The Evaluation department (EvD) produces thematic or sectoral level evaluation reports in the form of Special Studies. These provide valuable insights to strengthen operational outcomes and institutional performance; they focus on larger issues for which a transactions lens is unsuitable and generate more widely applicable findings for a wider audience. The larger scope of these studies facilitates the use of innovative and robust evaluation methods. This study forms one of eight such studies scheduled for EvD’s 2012 Work Programme.
# Contents

Abbreviations v  
Defined terms vi  
Executive summary vii  

## 1. Background  
1.1 Evolution and scope of activities 1  
1.2 2001 mid-term review 4  
1.3 Evaluation methodology, criteria and scope 7  

## 2. Legal Assessments  
2.1 Concessions/PPP 9  
2.2 Corporate governance 10  
2.3 Infrastructure regulatory reform and competition 10  
2.4 Secured transactions 11  
2.5 Insolvency 12  
2.6 Judicial capacity building 13  
2.7 Public procurement 14  
2.8 Securities markets 14  
2.9 Overall evaluation: legal assessments 15  

## 3. Standard setting  
3.1 Concessions/PPP 17  
3.2 Corporate governance 17  
3.3 Infrastructure regulatory reform and competition 18  
3.4 Secured transactions 19  
3.5 Insolvency 20  
3.6 Judicial capacity building 21  
3.7 Public procurement 22  
3.8 Securities markets 22  
3.9 Overall evaluation: standard setting 23  

## 4. Legal and institutional reform  
4.1 Concessions/PPPs 24  
4.2 Corporate governance 28  
4.3 Infrastructure regulatory reform and competition 31  
4.4 Secured transactions 35  
4.5 Insolvency 39  
4.6 Judicial capacity building 41  
4.7 Public procurement 45
## Evaluation Special Study

### Legal Transition Programme Review

June 2012

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.8</td>
<td>Securities markets</td>
<td>47</td>
</tr>
<tr>
<td>4.9</td>
<td>Overall evaluation: legal and institutional reform</td>
<td>50</td>
</tr>
<tr>
<td>5.0</td>
<td>Outreach</td>
<td>51</td>
</tr>
<tr>
<td>5.1</td>
<td>Concessions/PPPs</td>
<td>52</td>
</tr>
<tr>
<td>5.2</td>
<td>Corporate governance</td>
<td>52</td>
</tr>
<tr>
<td>5.3</td>
<td>Infrastructure regulatory reform and competition</td>
<td>53</td>
</tr>
<tr>
<td>5.4</td>
<td>Secured transactions</td>
<td>53</td>
</tr>
<tr>
<td>5.5</td>
<td>Insolvency</td>
<td>54</td>
</tr>
<tr>
<td>5.6</td>
<td>Judicial capacity building</td>
<td>54</td>
</tr>
<tr>
<td>5.7</td>
<td>Public procurement</td>
<td>55</td>
</tr>
<tr>
<td>5.8</td>
<td>Securities markets</td>
<td>55</td>
</tr>
<tr>
<td>5.9</td>
<td>Overall evaluation: outreach activities</td>
<td>55</td>
</tr>
<tr>
<td>6.0</td>
<td>Conclusions and recommendations</td>
<td>56</td>
</tr>
<tr>
<td>6.1</td>
<td>Overall evaluation</td>
<td>56</td>
</tr>
<tr>
<td>6.2</td>
<td>Findings</td>
<td>59</td>
</tr>
<tr>
<td>6.3</td>
<td>General recommendations</td>
<td>61</td>
</tr>
<tr>
<td>6.4</td>
<td>Recommendations in respect of LTP's activity fields</td>
<td>62</td>
</tr>
</tbody>
</table>

