can impede further transition.

In terms of the business environment Slovenia has received criticism due to the traditional restricted nature of the economy and reluctance towards foreign investors. Recently, the government recognized the need to increase competition and develop investment potential by opening up for foreign investment. Serious changes in this regard have been made during its preparation for joining the EU (e.g. allowing foreign banking, liberalising current accounts, VAT changes, etc.). This trend slowed down for a while, but was revived by the new government in 2005 that set a target of creating a friendlier environment for entrepreneurs

The features that need attention are the overregulation of the market, tax rates and incentives, investment in strategic sectors (e.g. IT, high and medium technologies, research, services). Slow privatization and extensive participation of the state in the market is another issue that needs to be addressed and has been noted in the government's strategy. Bureaucratic inefficiencies still exist, but at a much lesser extent than in other states in the region. Similarly the corruption level is perceived as very low especially for a country in transition. Nonetheless, further improvements and modernisation of state administration is required for a sustainable level of efficiency for market growth.

Chart 3 below graphically represents what major changes took place in the key areas that affect business environment. Improvements should be noted in the macroeconomic environment (a separate component covering inflation and exchange rates) and institutions and property rights segment (weighted average of functioning of the judiciary, corruption, street crime, theft and disorder, and organised crime). The situation has worsened regarding taxation (weighted average of tax rates and tax administration) and labour (weighted average of labour regulations, and skills and education of available workers).

**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 Slovenian capital markets include the Securities Market Act, the Investment Funds and Management Companies Act, and the Takeover Act. The Securities Market Act entered into force on 28 July 1999 and was most recently amended in November 2004. The Investment Funds and Management Companies Act entered into force on 2 January 2003 and were last amended in April 2004. The Takeover Act came into force in 1997 and was amended in 1999.

Established in 1994, the Securities Market Agency ("SMA") is the securities market regulator in Slovenia. It is an independent agency financed by market participant fees. The SMA is in charge of licensing new issues of securities, the supervision of the activities of the Ljubljana Stock Exchange ("LJSE"), the Central Securities Clearing Corporation, custodians, securities brokers and investment service providers, investment funds, mutual pension funds and asset management companies. It is also in charge of enforcing stock exchange disclosure requirements and insider trading laws.

The LJSE was officially established on 26 November 1989.[1] On 29 March 1990, the first LJSE trading session took place, involving 14 stock brokers who traded 11 securities. In July 1992, the LJSE introduced a Stock Exchange Depository. On 23 April 1999, the Dematerialisation Act came into force and issuers had to issue their shares in a dematerialised form starting from 23 June 1999. On 1 June 2004, the LJSE became a member of the Federation of European Securities Exchanges (FESE). During 2004, the main index "SBI 20" increased by 247 % compared to 2003, while its turnover in 2004 exceeded that of 2003 by 22.1%. The total market capitalisation on all market segments of the LJSE increased by SIT[2] 607.8 billion in 2004, (with an increase of 24.9%) and exceeded SIT 3,000 billion for the first time in history.

On 1 May 2004 Slovenia joined the European Union (EU) and on 16 May 2006, the EU announced that Slovenia was to adopt the Euro as of January 2007, being the first of the new EU Member States to be allowed to adopt the EU's single currency.[3]

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. (See Chart 4) The assessment was updated in 2005 and the results confirmed the 2004 scoring.

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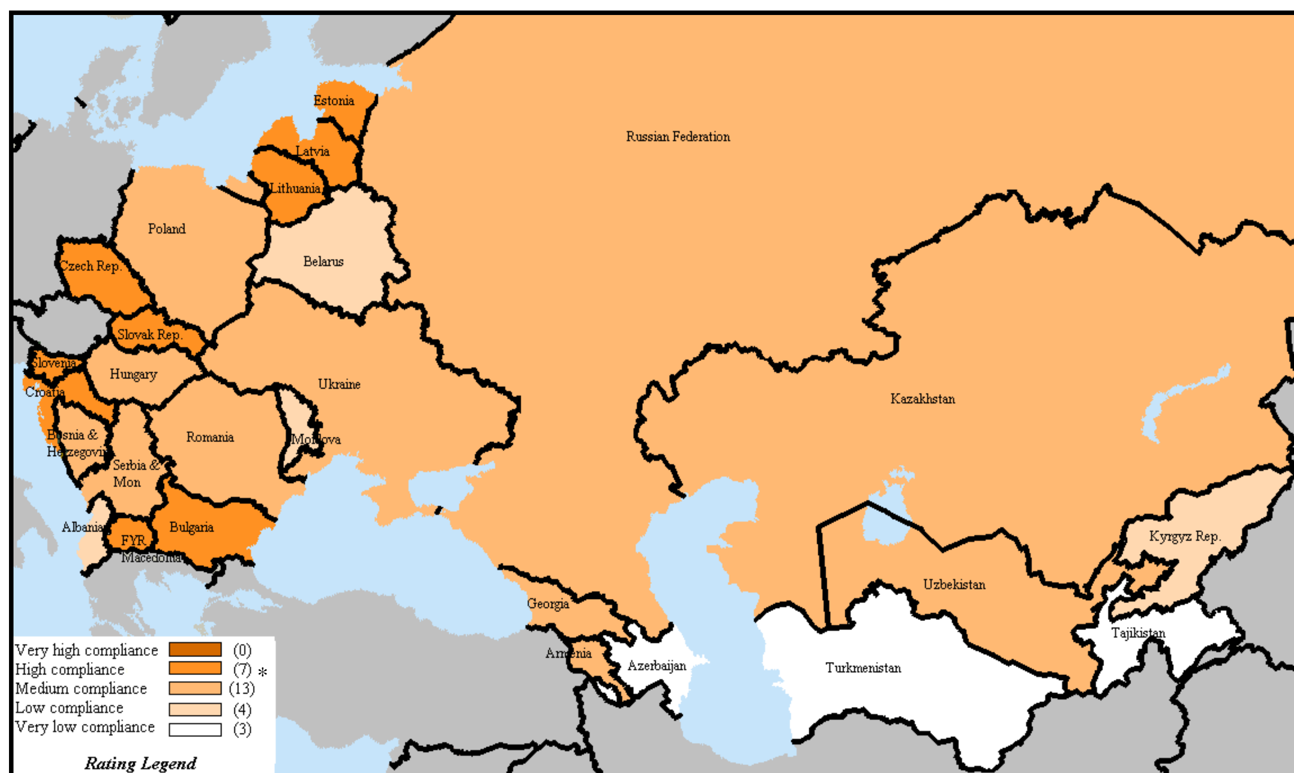
1 Trading at the Ljubljana stock exchange dates back to the period between 1924 and 1942. During the Second World War the trading on the old exchange was suspended, and after the war also officially banned by a decree.

2 Slovenian tolar: 1 Euro = 239.65 (ECB exchange rate, 3 August 2006)

3 Slovenia joined the European Union's Exchange Rate Mechanism (ERM II), as pre-condition to adoption of the euro in June 2004.

