

EBRD INSOLVENCY LAW ASSESSMENTS PROJECT 2003

LITHUANIA

The assessment is based on the Enterprise Bankruptcy Law (as amended 2003) and the Law on Restructuring of Enterprises (2001) of the Republic of Lithuania.

Although both these laws are of recent origin, they fall considerably short of acceptable standards. Among the many deficiencies are the following:

- The difficulty for a creditor to initiate proceedings – debt must be at least 3 months overdue and the amount of overdue debts must be in excess of half the value of the assets of the enterprise.
- There is no 'balance sheet' (assets/liabilities) test of insolvency.
- The court with jurisdiction is a general court.
- The rules for hearing are inadequate.
- There is no provision for automatic conversion from reorganisation to liquidation.
- There are no qualifications for an insolvency administrator.
- The provisions relating to the avoidance of pre-bankruptcy transactions are obscure and lack the necessary detail.
- Set off is not permitted.
- The priority for payment of administration costs is vague and unclear.
- The powers for continued management in a case of reorganisation are unclear.
- There are no minimum 'protective' requirements for a plan of reorganisation.
- There are no provisions for urgent reorganisation financing.
- There is no statement that a reorganisation plan binds all creditors.
- There are no provisions dealing with cases of cross-border insolvency.

The assessed score indicates very low compliance (see compliance rating chart below) with the core essentials of international standards on insolvency.

KEY	
Y	Substantial compliance
Y/?	Compliance with reservations
N/?	Doubtful compliance
N	Non compliance
N/A	Not applicable

COMPLIANCE RATING
very high compliance
high compliance
medium compliance
low compliance
very low compliance

PART A - COMMENCEMENT	YES / NO	ARTICLE	COMMENTARY
<p>1. APPLICATION OF THE INSOLVENCY LAW</p> <p>Does the law apply to the following enterprises engaged in commercial activity:</p> <p>1.1 natural person enterprises;</p> <p>1.2 legal person enterprises;</p> <p>1.3 state owned/controlled enterprises?</p>	<p>Y</p> <p>Y</p> <p>Y</p>	<p>1</p> <p>1</p> <p>1</p>	
<p>2. COMMENCEMENT ELIGIBILITY</p> <p>Does the insolvency law permit an insolvency proceeding to be initiated by a:</p> <p>2.1 debtor enterprise;</p> <p>2.2 creditor of a debtor enterprise?</p>	<p>Y</p> <p>Y</p>	<p>5</p> <p>5</p>	
<p>3. COMMENCEMENT CRITERIA</p> <p>3.1 Does the law clearly state the type of financial condition that must apply to a debtor enterprise before an insolvency proceeding may be initiated?</p> <p>3.2 Does this financial condition refer to a situation in which a debtor is unable to pay its mature debts?</p> <p>3.3 Does this financial condition refer to a situation in which a debtor's liabilities exceed its assets?</p> <p>3.4 Does this financial condition also include the circumstance that a debtor will or may become unable to pay its mature debts?</p> <p>3.5 Does the law permit an insolvency proceeding to be initiated by a debtor with reasonably minimal formalities?</p>	<p>Y</p> <p>Y</p> <p>N</p> <p>N</p> <p>Y/?</p>	<p>2</p> <p>4</p> <p></p> <p></p> <p>8</p>	<p></p> <p></p> <p></p> <p></p> <p>There is an onerous requirement for financial statements.</p>

<p>3.6 Does the law provide any specific means to enable a creditor to establish the financial condition referred to in 3.2 (such as failure to satisfy a demand for payment of an undisputed debt)?</p> <p>3.7 Does the law permit a single creditor to commence proceedings?</p> <p>3.8 If the law prescribes any further criteria (other than jurisdictional and financial condition bases) for commencement of proceedings, is that criteria clear and sufficiently practicable to permit proceedings to be commenced?</p>	<p>N/?</p> <p>Y</p> <p>N/A</p>	<p>2, 6</p> <p>5</p>	<p>The law requires a creditor to show that a debt is 3 months overdue and that overdue debts are in excess of half of the assets of the debtor. This may be impossible to show or prove.</p>
<p>4. COURT / TRIBUNAL JURISDICTION</p> <p>4.1 Does the law clearly identify the court or tribunal in which proceedings should be commenced?</p> <p>4.2 Does the law provide for the proceedings to be under the control or supervision of that court or tribunal?</p> <p>4.3 Is the court a special bankruptcy or commercial court (or division)?</p>	<p>Y</p> <p>N</p> <p>N</p>	<p>5</p>	
<p>5. REMEDIES</p> <p>5.1 Does the law provide for alternative remedies of bankruptcy (liquidation) and reorganisation (rescue)?</p> <p>5.2 Does the law provide for the conversion from one type of remedy to the other?</p>	<p>Y/?</p> <p>N</p>		<p>Reorganisation is regulated in separate legislation and is widely regarded as poorly regulated and impractical.</p>
<p>6. INTERIM RELIEF</p> <p>6.1 Does the law provide for interim relief to protect the assets of the debtor?</p>	<p>N/?</p>		<p>Note that interim measures such as attachment of assets are available under general rules of the civil procedure and widely used alongside bankruptcy petitions.</p>