Annexes to this study are all available online at [http://www.ebrd.com/evaluation](http://www.ebrd.com/evaluation).
### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
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<tr>
<td>AfDB</td>
<td>African Development Bank</td>
</tr>
<tr>
<td>CIS</td>
<td>Commonwealth of Independent States</td>
</tr>
<tr>
<td>CIS-IPA</td>
<td>CIS Inter-Parliamentary Assembly</td>
</tr>
<tr>
<td>DAC</td>
<td>Development Assistance Committee</td>
</tr>
<tr>
<td>EBRD</td>
<td>European Bank for Reconstruction and Development</td>
</tr>
<tr>
<td>EITI</td>
<td>Extractive Industries Transparency Initiative</td>
</tr>
<tr>
<td>ERA</td>
<td>Energy Regulatory Authority (Mongolia)</td>
</tr>
<tr>
<td>ETCs</td>
<td>Early transition countries</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>EUR</td>
<td>Euro currency unit</td>
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<tr>
<td>EvD</td>
<td>Evaluation department (EBRD)</td>
</tr>
<tr>
<td>FOLLIO</td>
<td>Framework of Local Laws in Operation</td>
</tr>
<tr>
<td>GFC</td>
<td>Global financial crisis</td>
</tr>
<tr>
<td>ICLG</td>
<td>Institute of Corporate Law and Governance</td>
</tr>
<tr>
<td>IDLO</td>
<td>International Development Law Organization</td>
</tr>
<tr>
<td>IFIs</td>
<td>International financial institutions</td>
</tr>
<tr>
<td>IOSCO</td>
<td>International Organization of Securities Commission</td>
</tr>
<tr>
<td>JTC</td>
<td>Judicial Training Centre (Kyrgyzstan)</td>
</tr>
<tr>
<td>LC2</td>
<td>Local Capital Markets and Local Currency Initiative (EBRD)</td>
</tr>
<tr>
<td>LFA</td>
<td>Logical Framework Analysis</td>
</tr>
<tr>
<td>LIS</td>
<td>Legal Indicator Survey</td>
</tr>
<tr>
<td>LTP</td>
<td>Legal Transition Programme</td>
</tr>
<tr>
<td>LTT</td>
<td>Legal Transition team</td>
</tr>
<tr>
<td>MDB</td>
<td>Multilateral Development Bank</td>
</tr>
<tr>
<td>MEI</td>
<td>Municipal and Environmental Infrastructure team (EBRD)</td>
</tr>
<tr>
<td>MSL</td>
<td>Model Securities Law</td>
</tr>
<tr>
<td>MTR</td>
<td>Mid-term review</td>
</tr>
<tr>
<td>OCE</td>
<td>Office of the Chief Economist (EBRD)</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Co-Operation and Development</td>
</tr>
<tr>
<td>OGC</td>
<td>Office of the General Counsel (EBRD)</td>
</tr>
<tr>
<td>OL</td>
<td>Operation Leader (EBRD)</td>
</tr>
<tr>
<td>OpsCom</td>
<td>Operations Committee</td>
</tr>
<tr>
<td>PPP</td>
<td>Public-Private Partnership</td>
</tr>
<tr>
<td>RFCSM</td>
<td>Russian Federal Commission on the Securities Markets</td>
</tr>
<tr>
<td>RO</td>
<td>Resident Office (EBRD)</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>--------------</td>
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</tr>
<tr>
<td>SECO</td>
<td>Secretariat for Economic Affairs (Switzerland)</td>
</tr>
<tr>
<td>SEMED</td>
<td>Southern and Eastern Mediterranean region</td>
</tr>
<tr>
<td>SME</td>
<td>Small and medium-sized enterprises</td>
</tr>
<tr>
<td>TACIS</td>
<td>Technical aid to the Commonwealth of Independent States (EU)</td>
</tr>
<tr>
<td>TAM/BAS</td>
<td>Turn around management and business advisory services (EBRD)</td>
</tr>
<tr>
<td>TC</td>
<td>Technical cooperation</td>
</tr>
<tr>
<td>TCFP</td>
<td>Technical Cooperation Funds Programme (EBRD)</td>
</tr>
<tr>
<td>TI</td>
<td>Transition impact</td>
</tr>
<tr>
<td>UNCITRAL</td>
<td>United Nations Commission on International Trade Law</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>UNECE</td>
<td>United Nations Economic Commission for Europe</td>
</tr>
<tr>
<td>UNIDROIT</td>
<td>International Institute for Unification of Private Law</td>
</tr>
<tr>
<td>USAID</td>
<td>United States Aid and Development Agency</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
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**Defined terms**

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>the Bank</td>
<td>European Bank for Reconstruction and Development</td>
</tr>
<tr>
<td>the Evaluation team</td>
<td>Staff of the Evaluation department and the independent sector consultants who jointly carried out the evaluation</td>
</tr>
</tbody>
</table>
Executive summary

Legal and regulatory reform is a cornerstone of the EBRD’s transition mandate as its countries of operations often fall short of internationally accepted standards of best practice. Since 1995 the Legal Transition Programme (the “LTP”) has been the primary vehicle through which the Bank helps build transparent and predictable legal environments to support healthy markets and improve the investment climate.