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

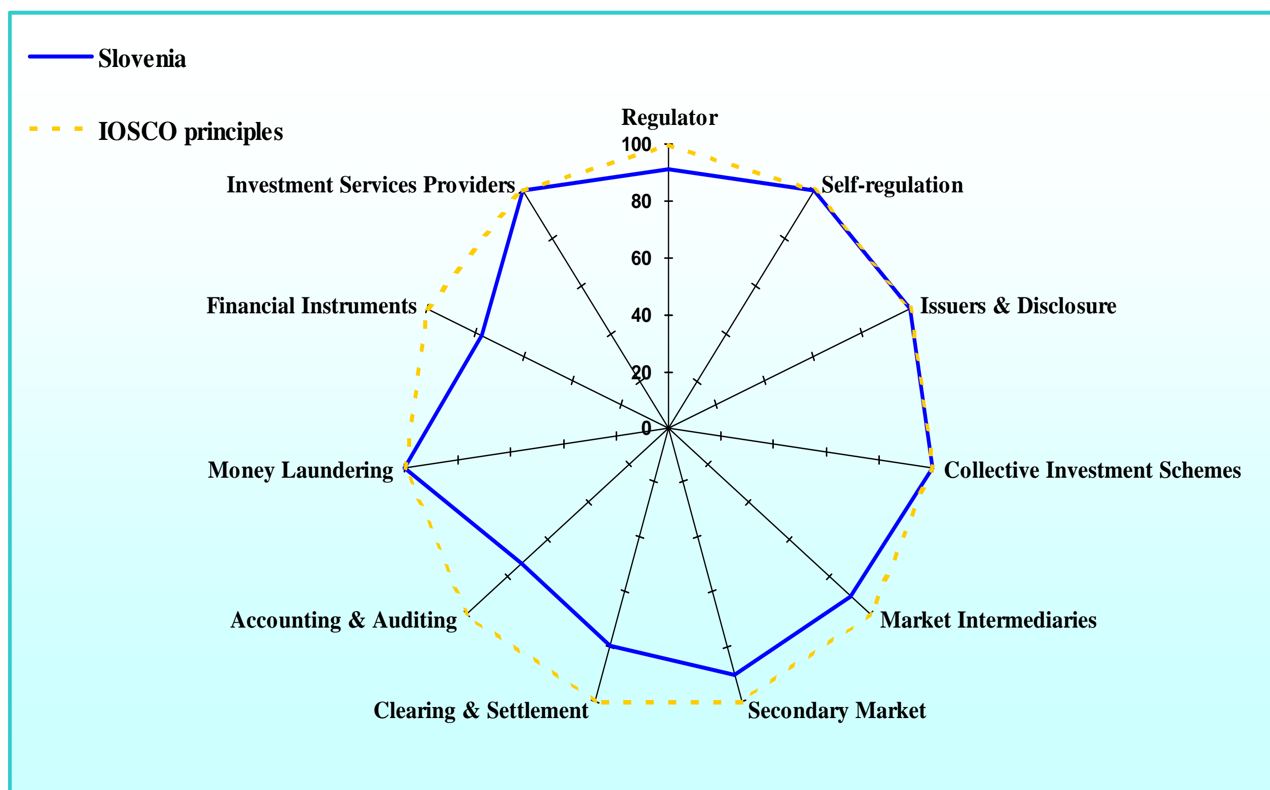



***Source:*** *Securities Markets Legislation Assessment 2004*

***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 Slovenia ranks.*

In particular, the 2005 update evidenced an overall evolution towards more regulatory requirements, including closer scrutiny of the fitness and propriety of key individuals employed, heavier fines, qualifications and experience of individuals, conflicts of interest section, new grounds for refusal of a license, and required disclosure concerning the market intermediary to be provided. The update also revealed significant improvements in the clearance and settlement section. In particular, the SMA now has the power to license clearing and settlement organisations and to approve the changes to their rules and procedures. Finally, trades between direct market participants must now be confirmed as soon as possible after trade execution and settled within two days (T+2). (See Chart 5 for graphical representation of results)

**Chart 5 - Quality of securities market legislation – Slovenia, 2005**



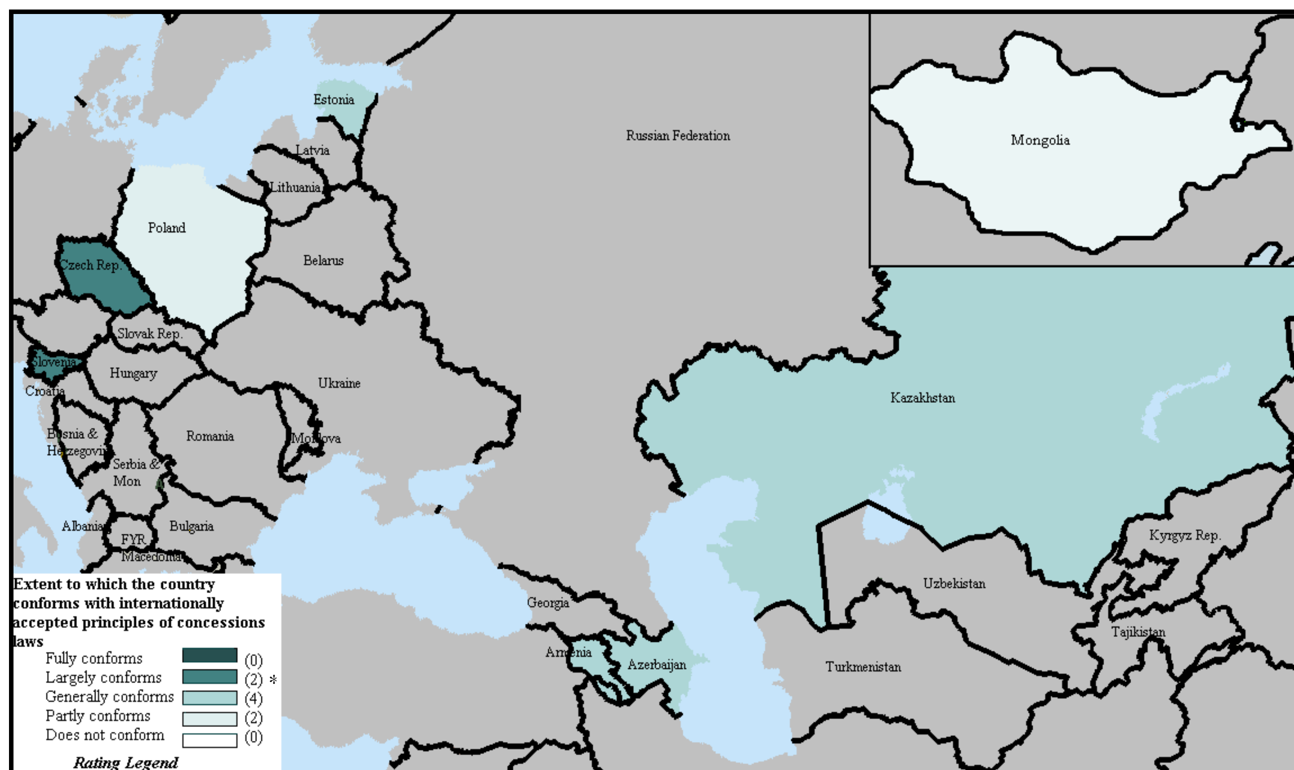

***Source:*** *EBRD Securities Market Legislation Assessment 2005*

***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.*

### *3.2. Concessions*

Slovenia is one of few EBRD countries of operations that does not have a single general framework law regulating concessions. Instead, a number of general and sector specific laws contain rules governing concessions. However, a new Law on Public Private Partnership passed first reading in Parliament in September 2006. Once approved the new law may change the existing situation. Below is the chart (see Chart 6) that shows Slovenia's current position when compared to other countries that do not have specific laws, regarding the quality of legal framework. According to the EBRD Concessions Sector Assessment, Slovenian laws were rated as largely conforming to internationally accepted principles of concessions laws.