<p>7. HEARING AND DETERMINATION OF PROCEEDINGS</p> <p>7.1 Do the rules and procedure for the opening of an insolvency proceeding provide for: -</p> <ul style="list-style-type: none"> i) an early (timely) consideration of the case; ii) a fair and proper process of notice and hearing of a disputed case; iii) the right to appeal from a decision in a case? <p>7.2 Does the law provide that the court/tribunal must open an insolvency case if a debtor or a creditor satisfies the legislative formalities required for the opening of an insolvency proceeding?</p> <p>7.3 Does the law permit a case to be opened and fully administered where the assets are insufficient to meet the costs and expenses of such administration?</p>	<p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p>	<p>9</p> <p>6</p> <p>10</p> <p>9</p>	<p>No specific exceptions provide for such cases.</p>
<p>8. IMMEDIATE EFFECTS OF OPENING PROCEEDING</p> <p>8.1 Does the law provide that, without any further determination, the opening of proceedings has the following effect:</p> <ul style="list-style-type: none"> i) all enforcement action or proceedings against the debtor's assets are stayed; ii) the commencement or continuation of any individual action or proceedings concerning the debtor's assets is stayed; iii) the right to transfer, secure or otherwise deal with the debtor's assets is suspended? <p>8.2 In the absence of such a provision, does the law provide that the court/tribunal may make orders to the same effect upon or shortly after the opening of the case?</p> <p>8.3 Do the prohibitions above extend to:</p> <ul style="list-style-type: none"> i) a secured creditor; ii) a third party who owns property that is used, occupied or in the possession of the debtor; iii) a supplier under retention of title terms? 	<p>Y</p> <p>Y</p> <p>Y</p> <p>N/A</p> <p>Y</p> <p>N</p> <p>N</p>	<p>10</p> <p>10</p> <p>10</p>	

<p>8.4 Does the law specify the rights of any of the persons mentioned in 8.3 to apply for relief from the stay?</p> <p>8.5 Does the law provide for effective notification of the commencement of proceedings to:</p> <ul style="list-style-type: none"> i) the public generally; ii) all known creditors individually; iii) all relevant regulatory authorities? <p>8.6 Does the law provide for the appointment of an independent functionary to either</p> <ul style="list-style-type: none"> i) take full control of the debtor's business and assets; or ii) supervise the debtor's business and assets? 	<p>N</p> <p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p> <p>Y</p>	<p></p> <p>10</p> <p>10</p> <p>10</p> <p></p> <p>10</p> <p>10</p>	
<p>9. ADMINISTRATION OF AN INSOLVENCY CASE</p> <p>9.1 Does the law specify the qualifications of a person who may be appointed an independent functionary to administer the insolvency?</p> <p>9.2 Does the law provide for the appointment of a functionary through the court or the creditors?</p> <p>9.3 Does the law provide for the possible removal and replacement of a functionary?</p>	<p>N</p> <p>Y</p> <p>Y/?</p>	<p></p> <p>11</p> <p>11</p>	<p>No qualifications are specified.</p> <p>Absence of statements of clear grounds for removal.</p>

PART B – ASSETS OF THE ESTATE	YES / NO	ARTICLE	COMMENTARY
<p>10. ASSETS OF THE DEBTOR</p> <p>10.1 Does the law adequately define the assets forming the debtor estate?</p> <p>10.2 Does the law clearly state that the ownership rights of third parties and secured property rights are preserved?</p> <p>10.3 Does the law require that the debtor safeguard, deliver up or make available all assets belonging to the estate to the relevant functionary?</p> <p>10.4 Does the law provide that a third party in possession of assets of the estate of a debtor is required to deliver up such assets or make them available to the relevant functionary?</p>	<p>N</p> <p>N</p> <p>Y/?</p> <p>N</p>	<p>10</p>	<p>The law allows 15 days to transfer assets.</p>
<p>11. PROVISION OF INFORMATION TO A RELEVANT FUNCTIONARY</p> <p>11.1 Does the law require the debtor (or relevant persons connected to the debtor) to provide all information concerning the assets and financial affairs of the debtor?</p> <p>11.2 Does the law require relevant third parties to provide all information concerning the assets and financial affairs of the debtor?</p>	<p>N/?</p> <p>N</p>		<p>Only in the case of reorganisation.</p>