This report provides the findings and recommendations from an independent evaluation of the implementation of the LTP from 2001 to 2010 (the “evaluation period”). The LTP’s activity fields comprise: i) legal assessments, ii) standard setting, iii) outreach activities and iv) legal reform (the “activity fields”). In all activity fields, the LTP currently focuses on eight core legal areas: concessions/public-private partnerships (PPPs), corporate governance, infrastructure regulatory reform and competition, judicial capacity building, secured transactions, insolvency, public procurement and securities markets (the “core legal areas”).

During the evaluation period, the LTP initiated 87 legal reform projects funded under the Bank’s Technical Cooperation Funds Programme for a total value of €26 million, benefiting 25 countries of operations. Most of these projects have been completed or are at an advanced stage of implementation. In addition, the LTP has completed a number of internally funded legal transition-related advisory projects to a value of €1.35 million.

This evaluation concludes that the LTP made an important, although quite narrowly focused contribution to legal reforms in the Bank’s countries of operations, as well as to the Bank’s operational objectives. Overall, the LTP’s performance is evaluated as Successful. Through promoting legal reforms, the LTP directly supports the Bank’s operational objectives of assisting its countries of operations in the transition to open market economies and the establishment of entrepreneurial opportunities within a multiparty democratic system.

The relevance of LTP’s work is rated High. The LTP’s core areas represent key legal transition areas in which both the LTP and the EBRD have accumulated extensive experience. These core areas reflect the Bank’s priorities in terms of improvement needed to the legal environment to enable its operations.
The LTP’s overall effectiveness is rated **Good**, mainly on account of strong evidence that the LTP’s advice has been largely followed; many laws and regulations that the LTP helped to draft were approved and are utilised, while a substantial number of legal practitioners in the Bank’s countries of operations benefited from the LTP’s training, although its effectiveness has not always been possible to verify. Some institution building projects were of lower effectiveness and this is an area where the LTP should focus more in the future.

The LTP’s overall efficiency is rated **Good**. It varies across the eight core legal areas and depends largely on the LTP’s success in attracting and keeping high-calibre specialists in any given core area. It also reflects the LTP’s management’s strategy to allocate more resources to certain core areas, while keeping the LTP’s involvement in other areas to a minimum.

Overall transition impact and sustainability stemming from the LTP’s activities are rated **Excellent**. The LTP is, by definition, at the core of transition and it has achieved significant of transition impact by providing technical assistance for the development of legal structures, via projects, which support free market economies and promote legal reform. The LTP’s work has been shown to greatly influence domestic policy formation, impacting frameworks for markets that promote function and efficiency. Skills transfer has also made an important impact, particularly through the LTP’s outreach activities and dedicated training programmes.

Although this review evaluated the LTP against key criteria and focus areas, the “soft power” impact of the LTP on EBRD operations should not be overlooked. Local stakeholders highly appreciate the work of the LTP; it is seen as a formidable “calling card” for the EBRD and is clearly project enabling. If the work of the LTP was initially seen as at the “fringe” of the Bank’s activities, it is now perceived as “mainstream” with a strong presence in several countries. Table 1 below provides a summary of the performance ratings in specific activity fields.
Table 1: Performance ratings for LTP activity fields and the legal reform core areas
(Rating scale: Highly successful, successful, partly successful, unsuccessful)

<table>
<thead>
<tr>
<th>Legal reform projects overall</th>
<th>Successful</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concessions/PPP</td>
<td>Successful</td>
</tr>
<tr>
<td>Corporate governance</td>
<td>Successful</td>
</tr>
<tr>
<td>Infrastructure regulatory reform:</td>
<td></td>
</tr>
<tr>
<td>- in respect of telecommunications</td>
<td>Highly successful</td>
</tr>
<tr>
<td>regulation</td>
<td>Partly successful</td>
</tr>
<tr>
<td>- in respect of other infrastructure</td>
<td></td>
</tr>
<tr>
<td>Secured transactions</td>
<td>Highly successful</td>
</tr>
<tr>
<td>Insolvency</td>
<td>Partly successful</td>
</tr>
<tr>
<td>Judicial capacity building</td>
<td>Partly successful</td>
</tr>
<tr>
<td>Public procurement¹</td>
<td>Partly successful</td>
</tr>
<tr>
<td>Securities markets</td>
<td>Partly successful</td>
</tr>
<tr>
<td>Legal assessments</td>
<td>Highly successful</td>
</tr>
<tr>
<td>Standard setting</td>
<td>Successful</td>
</tr>
<tr>
<td>Outreach activities</td>
<td>Successful</td>
</tr>
<tr>
<td>LTP’s overall assessment</td>
<td>Successful</td>
</tr>
</tbody>
</table>