**Chart 6 – Quality of Concessions legislation in the EBRD Countries of operation that do not have a special Concessions Law**

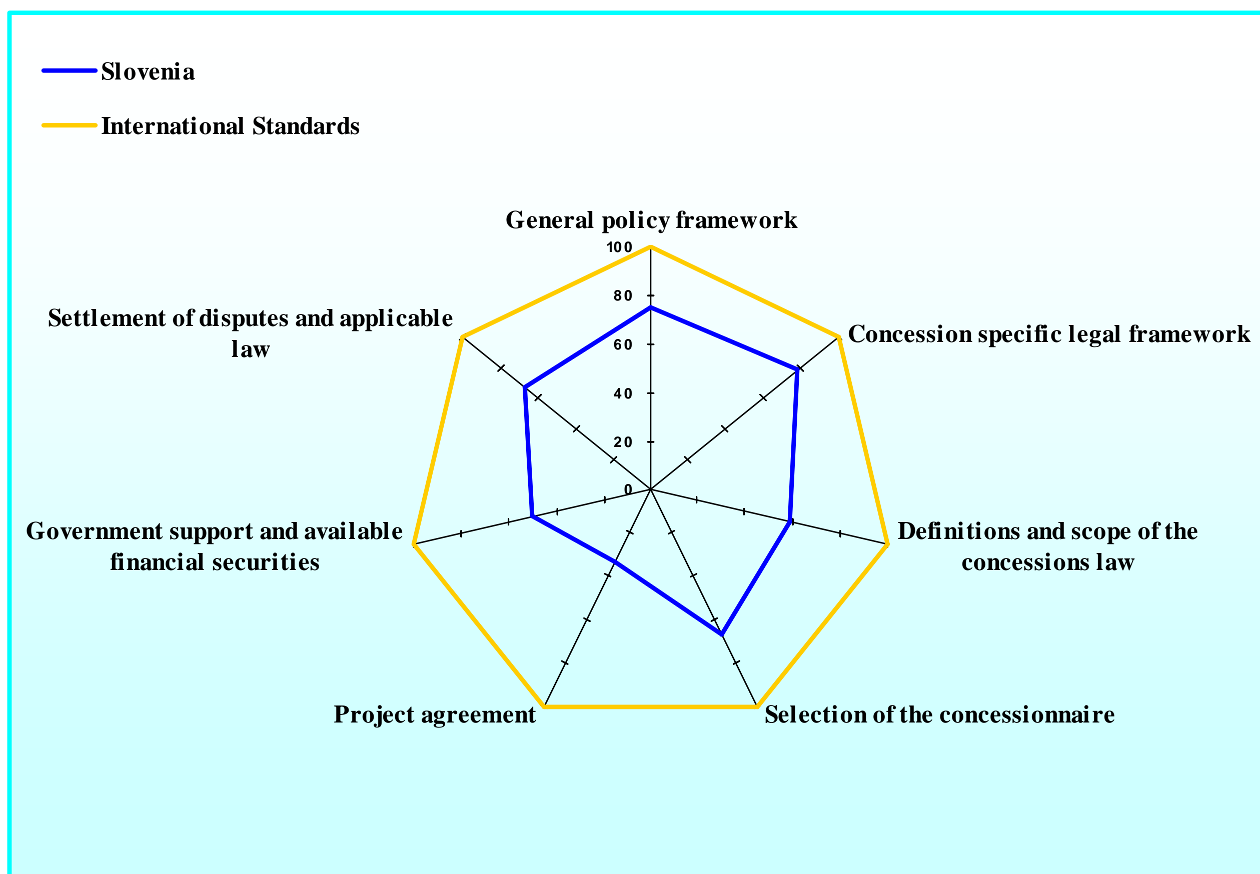



***Source:*** *EBRD Concessions Sector Assessment 2004*

***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 Slovenia ranks.*

However, while Slovenia has a favourable environment for granting and implementing concessions, the absence of a general concession/PSP law limits the development of PSP in the country. In particular, as illustrated by the graph below (see Chart 7); the current laws are insufficient regarding the regulation of the project agreement, government support, financial securities and settlement of disputes.

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

A draft law on concessions was prepared with EBRD assistance in 2002. Unfortunately, the draft law has not been approved. If properly adopted and implemented, the new law would improve the legal regime and provide one of the most advanced concession regimes in the region.

The Government has created a policy and institutional framework for improving the legal environment and promoting private sector participation ("PSP") in the country (e.g. the establishment of the "Investments, Public Procurement and Concessions Department" within the Ministry of Finance).

The 1993 Public Trading Services Act contains core provisions on concessions (e.g., dealing with the concessionaire, concession enactment, procedure, concession agreement, dispute settlement, termination). However, these provisions need to be enhanced as the scope of the law is unclear, procedure is only vaguely described, the arbitration options are not regulated, and the law provides for discretionary powers of the contracting authority for termination. The Local Government Act dated 1993 sets out a framework that permits municipal entities to award concessions for the performance of public services, but does not describe the conditions under which such concessions will be granted. In addition, numerous sector-specific acts regulate the granting of concessions in specific sectors (e.g. Railway Transport Act of 1999, Maritime Code of 2001, Aviation Act of 2001, Public Highways Act of 1997, Energy Act of 1999, Water Act of 2001, Mining Act of 1999, laws regulating education, health care and social care).

Further development of PSP in the country is conditional on the adoption of a general concession/PSP law, which would clearly and consistently regulate project agreement provisions, government support, financial securities and settlement of disputes throughout all sectors. It is worth pointing out that various concession-related arrangements or quasi concessions exist in practice in Slovenia.

### *3.3. Corporate Governance*

The Companies Act is the principal law dealing with corporate governance in Slovenia. It was enacted in 1993 and amended several times, most recently in May 2006.

Under the Companies Act, a commercial company can be organised as a general partnership, limited partnership and silent partnership, limited liability company, joint stock company (JSC) and limited partnership with share capital.

The 2006 amendment to the Companies Act introduced the possibility for JSCs to be organised under a one-tier system as an alternative to the traditional two-tier system. There are no legal limitations or conditions for choosing one or the other management system. Under the one-tier system, the board of directors (BoD) is in charge of managing the company, while under the traditional two-tier system, the management board and the supervisory board are in charge of the management and the supervision of the company respectively. In the one-tier system the BoD is appointed by the general shareholders meeting (GSM), while in the two-tier system, the GSM appoints the supervisory board which in turn appoints the executive management. The BoD may also appoint one or more executive directors. The BoD of a listed JSC is required to appoint at least one executive director from among its members, though at most one-half of the board of directors may be appointed as executive directors.

The new Companies Act contains more detailed provisions on the duties of the BoD's committees - in particular the audit committee - as well as increased detail on the duties of committees of the supervisory board. It also provides that one of every three directors may be appointed by the employees.

The new Companies Act introduced new rules on minority shareholders squeeze-out whereby a controlling shareholder holding at least 90% of the share capital may require minority shareholders to sell their shares at a price determined by an auditor. Conversely, minority shareholders also have the right to exit the company by requesting the controlling shareholders to buy–out their shares. In any event, minority shareholders have a right to judicial appraisal. Finally, the new Act also includes a chapter implementing the EU Council Regulation no. 2157/2001 of 8 October 2001 on the Statute for a European company.

Worth noting also is the Corporate Governance Code adopted on 18 March 2004 by the Managers' Association of Slovenia, the Association of Supervisory Boards' Members and the LJSE. The Code is of a voluntary nature and includes a "comply or explain" rule according to which companies are requested to fill a declaration stating their compliance with the Code or explain their reasons for non-compliance.[4] The Code was amended in December 2005 in order to strengthen the independence requirements of the supervisory board.