<p>12. AVOIDANCE OF PRE-BANKRUPTCY TRANSACTIONS</p> <p>12.1 Does the law provide for the avoidance or setting aside of transactions made prior to the opening of insolvency proceedings that involves the transfer, disposal or granting of security in relation to assets of the debtor (including the payment of money):</p> <p> i) in favour of a creditor, if as a result of the transaction a creditor is preferred over other creditors;</p> <p> ii) in favour of a third party, if the transaction is a transaction at an under value as regards the debtor;</p> <p> iii) in favour of a third party, if the transaction was made with the intention of defeating, prejudicing or otherwise defrauding creditors of the debtor?</p> <p>12.2 Does the law provide clear criteria (including time periods) that must be established before any such transaction may be avoided or set aside?</p> <p>12.3 Does the law also provide for establishing lesser criteria to avoid or set aside transactions such as those mentioned above where the other party involved in the transaction is closely connected to the debtor?</p> <p>12.4 If the law provides for the setting aside of transactions such as those mentioned above, does it provide for recovery from the third party?</p> <p>12.5 Does the law provide for the avoidance or setting aside of a transfer, disposal or grant of a security in relation to the assets of the debtor that is made subsequent to the opening of proceedings without proper authority?</p>	<p>N/?</p> <p>N/?</p> <p>N/?</p> <p>N</p> <p>N</p> <p>N</p> <p>N</p>	<p>11, 20</p> <p>11, 20</p> <p>11, 20</p>	<p>These provisions are inadequate. They suggest an ability to reject disadvantageous contracts and to review all contracts within 3 years or 5 years in the case of fraudulent bankruptcy and bring actions to invalidate contracts. There is a complete lack of specificity.</p>
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PART C – CREDITORS	YES / NO	ARTICLE	COMMENTARY
<p>13. CLAIMS OF CREDITORS</p> <p>13.1 Does the law provide for creditors (including secured and foreign creditors) of the debtor to be notified of any requirement to lodge claims?</p> <p>13.2 Does the law enable claims to be made and accepted in respect of all debts and liabilities (including liability for a civil wrong) of the debtor?</p> <p>13.3 Does the law provide for set-off?</p> <p>13.4 Does the law allow creditors to claim at any time before a dividend is paid?</p> <p>13.5 Is there provision for judicial or other review of the claim of a creditor that is rejected or disallowed by the relevant functionary?</p>	<p>N/?</p> <p>Y</p> <p>N</p> <p>N/?</p> <p>Y</p>	<p>10</p> <p>10</p> <p>19</p>	<p>No express notification in a case of bankruptcy.</p> <p>Maximum of 45 days to file claims (but late filing is possible in reorganisation).</p> <p>In a reorganisation, the functionary may only reject or disallow claims through application to the court.</p>
<p>14. INVOLVEMENT OF CREDITORS</p> <p>14.1 Does the law provide for adequate participation in an insolvency case either by the creditors as a whole or through a representative committee?</p> <p>14.2 Does the law require meetings of the creditors and/or creditors' committee?</p> <p>14.3 Does the law require that creditors be informed of the progress of the administration of an insolvency case at relevant stages?</p> <p>14.4 Do creditors have access to a court or tribunal to review aspects of insolvency case that affect their interest/s to which they object?</p>	<p>Y</p> <p>Y</p> <p>N/?</p> <p>Y</p>	<p>22</p> <p>22</p> <p>23</p> <p>24</p>	<p>Information is provided only at the request of the creditor and the scope of the information to be provided is unclear.</p>

<p>15. PRIORITY OF CLAIMS AND EQUALITY BETWEEN CREDITORS</p> <p>15.1 Does the law provide that the costs and charges involved in the administration of an insolvency case rank in priority to creditors' claims?</p> <p>15.2 Does the law clearly otherwise state the priority for the payment of creditors claims?</p> <p>15.3 With the exception of the above priorities, does the law provide for equal treatment for all creditors of the same class?</p>	<p>N/?</p> <p>Y</p> <p>Y</p>	<p>36</p> <p>35</p> <p>35</p>	<p>The law is unclear.</p>
<p>PART D - REORGANISATION PROCEEDINGS</p>	<p>YES / NO</p>	<p>ARTICLE</p>	<p>COMMENTARY</p>
<p>16. REORGANISATION PROCEEDINGS</p> <p>16.1 Does the law clearly provide who has the power of continued management in a case of reorganisation?</p> <p>16.2 If the debtor (or representative/s of the debtor) may continue to manage, does the law provide for any supervision by a relevant functionary and/or the replacement of the debtor by a relevant functionary if circumstances require it?</p> <p>16.3 In a case of a proposed reorganisation, does the law specifically prohibit or restrict the termination of:</p> <p>i) the supply of essential services including gas, electricity and telecommunications to the debtor;</p> <p>ii) other essential contracts to which the debtor is a party?</p>	<p>N/?</p> <p>Y</p> <p>N</p> <p>N</p>	<p>5, 16</p> <p>16</p>	<p>Powers of enterprise administrator, management and creditors committee somewhat overlap and are not clearly distinguished.</p>