The rating above is at one level only marginally higher than that attained during the mid-term review conducted in 2000. However, this likely does not fully capture the consolidation and mainstreaming of the LTP at the EBRD or its substantially enlarged reputation among partners in the countries of operations and international organisations. The rating should also be seen in the context of very uneven allocation of resources among different core legal areas by the LTP’s management, which purposefully promotes certain priority areas, while limiting the LTP’s involvement in other areas. The four core areas that were rated “Highly successful” or “Successful” accounted for 78 per cent of the LTP’s budget and 83 per cent of its experts’ time allocation, while four other

¹ LTP core area only since late 2009, which provided limited basis for full evaluation (further described in Section 4.7).
areas rated “Partly successful” accounted for less than a quarter of the LTP’s commitments and only 17 per cent of its experts’ total time. Nevertheless, important challenges remain and warrant careful review and consideration going forward. The section below presents this evaluation’s main general findings and recommendations.

Findings

− The need for “law on the books” reform assistance varies widely across the Bank’s countries of operations. However, the functioning of legal systems and institutions in practice is still universally substandard in all of the Bank’s countries of operations (see Annex 5 online). Institution building has been an important part of almost all of the LTP’s projects so far. To further strengthen the impact of its interventions, the LTP should now put even more emphasis on training legal practitioners and establishing institutions and administrative competency (see the Recommendations section).

− Most of the LTP’s projects have defined operational and funding life spans, whereas the process of legal reform is usually long and highly susceptible to changes in the priorities, personnel and political configuration of the recipient country. In addition, there is often a lack of clarity and measurability in project-level benchmarks.

− The LTP’s core legal areas are also key operational areas for the EBRD. In turn, LTP activity fields respond to the technical needs of the Bank and its countries of operations. In dividing the needs of transition countries across several focus areas, the LTP has identified gaps within the larger legal structures. Such gap analysis has enabled the LTP to address systemic issues within legal frameworks.

− A well-functioning, investor-friendly and free market-oriented legal structure is at the core of transition. Therefore the LTP’s projects usually have a high degree of transition potential, however their actual impact varies, depending mainly on the determination of the LTP’s local partners. The strongest impacts were achieved in those core legal areas where the LTP had well-developed in-house expertise and in the countries where its staff was able to focus their efforts for an extended period (for example, a PPP expert based in Moscow). Due to the LTP’s

2 Enacted legislation.
relatively limited resources, such impact has been fairly “localised” and narrowly focused on a limited number of countries (except for secured transactions and telecommunications regulation, which achieved a strong impact across most countries of operations).

− While there has been increased compatibility and cohesiveness between the Bank operational departments and the LTP, a recurring internal view is that the LTP should more proactively promote its work to the Banking department, while liaising more closely with staff from other support units, keeping them informed about its operational priorities. The improvement of an “internal outreach” should be directed particularly towards EBRD staff based at the regional offices.

− The LTP has built an adequate repository of information and experience that can contribute and add value to the Bank’s future projects in the southern and eastern Mediterranean (SEMED) region. The current core legal areas and activity fields can serve as a useful starting point, although country-specific assessments will largely dictate practice and policy areas of concentration. The difficulty to accurately assess local conditions in a new and totally different region cannot be overstated, as expanding the Bank’s mandate will be complicated by fluid socio-economic structures where understanding and adherence to rule of law and transparency issues are generally weak. Thorough and detailed legal assessments remain critically important (see Annex 7 online).

− The LTP’s three-year action plans lack clear objectives, milestones and timetables.

− In its legal reform projects the LTP has paid due attention to simplicity and transparency of proposed legal structures. These efforts should continue to avoid over-regulation, which may delay transition.

− In cases of some of the LTP’s activities, there is simply not enough hard evidence to properly assess their success and/or their impact.