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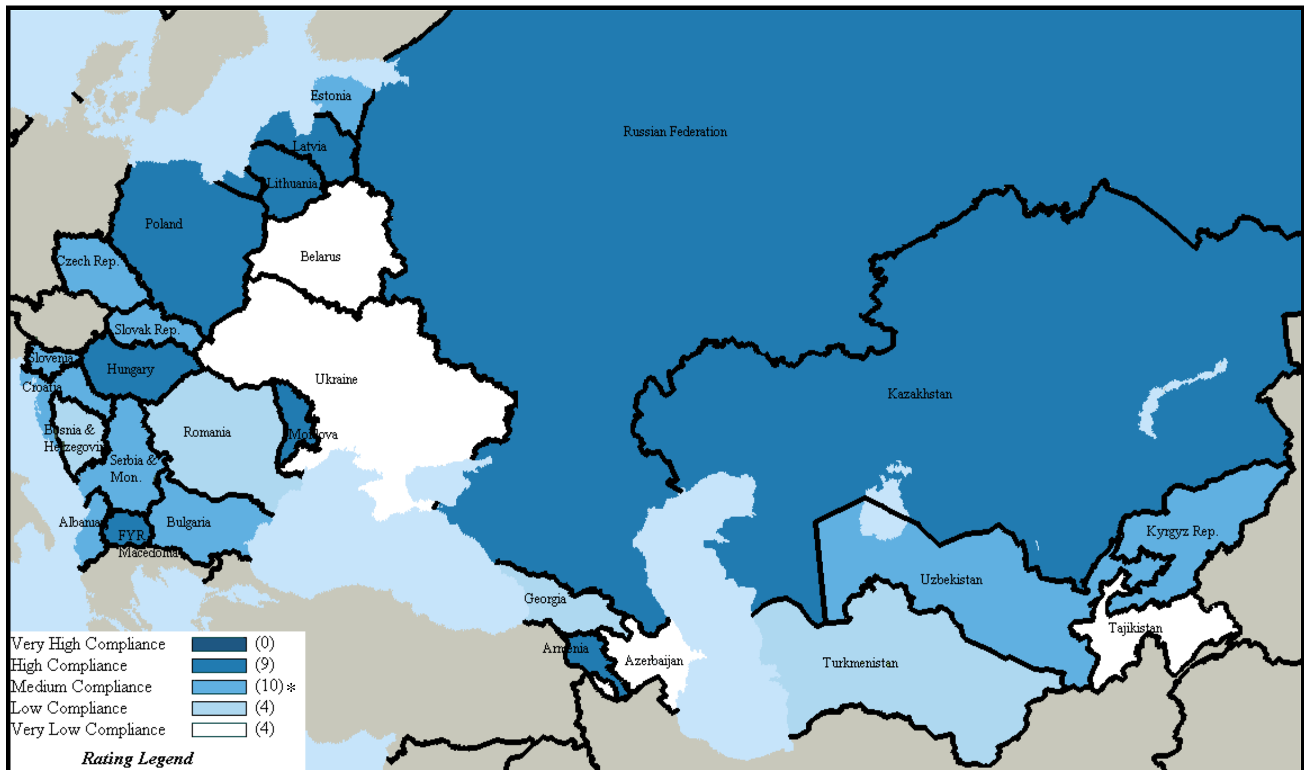
[4] Read more on this issue on the 2006 Spring edition of *Law in transition* (http://www.ebrd.com/pubs/legal/6716h.pdf)

According to the 2004 results of the EBRD's Corporate Governance Sector Assessment, Slovenian corporate governance related laws (i.e., "law on the books", not how the relevant legislation is being implemented) were assessed as in "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**

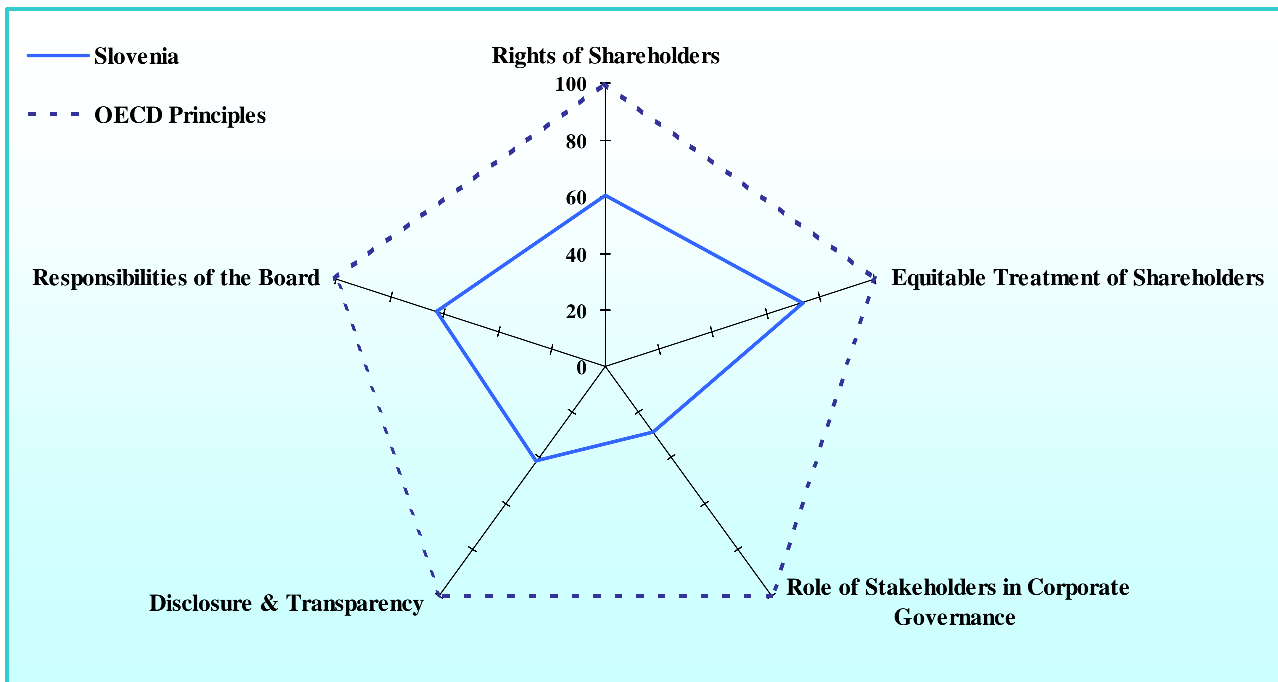



***Source:*** *EBRD Corporate Governance Sector Assessment 2004*

***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 Slovenia ranks.*

The major weaknesses were identified in the "disclosure and transparency" and in the "role of stakeholders" sections (see Chart 9). A new EBRD assessment is planned to be undertaken in the course of 2006.

**Chart 9 – Quality of Corporate Governance legislation – Slovenia (2004)**

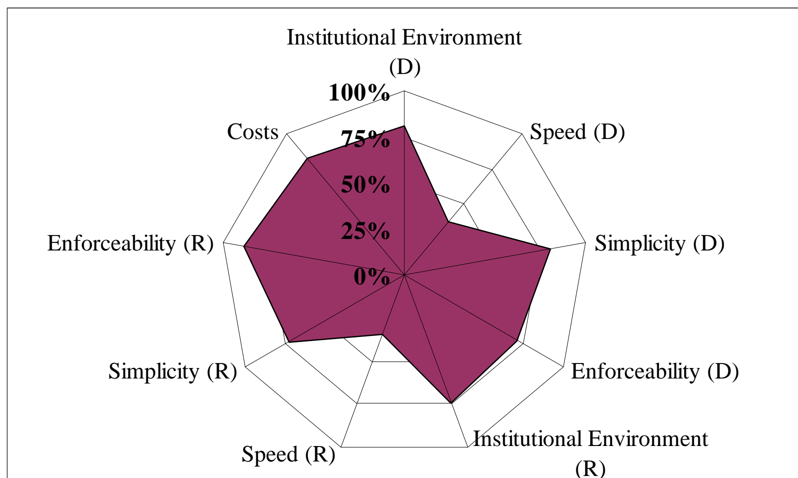



***Source:*** *EBRD Corporate Governance Sector Assessment, 2004 assessment*

***Note:*** The extremity of each axis represents an ideal score, i.e., corresponding to OECD Principles of Corporate Governance. The fuller the 'web', the more closely the corporate governance laws of the country approximates these principles.