16.4 Does the law require that a decision regarding a proposed reorganisation be reached within a specified time frame?	Y	13	Decision regarding proposed reorganization shall be taken within 4 months of start of proceedings.
16.5 Does the law clearly state who is responsible for the preparation of a proposed plan of reorganisation?	Y	15	Management task unless creditors initiate restructuring: creditors may provide alternative plans.
16.6 Does the law require that material information in connection with a proposed plan be fully disclosed to creditors?	Y	13	
16.7 Does the law provide that an independent analysis of a proposed plan of reorganisation be made available to creditors?	Y/?	15	Independent analysis is provided by reorganization functionary.
16.8 Does the law provide that a reorganisation plan must comply with specified minimum 'protective' requirements (e.g. that the anticipated return to creditors will be at least equal to the return they would obtain in a liquidation) or otherwise provide against possible commercial abuse?	N		
17. REORGANISATION FINANCING			
17.1 Does the law provide for financing the on-going needs of the business that is attempting a reorganisation?	N		
17.2 If so, does the law provide for a commercially sound process by which such finance may be obtained and repaid?	N		
18. APPROVAL OF REORGANISATION PLAN			
18.1 Does the law provide that a prescribed percentage of creditors (whether in number, value or both) is required to approve a plan of reorganisation of the affairs of the debtor?	Y	15	
18.2 If so, is the approval required no more than 75% and more than 50%?	Y	15	75% required unless voting by class where 66% of class needed to approve.

18.3 Does the law provide for restrictions on voting on a reorganisation plan by 'insider' creditors (e.g. shareholders, directors of the debtor)?	N		
18.4 Does the law provide that a sufficient vote of approval binds all creditors (including dissenting creditors)?	N		
18.5 Does the law enable a dissenting creditor to appeal against a reorganisation plan?	N		
18.6 Does the law require that a reorganisation plan be approved/confirmed by a court/tribunal?	Y	15, 17	The court is entitled to challenge the plan.
18.7 Does the law provide that the bona fide approval of the relevant majority of creditors cannot be over-ruled by the court?	N		
18.8 Does the law enable a case of reorganisation to be converted to a case of liquidation in the event that either a plan of reorganisation is not prepared within time, a plan is not approved by creditors or a plan is not approved/confirmed by a court/tribunal?	N		
19. POST APPROVAL			
19.1 Does the law provide for any supervision in the implementation of a reorganisation plan?	Y	15, 16	
19.2 Does the law enable a plan of reorganisation to be amended/modified with the approval of creditors?	Y	13	
19.3 Does the law clearly state the effect of a failure to implement a plan of reorganisation?	Y	24	

PART E – TERMINAL PROCEEDINGS	YES / NO	ARTICLE	COMMENTARY
<p>20. LIQUIDATION</p> <p>20.1 Does the law provide for the termination of the powers and authority of the management of an insolvent debtor enterprise once it has been determined that the debtor enterprise should be liquidated?</p> <p>20.2 Does the law provide for an independent functionary to administer the liquidation?</p> <p>20.3 Does the law provide for the sale of the assets of the debtor by either public auction or private sale?</p> <p>20.4 Does the law make provision for the timely conduct of a liquidation?</p> <p>20.5 Once a liquidation commences, does the law provide for a lifting of any stay in respect of actions and proceedings against the assets of the debtor in so far as it affects secured creditors and other persons who own property that is in the possession or occupation of the debtor?</p>	<p>Y</p> <p>Y</p> <p>Y</p> <p>N</p> <p>N</p>	<p>10, 14</p> <p>31</p> <p>31, 33</p>	
<p>21. DISCHARGE/ RELEASE OF DEBTS</p> <p>21.1 Does the law provide for the discharge/release of all debts and liabilities on the completion of the proceedings?</p> <p>21.2 If not, is it clear what liabilities survive discharge?</p>	<p>N</p> <p>N</p>		

22. ENFORCEMENT & SANCTIONS 22.1 Does the law provide sanctions for persons who breach or fail to fulfil obligations under the law?	N		
23. CROSS-BORDER INSOLVENCY 23.1 Does the law provide for the recognition of an insolvency case that has been opened in another jurisdiction? 23.2 If so, does the law enable a court or tribunal to assist and co-operate in respect of such foreign proceedings?	N N		