− There are clear limitations to the impact of the LTP’s work as endogenous conditions may and sometimes do hinder LTP reform efforts. For instance, while an LTP mortgage training manual was heavily utilised by the local banks in Moldova, the growth of mortgage lending has been hindered by the global financial crisis and low salaries.
Recommendations

− The Bank/Office of the General Counsel (OGC) should undertake a strategic review of the LTP’s priorities, core areas, resource allocations and the modes of engagement with the rest of the Bank as well as external players (for example, IFIs), with a view to re-orienting its focus in some areas (for example, securities markets to take account of the LC2 initiative, telecommunications regulations to take account of development and convergence in the information and communication technology (ICT) market), while increasing activities in others (for example, energy law and regulation, corporate governance, public-private partnerships (PPPs)). Historically the LTP has achieved the greatest success in areas to which considerable resources (funds and staff) have been dedicated over the longer term. To strengthen and expand the impact of its projects the LTP will require a gradual increase in its resources. For example, adding a Concessions/PPP expert could result in the LTP making a stronger impact beyond Russia. Similarly, a dedicated energy regulation or/and transport regulation specialist(s) would be required to build the LTP’s reputation in these fields. Corporate governance is another important area where the LTP has been successful, however benefiting only a few countries due to resource constraints.

− Over the last 10 years, the LTP has dedicated substantial resources to conducting legal assessments and developing legal standards. These were highly successful undertakings and prerequisite to further actions. The LTP should continue updating its assessments and fine-tuning the set standards.

− The LTP should sharpen its focus on projects that directly support legal reform processes, particularly with institutional capacity building and better designed training for judges, registrars, PPP or procurement officials. Such training should always incorporate specific targets for expected outcomes/accomplishments and specific measures to verify impact. This has not always been the case (for example, early phases of judicial capacity building) and has been a significant impediment to gauging the relevance and impact of this important work. The LTP has recognised the importance of such measures with its more recent projects.

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3 See the last recommendation.
While the ultimate success of legal reform projects depends to an extent on external factors, the LTP should set more precise and measurable objectives in its three-year action plans (or in its annual plans, if introduced). This would improve monitoring and provide the potential for the implementation of these plans to be effectively evaluated.

The LTP should integrate a “project results” column to its “LTP legal reform projects” list (see Annex 8 online). This would briefly summarise the concrete results of each project, for example listing the main outcomes and impacts, giving the date when the law was enacted, commenting on whether it is utilised, or why it was not approved, results of competency tests following training, and so on.

The LTP should better structure (by organising it in a more systematic way, for example) its collaboration with other organisations, setting specific objectives and plans for such a collaboration in its three-year action plans.

More focus on company law and secured transactions is needed as these areas greatly facilitate the Bank’s engagement and are at the core of transition.

Increased efforts are needed in developing local capital markets. In this respect the LTP might usefully intensify its work on capital market development, possibly within the framework of the Bank’s Local Capital Markets and Local Currency Initiative.

Annexes to this study are available at http://www.ebrd.com/evaluation
1. Background

1.1 Evolution and scope of activities

This report provides the findings and recommendations from an independent evaluation of the implementation of the Legal Transition Programme (the “LTP”) during 2001-10 (the “evaluation period”).

Since its inception in 1991, the Bank, through its Office of the General Counsel (OGC), has considered legal reform as a primary cornerstone of its transition mandate. The relationship between legal reform and economic growth is supported by a large body of external empirical evidence. The EBRD promotes legal reform because a number of its countries of operations do not comply with internationally accepted standards of best practice. Thus, the Bank pursues activities that enhance the rule of law, the growth of a domestic legal culture and promotes policies conducive to improving the investment climate in its countries of operations.

The Legal Transition Programme, administered by the Legal Transition and Knowledge team (the “LTT”), established in 1995, is the primary vehicle through which the Bank implements these objectives. Evolving from an unfunded and ad hoc technical assistance resource to a more formalised programme undertaken by a dedicated team, the LTP has solidified its role within the EBRD. Using Bank funds and donor grants, the LTP is guided in its operations by three-year action plans (summarised in Annex 2 (online), the current one running from 2010-12).