In 2005, the EBRD launched a survey for testing the effectiveness of corporate governance (how the law works in practice). Two case studies dealing with related-party transactions in listed and unlisted company scenarios were designed. The case studies 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: institutional environment, enforceability, complexity and speed. The survey revealed a relatively effective corporate governance framework in Slovenia. (See Chart 10)

**Chart 10 – Effectiveness of corporate governance in Slovenia (2005)**

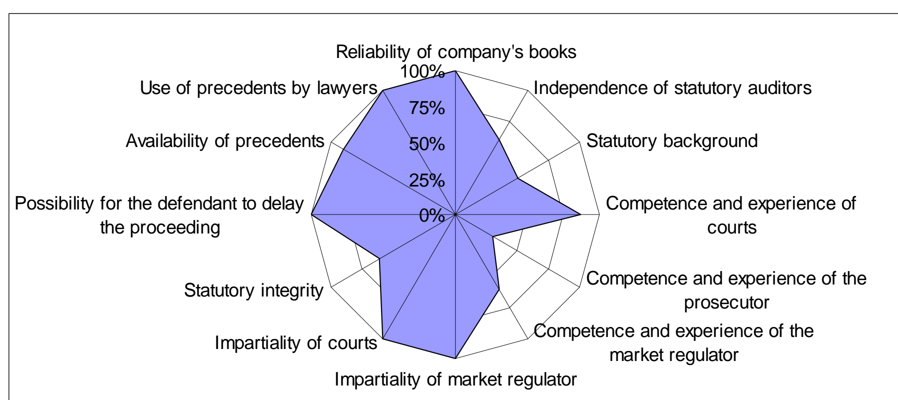


*Note: The graphs show disclosure, redress and the institutional environment in Slovenia. The average results from the case study scenarios are shown. Disclosure refers to a minority shareholder's ability to obtain information about their company. Redress refers to the remedies available to a minority 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.*

Minority shareholders have different legal actions available to obtain disclosure and redress, which are considered relatively simple and easy to enforce. The only cause for some concern is the time needed to reach an executive judgement as the procedure might last more than two years.

The institutional environment is also considered generally sound (see Chart 11): company books are considered reliable and statutory auditors fairly independent. Courts and the market regulator are deemed impartial in their decisions although their competence may sometimes be questionable. Case law is generally available and largely used by courts and judges, which helps to improve the clarity of the proceedings. The only negative notes are the competence and experience of the prosecutor in corporate cases and the legal framework on related party transactions, which should be both improved.

**Chart 11 – Institutional Environment in Slovenia (2005)**

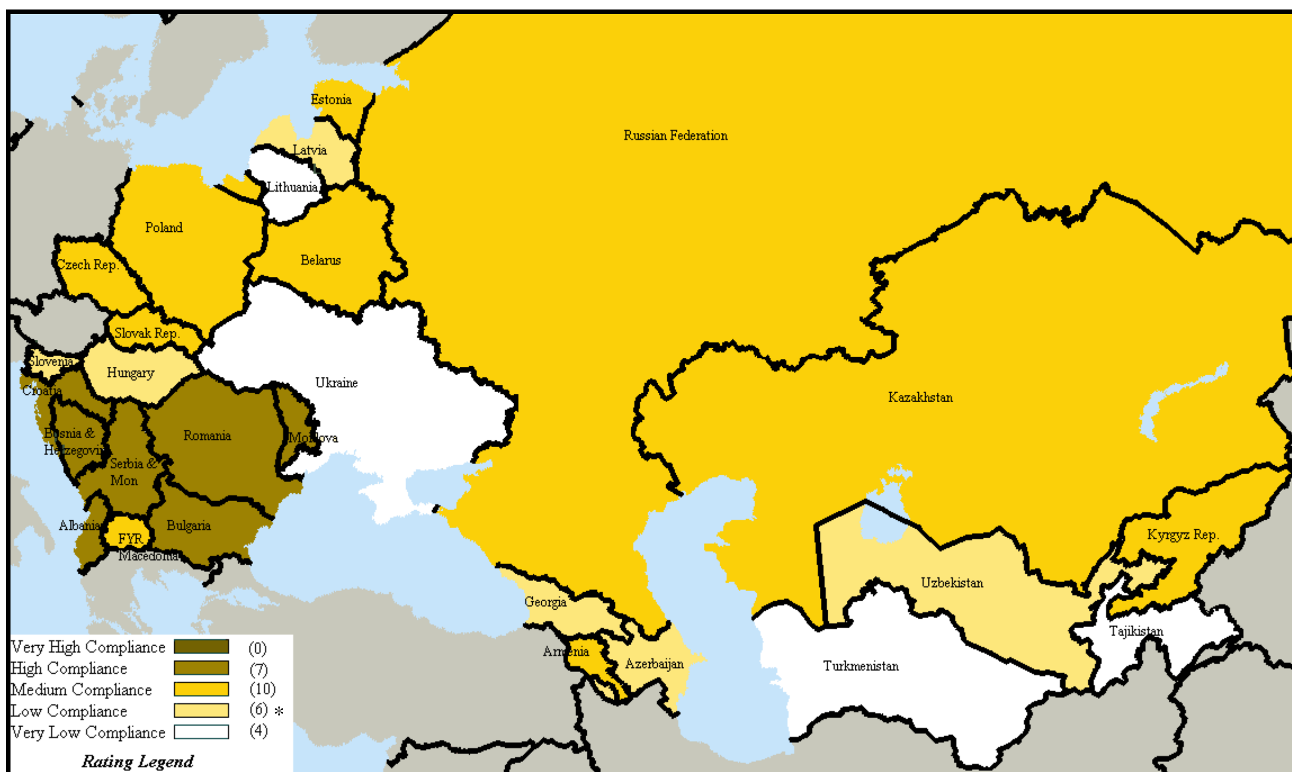



*Note: Institutional environment refers to the capacity of a country's legal framework to effectively implement and enforce corporate governance legislation. Statutory background relates to how comprehensive, clear and well structured a country's definition of related-party, self-interested, self-dealing, 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 are governed by the "Law on Compulsory Settlement, Bankruptcy and Liquidation (as amended, 1999) of the Republic of Slovenia (the "Insolvency Law"). As noted in the EBRD's 2004 Insolvency Sector Assessment, the Insolvency Law is missing many of the elements generally recognised in international insolvency standards and best practices as being critical to a well-functioning insolvency legal regime. The law was given an overall rating of 'Low compliance' in the Assessment (see Chart 12).

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

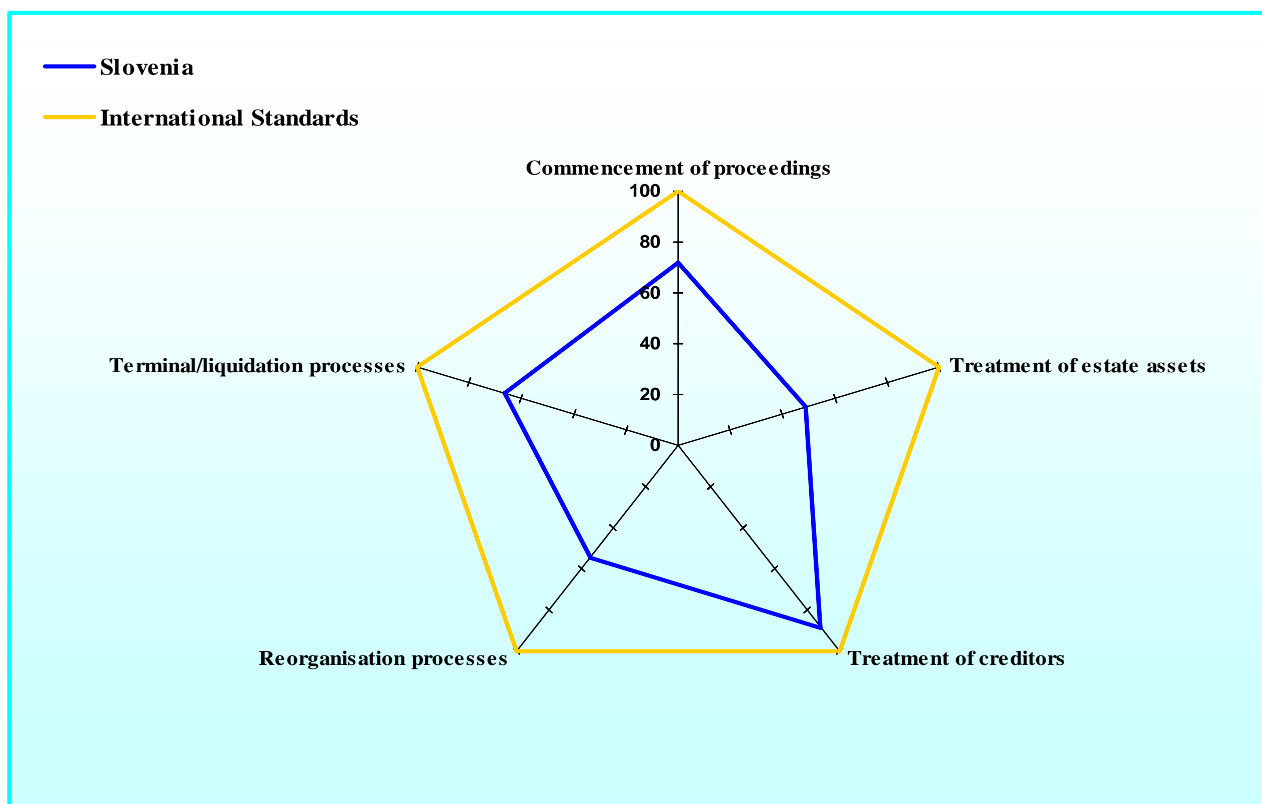



***Source:*** *EBRD Insolvency Sector Assessment 2004*

***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 Slovenia ranks.*

The graph below (see Chart 13), from the 2004 Assessment, shows the level of compliance of the Insolvency Law with these international standards in the five core areas most relevant to the sector.

**Chart 13 – Quality of Insolvency legislation – Slovenia, 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.*

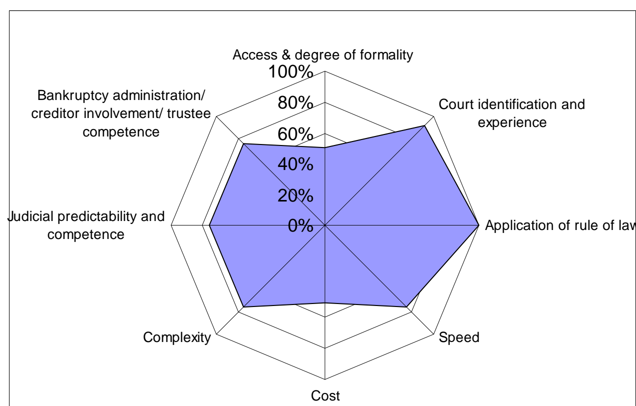
The insolvency system as a whole scored somewhat better results in the EBRD Legal Indicator Survey conducted in 2004. Whereas the Assessment measured the extensiveness of the legislation, the Survey measured the effectiveness of the system. The survey gave the system relatively high marks for efficiency, speed and transparency/predictability in terms of both creditor and debtor initiated processes.

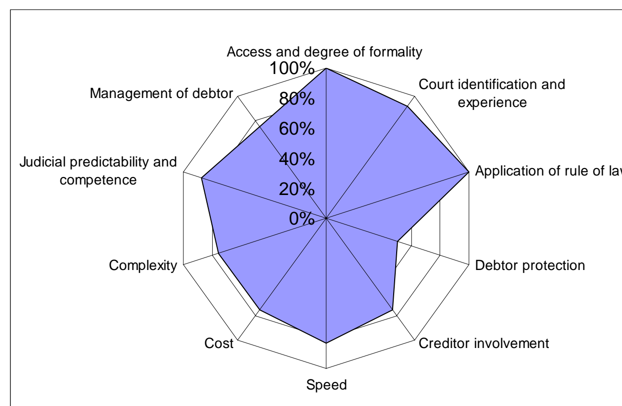
The results of the Survey, taken with the results of the Assessment seem to indicate that the system has developed a level of functionality despite the flawed Insolvency Law. (See Chart 15)

**Chart 15 – Effectiveness of Slovenia 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 Insolvency Law applies to both individuals and corporate entities as well as to state-owned enterprises. The law is unclear, however, on what financial conditions are necessary to constitute insolvency and what evidence is required to prove these financial conditions and demonstrate that the debtor is insolvent.

Although this law notionally provides for reorganisation of troubled companies through a process called "compulsory settlement", this process is largely unstructured and unlikely to be particularly useful. The compulsory settlement process does not prevent, for example, critical suppliers (such at telephone and utility companies) from cutting off supply to ransom old debts, does not permit priority reorganisation financing, does not provide for supervision of the implementation of any reorganisation plan that is approved and does not limit in any way "insider creditors" (such as shareholders and officers of the debtor) from voting on the reorganisation.

On the liquidation side, the Insolvency Law contains many elements of a sound law, such as designating a specialist bankruptcy court to hear bankruptcy matters and imposing interim protective measures when insolvencies are commenced, but is still in need of reform. Of particular concern are the provisions dealing with reviewable transactions (i.e., reviewing and reversing suspicious transactions that occurred on the eve of the debtor's insolvency), which are woefully inadequate and were recently deemed unconstitutional by the Constitutional Court. This will make it difficult for any insolvency administrator to pursue fraudulent transactions and increase the pool of assets available for distribution in the estate. Similarly, there is no positive obligation upon officers and directors of the debtor company to deliver assets of the debtor to the insolvency administrator, thus making the administrator's job both more difficult and more expensive.

Creditors, both secured and unsecured, are not entitled to direct notice of insolvency proceedings and therefore run the risk of having their claims disallowed or ignored if they do not become aware of the appropriate time periods for filing such claims. Finally, the Insolvency Law does not provide for the final resolution and wind-up of the insolvent estate in cases where there are not sufficient assets to pay for liquidation. While this position may be a result of budgetary constraints and an unwillingness of the state to bear the costs of liquidating insolvent companies, it runs counter to international standards and best practices which strongly support the final wind-up and resolution of all estates.

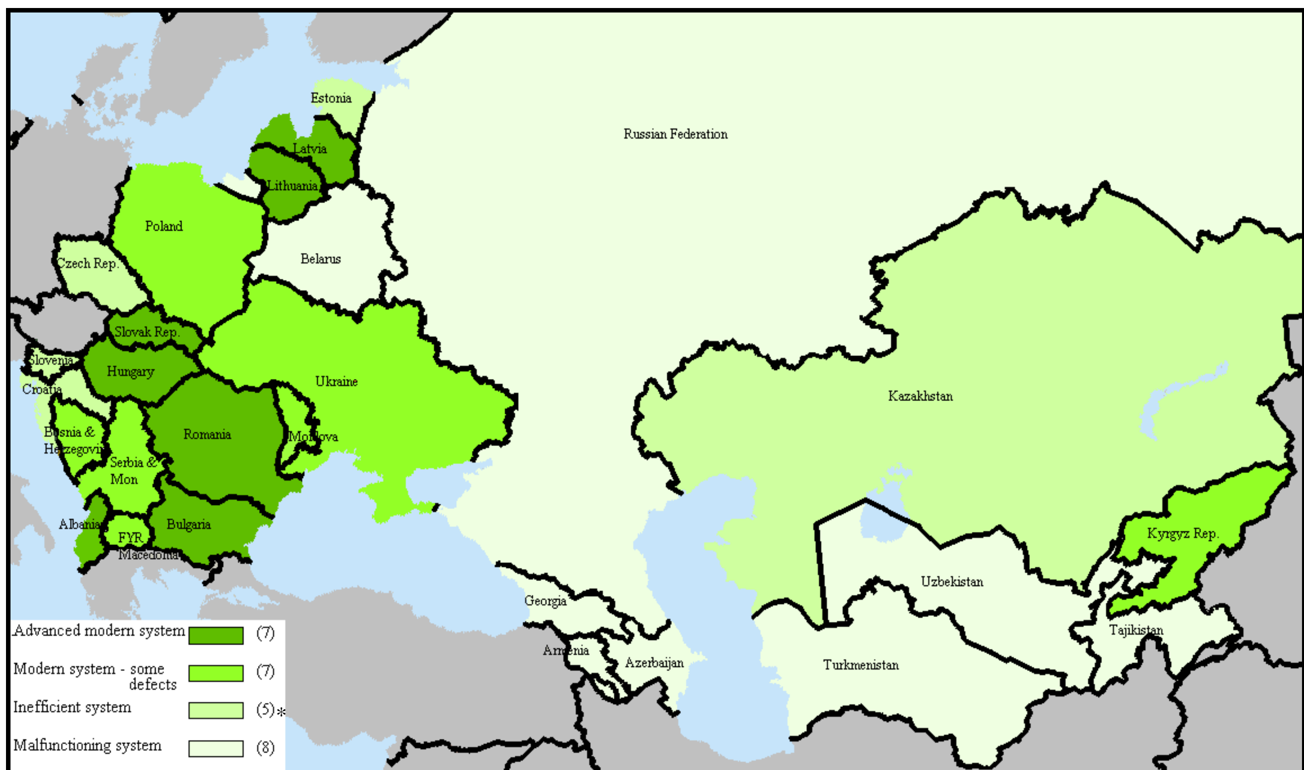
In its October 2005 publication, Reform Programme for Achieving the Lisbon Strategy Goals,[5] the government highlighted a simplification of the bankruptcy process as a key element in their strategy to promote entrepreneurship. Should the government undertake the task of simplifying the bankruptcy process, it is recommended that the government use the opportunity to address the legislative shortcomings identified above.