During the evaluation period the LTP initiated 87 legal reform projects funded under the Bank’s Technical Cooperation Funds Programme for a total of €26 million, benefiting 25 countries of operations (see the list of LTP’s projects in Annex 8 online). Most of these projects have been completed or are at an advanced stage of implementation. The LTP has also completed a number of internally funded advisory projects, to a value of €1.35 million. During that time, the LTP’s activity fields remained the same, that is, legal assessments, standard setting, legal reform and outreach (the “activity fields”). However the core legal areas

---

on which the LTP focused its work were periodically adjusted (see Annex 2 online, describing the LTP’s evolution over 2004-10). Currently, in all activity fields, the LTP focuses on eight core legal areas: concessions/public-private partnerships (PPPs), corporate governance, infrastructure regulatory reform and competition, judicial capacity building, secured transactions, insolvency, public procurement and securities markets (the “core legal areas”).

The LTT is one of the 11 operational units within OGC. It has a headcount of 11 (sometimes strengthened by additional temporary appointments) and a separate budget within OGC. In 2010, the EBRD created the Financial Law Unit within the LTT to identify and address legal impediments to investments in specific areas such as capital markets, corporate governance, insolvency and secured transactions. The formal LTT reporting line runs vertically to one of three Deputy General Counsels and then to the General Counsel.

While there is a strong informal relationship with some other units within OGC, the LTP’s key formal input to the department’s work occurs through its contribution to the Framework of Local Laws in Operation (FOLLIO) – a database used by OGC to determine the legal risk of the Bank’s operations. Based on the information contained in FOLLIO, OGC lawyers working on the Bank’s financing projects prepare legal risk assessments that are part of each project’s overall assessment during the OpsCom approval stage. In the past, the LTP has sometimes been regarded as “stand alone” and “not well integrated” into the work of OGC. The current view is that the LTP’s work is more closely related to operational challenges.

The LTP’s projects are funded from two sources: (i) technical cooperation funds, (donor grants) and (ii) the internal budget of OGC. The former source has usually financed larger legal reform projects, while the latter smaller legal assessments and outreach projects, as well as the LTT’s staff and operating costs.

Figure 1: Summary of funding 2002-10

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7 OGC operational chart as of June 2011.
An “integrated approach” to legal reform is central to the LTP’s operating strategy. It comprises four activity fields and is applied across LTP’s eight core legal areas. Their interrelationships are illustrated in Figure 2.

Figure 2: LTP toolkit – the “virtuous circle” of legal reform

The LTP’s activities have been (and still are) governed by the following five operating principles:

i) The LTP projects should be directly related to the Bank’s ongoing or potential investments.

ii) The LTP projects should be consistent with the Board-approved country and sector strategies.

iii) The LTP projects should have the support of the relevant country authorities and the Bank’s country and/or sector teams. As a matter of practice, the LTP obtains from the relevant government a formal request for assistance before undertaking a country-specific project.

iv) The work of the LTP should be “additional”. The LTP may only take on projects in areas where the team has demonstrated legal expertise and where other law reform facilitators are not providing adequate assistance.

v) The LTP needs to seek the approval of the Technical Cooperation Committee for donor-funded projects.
1.2 2001 mid-term review

In 2001, the Bank’s Evaluation department (EvD) conducted a comprehensive evaluation of the LTP’s activities from its inception to end-2000. During that period, the LTP started, and largely completed, 74 legal reform projects funded under the Bank’s Technical Cooperation Funds Programme (the “TCFP”), for a total of approximately €11 million. Additionally, there were numerous internally funded legal transition-related projects. The mid-term review (MTR) covered the LTP’s four activity fields and spanned six core legal areas. Its rating of the LTP’s performance was as follows:

Table 2: Rating of the Legal Transition Programme from the mid-term review in 2001

<table>
<thead>
<tr>
<th>Overall</th>
<th>Successful</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legal Transition Programme</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Legal reform projects</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Core legal areas</strong></td>
<td></td>
</tr>
<tr>
<td>Bankruptcy</td>
<td>Partly successful</td>
</tr>
<tr>
<td>Concessions</td>
<td>Partly successful</td>
</tr>
<tr>
<td>Financial markets</td>
<td>Partly successful</td>
</tr>
<tr>
<td>Corporate governance</td>
<td>Partly successful</td>
</tr>
<tr>
<td>Secured transactions</td>
<td>Highly successful</td>
</tr>
<tr>
<td>Telecommunications regulations</td>
<td>Highly successful</td>
</tr>
<tr>
<td><strong>Other activity fields</strong></td>
<td></td>
</tr>
<tr>
<td>Legal assessments</td>
<td>Successful/Highly successful</td>
</tr>
<tr>
<td>Standard setting</td>
<td>Successful/ with secured transactions</td>
</tr>
<tr>
<td></td>
<td>Highly successful</td>
</tr>
<tr>
<td>Outreach activities</td>
<td>Successful</td>
</tr>
</tbody>
</table>

Source: Special Study: Legal Transition Programme, October 2001, EBRD Evaluation department.