### *3.5. Secured Transactions*

Despite its advanced economic development, Slovenia has proved reluctant to fully embrace reform to its legal framework in order to allow for sophisticated commercial transactions to be properly secured.

In 2002, a brand-new Code on Property Rights ("Code") was adopted which has changed considerably the way secured transactions can be structured in Slovenia (articles 128-209). The reform clearly intended to modernise the system and to provide the much needed commercial flexibility in the regime for security on movable and immovable property. (See Charts 16 & 17 for graphical presentation of the quality of secured transactions framework)

**Chart 16 – Quality of secured transactions legislation in the EBRD Countries of operation**

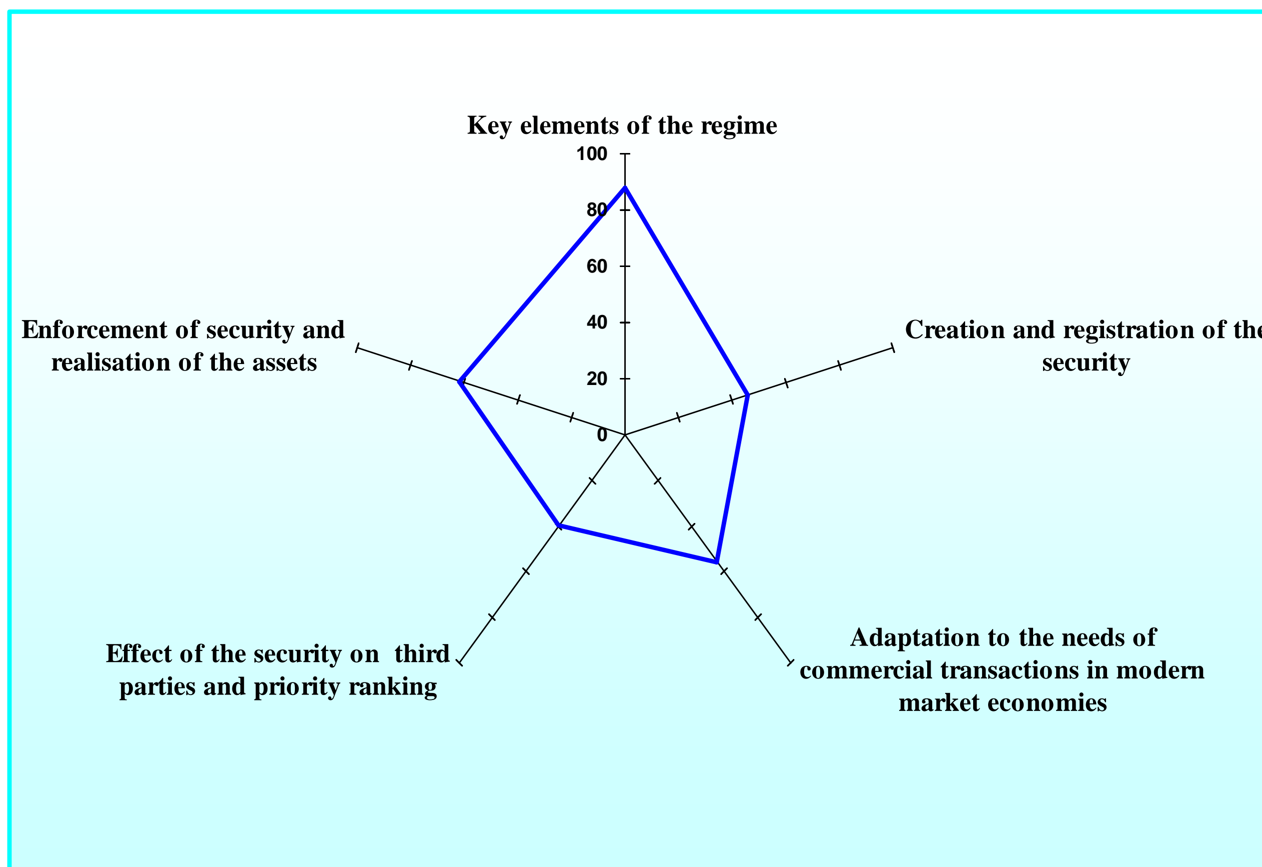



***Source:*** *EBRD Regional Survey of Secured Transactions Legislation 2004*

***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 Slovenia ranks.*

[5] See http://www.sigov.si/zmar/aprojekt/alizb-strategija/alizb-strategija.pdf

**Chart 17 – Quality of secured transactions legislation – Slovenia, 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.*

The non-possessory pledge allows the pledgor to remain in possession of the pledged assets (though he cannot freely dispose of them). The pledge must be entered into by execution of a notarial deed whereby the debtor gives its consent to direct enforceability. The aim is to make the enforcement more effective as it is possible to go directly to the execution procedure and dispense with the litigation procedure, which has proved in the past to be a serious issue in Slovenia (see chart below). The exact amount of the debt (principal and the interest rate) and maturity must be specified in the notarial deed. The pledge agreement may provide that in case of default the pledged assets would be sold in an out-of-court public auction (such provision is presumed in commercial agreements). The out-of-court auction can be carried out by the creditor upon the prior written notice to the debtor at least 8 days before the auction.

The pledge is now, and this is an important difference against previous regimes, recorded: in July 2004, the AJPES (*Agencija republike Slovenija za javnopravne prihodke in storitve*) began to manage the Register of Non-Possessory Pledges and Seized Movable Property. Each non-possessory pledge has to be entered into the AJPES register and the notary has to make a filing in the register on the same day the pledge was created. The data contained in this register is public, accessible to everyone requiring the information on certain business entities to ascertain that movable assets owned by these business entities are not already pledged. The information is available on the AJPES website and at AJPES branch offices (http://www.ajpes.si).

Although the new system has introduced improvements, it still includes some shortcomings, or what appear to be unnecessary limitations:

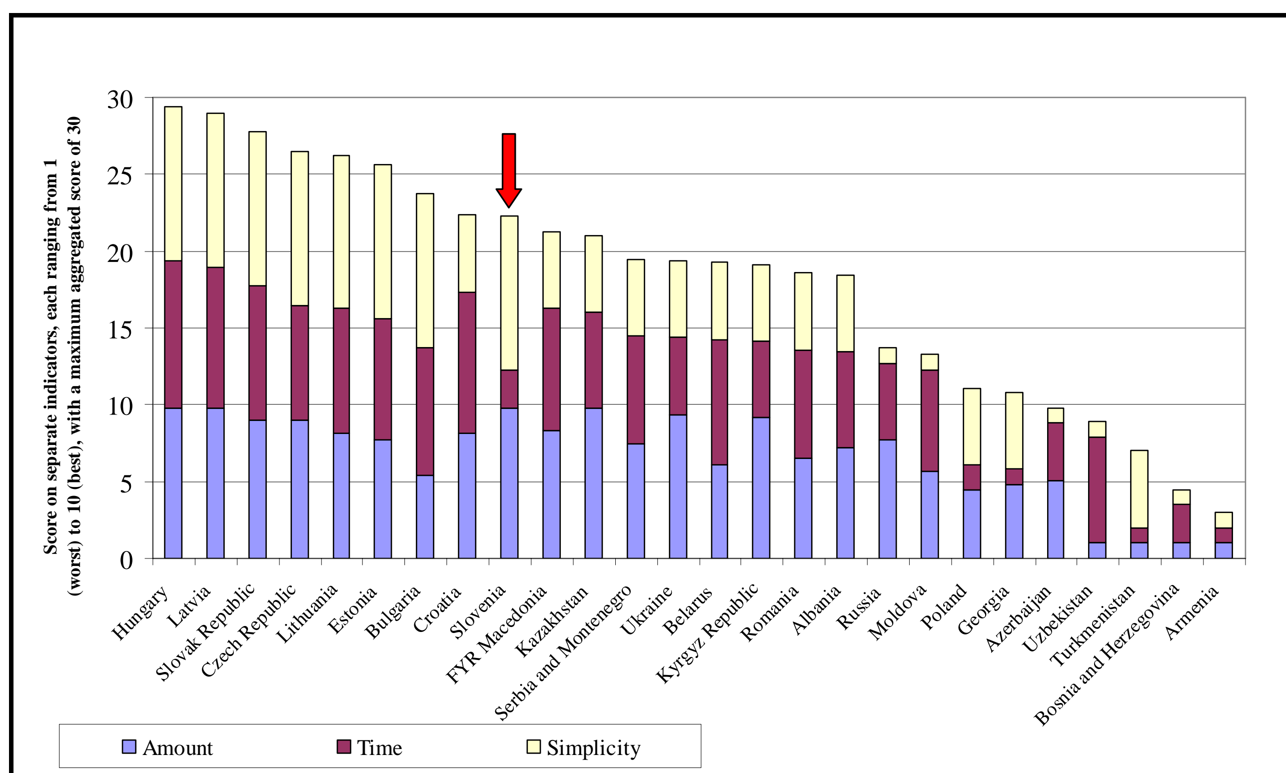
- The security agreement must be prepared in the form of a notarial deed exclusively, which is

bound to limit the use of such instrument, especially to SMEs and micro-enterprises.

- When inventory is charged, the inventory must be listed according to its location (which may create unnecessary problems if stocks have to be moved around) and the chargor must ensure its renewal (which may not be always possible or desirable).
- A charge over claims (account receivables, for instance) is only deemed created at the time of notification to the sub-debtor – which make general assignments of pools of debts virtually impossible.
- Enforcement has been substantially improved especially as far as it provides for out-of-court enforcement. In the past, should the debtor refuse to hand over the assets, the creditor had no alternative but to file an enforcement petition at the local court where the assets were located, which could lead to a significant delay to the procedure, possibly from 1 to 5 years.

This last point was emphasised in an EBRD-led survey conducted in 2003 on the enforcement of charges in the region, where Slovenia scored relatively well in the region, expect for the length of the process (See Charts 18 & 19).

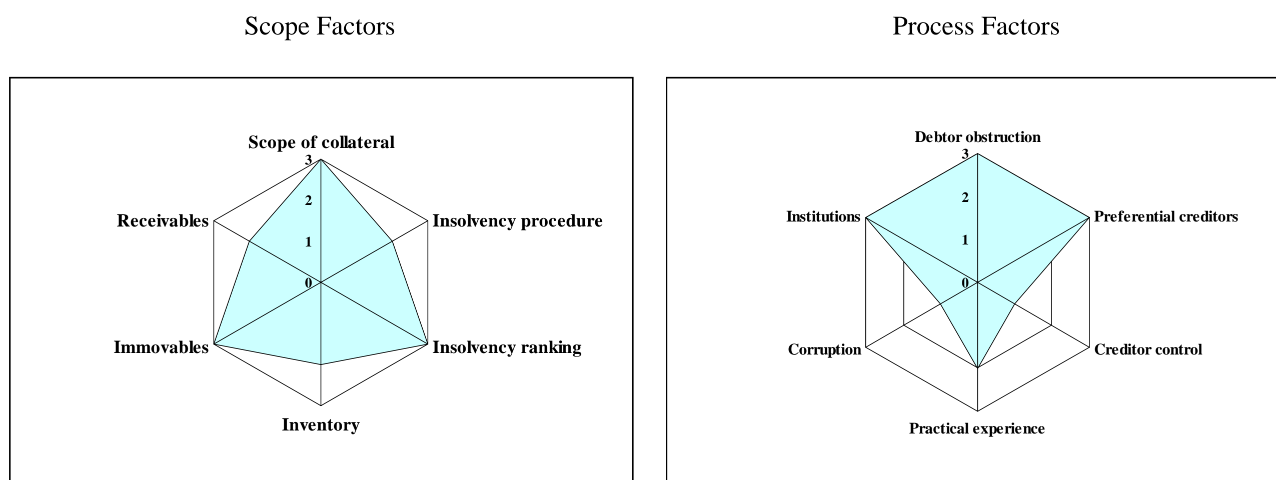
**Chart 18 – Effectiveness of the Charge Enforcement Process – Slovenia (2003)**




***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 19 - Obstacles to Charge Enforcement Process – Slovenia (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.*

## *3.6. Telecommunications*

The communications sector in Slovenia is currently regulated by Agencija za telekomunikacije, radiodifuzijo in posto Republike Slovenije (APEK) and governed by the Law on Electronic Communications of 2004 (the "2004 Law"). APEK was established as an independent institution in 2002 and its status and capacity was enhanced by the 2004 law, passed to move Slovenia in line with European Union (EU) requirements for the sector. Policymaking remains the responsibility of the Ministry of Economy. While the 2004 Law aligns the legal framework for telecoms in Slovenia with the relevant EU *acquis*, further recent legislative amendments were necessary to bolster APEK's independence in the face of infringement proceedings from the European Commission (EC).

While the market in Slovenia was formally liberalised in January 2001, the regulator's has been criticised for an apparent failure to take the necessary steps to implement the regulatory framework and encourage competition. This has resulted in the incumbent former monopoly operator, Telecom Slovenije (TS), remaining overwhelmingly dominant in the marketplace. While there has been some competitive impact in the international market, efforts to inject competition into the local market with local loop unbundling measures have yet to produce meaningful results. Whilst carrier selection and carrier pre-selection are also available, operator take up of these services has been slow because of difficulties encountered in negotiating interconnection with TS.

TS remains majority state owned. While there has been partial privatisation of with a minority stake of TS being held by a number of predominantly domestic investors, progress in implementing further privatisation has been slow. While there have been recent announcements by government in this respect, firm plans for implementation has yet to materialise

The mobile market in Slovenia can be characterised as more or less saturated with teledensity currently hovering around the 100% mark. Mobile services are provided by two network operators (Mobitel and Si.Mobil) and two mobile virtual network operators (Debitel and Volja Mobil). Mobitel is the mobile arm of incumbent TS and, like its parent, dominants the marketplace, holding in excess of 75% of the market. A third network operator (Vega) participated in the market place

until earlier this year, at which time it withdrew citing regulatory failure, selling its network to Mobitel and Si.Mobil.

Although Slovenia was one of the first new EU member states to formally liberalise its telecoms markets, five years on incumbent TS remains dominant across most elements of the telecom market. There have been strong criticisms from many quarters, including the EC, about the lack of appropriate and timely regulatory intervention. Although APEK formally has the power to intervene on its own initiative, it has been repeatedly criticised by alternative operators and by the EC for not utilising its powers, for lacking resources and experience, and for having failed to fulfil its role in opening up the market and establishing competition. Going forward, the authorities face significant challenges to ensure the genuinely liberalised sector envisaged in both national policy and the EU communications framework is achieved. While the legislative base is largely consistent with the EU communications framework, implementation and appropriate regulatory intervention remains wanting in a number of significant areas. Areas of note are interconnection, cost-oriented tariffing and local loop unbundling. It is imperative that APEK take active and immediate steps to address deficiencies in these areas and curb TS dominance in the market place, ensuring that all necessary regulatory mechanisms are fully implemented. The government must provide APEK with all necessary support and resources to ensure full implementation of all outstanding provisions.