The most important lessons from the 2001 MTR included:

– The LTP lacks a formal and definitive document stating its overall policy, objectives and strategic approach. Such a strategy would
also help the LTP to obtain a more permanent operational mandate, budget and staffing resources.

− The advantages of a more strategically orientated versus activity-orientated approach should be compared. A reduction in the variety of core legal areas and the strengthening of the LTP’s in-house expertise was recommended.

− More rigorous channels of cooperation should be established throughout the Bank to increase the efficacy of the LTP. Further, self-evaluation should be factored into the LTP’s procedure to build institutional memory.

− The short-term funding arrangements for the retention of LTP staff created an inherent instability that detracted from the LTP’s effectiveness. Counsels should be retained with a view to longevity while promoting professional development.

− Background, pre-implementation work needs to be improved. Issues cited were:
  - lack of a systemic planning approach
  - rudimentary background research
  - legal drafting that was too broad
  - unrealistic timeframe allocation.

The MTR recommended the following:

− adopting a more systematic planning approach

− avoiding commitment to technical legal assistance without sufficient research into the broader legal context and the legal culture in the recipient countries

− increasing the LTP’s focus by reducing the variety of legal core areas and enriching the LTT’s in-house expertise to prevent dilution of the LTP’s impacts

− placing less reliance on the demands of the recipient countries and donors and instead being more realistic when formulating objectives and implementation schedules, particularly about what is feasible and what the budget allows

− ensuring a greater emphasis on implementation

− establishing a working group with various department stakeholders, with the purpose of furthering LTP’s integration within the Bank, and maximising synergy and the leveraging of operations between all parties
ensuring further efforts towards continuing self-evaluation and independent reviews.

Following this review, the Bank and LTP implemented most of the MTR’s recommendations, including:

- The LTP was restructured and provided with a permanent staff budget, which gradually increased from €0.6 million in 2002 to €1.4 million in 2010. This enabled the LTP to recruit experienced legal experts dedicated to different core areas (in some cases backed up by junior experts).

- The LTP introduced three-year action plans (summarised in Annex 2 online), which constituted a more systematic, strategic approach to its activities. The LTP’s action plans are presented to and approved by OGC and the Bank’s ExCom. The first plan covered 2004-07, the second 2007-09 and the most recent one 2010-12.

- The LTP intensified legal assessments, which gave it a better insight into the broader legal context. Over time, the LTP (which has retained about half its staff since the MTR) has also gained a very good understanding of the legal culture in the recipient countries.

- The LTP has been placing less importance on the demands of the recipient countries and donors and has instead been more realistic when formulating objectives and implementation schedules. The average project implementation timeframe grew from one year to over two years, while the average project budget doubled from €150,000 before 2001 to €300,000 in the evaluation period

However, the LTP increased, rather than decreased the number of core legal areas (from six to eight) and did not implement the MTR’s two other recommendations (a working group and self-evaluation). The LTP commented that the increase of the core legal areas took place at the request of the Banking department (as the Procurement and PPPs/Concessions areas were added), while the establishment of a working group comprising stakeholders from various departments of the Bank proved difficult due to conflicting schedules and priorities. Instead, informal one-to-one contacts of LTP staff with the Bankers have been intensified. The LTP has also increased internal outreach through a dedicated web site and vigorous promotion of its activities in Blueprint (the EBRD’s weekly internal publication).
The recommendation to step up self-evaluation was challenged by universally acknowledged difficulties with measuring the impact of legal reforms and the lack of an appropriate template or self-evaluation format. Nevertheless, the LTP made an attempt to self-evaluate the impact of selected projects, for example, Moldovan mortgage law, as well as several projects as part of its 2010-12 action plan (see Annex 2 online). One of the annexes to this action plan contains a grouping of the LTP’s completed projects into those with significant, medium, moderate and minimal impacts. Brief descriptions of the impacts, issues, and shortcomings of these projects have also been provided. Moreover, as part of this evaluation, the LTP completed a self-evaluation questionnaire prepared by the Evaluation team (see Annex 13).

1.3 Evaluation methodology, criteria and scope

There is no universally agreed quantitative model that measures the direct impact of legal reform on economic or social development. The absence of dedicated methodological tools that can produce relevant and reliable data constitutes a limitation on the ability to fully capture the LTP’s direct impact on legal maturation within the selected countries of operations. However, the Logical Framework Approach (LFA) has been found to be particularly conducive to assessing complex, highly nuanced situations in the social sciences that are not subject to conclusive answers. This methodology was adopted in the 2001 MTR and its elements have also been utilised in this review. In addition, various external sources that measure the impact of legal reform relevant to the LTP’s core legal areas (for example, the World Justice Project’s “Rule of Law Index”, the World Bank’s “Doing Business Index” and the World Economic Forum’s “Global Competitiveness Report”) have been consulted (see Annex 5).

To assess the LTP’s field performance, five sample countries from different regions and at different stages of transition were selected: Armenia, Hungary, Mongolia, Russia and Serbia (the “sample countries”). The Evaluation team conducted interviews with the LTP’s project beneficiaries and stakeholders in the sample countries, as well as EBRD staff in London. In its research, the Evaluation team was looking primarily for “hard evidence” of the LTP’s impact on codified domestic law, which has been utilised and is working well in practice.

The OECD Development Assistance Committee’s (DAC) evaluation criteria of relevance, effectiveness, efficiency, impact and sustainability were adopted to assess the LTP’s performance in the sample countries.
The report is structured by the four activity fields, within which the LTP works in each of the eight core legal areas. The LTP’s performance in each core legal area within each activity field is briefly described and evaluated at the activity field level. Only in the case of the most important activity field – the legal and institutional reform – each core legal area is rated separately. To limit the volume of this report, substantial amounts of evidence in support of the rating have been presented in the annexes (including sample country-specific performance in the legal reform area in Annex 4 online). Lastly, an important element of the evaluation approach was a self-evaluation questionnaire, which the LTP completed before the Evaluation team’s fieldwork (see Annex 13 online). Annex 1 (online) provides more details on the evaluation methodology.

2. Legal Assessments

The objective of the LTP’s legal assessment work is knowledge building on existing legal frameworks in the Bank’s countries of operations to:

i) (i) make EBRD banking projects more efficient. The LTP’s legal assessments form the basis of the legal annex to the EBRD’s country strategies and measure (via FOLLIO) legal risk in the EBRD’s banking operations. The latter tool is used in OpsCom briefings, when banking projects are presented for approval. The assessments also help the LTP identify priorities for legal reform projects.

ii) (ii) provide a basis for policy choices by a particular country. Dissemination of legal assessment information encourages local debate about the need for reform within particular countries and also allows governments themselves to tap directly into this wealth of information. EBRD assessments are widely publicised via the EBRD web site and publications, as well as during specialist conferences.

During the evaluation period the LTP completed 23 legal assessments (listed in Annex 9 online). Legal experts (members of the Evaluation team) confirmed the generally very high standard of all legal assessment research undertaken by the LTP. Equally, the internal and external utility of the legal assessments have been confirmed by the EBRD’s OpsCom members, as well as legal practitioners interviewed in the countries of operations. Some minor issues were identified in respect of the priority setting and targeting of these assessments but the reality of unforeseen, exogenous events must also be acknowledged. The LTP’s performance
in legal assessments in each of the eight core legal areas can be summarised as follows:

### 2.1 Concessions/PPP

The LTP conducts legal assessments of concession laws and examines the variety of policy options available, utilising as benchmarks international standards such as the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, EU concession *acquis* and other measures.\(^8\)

In this regard, the LTP draws on extensive experience in central and eastern Europe and the Commonwealth of Independent States (CIS) in determining the effectiveness of evolving legal structures within transition economies. The LTP seeks to examine how PPP laws function in actual practice, rather than merely examining their theoretical underpinnings. It gathers information from a variety of sources, but an assessment questionnaire (the Legal Indicator Survey (LIS)) is the main analytical tool used to determine its implementation in actual practice. This assessment methodology has proven to be cost-effective and provide valuable data. Characteristics/outputs included:

- Concession law assessments were carried out in 2004-05 and 2007-08 and focused on the quality of the legislative framework.
- A Legal Indicator Survey of concessions took place in 2006, while an update of the concession laws assessment is currently under way.
- Of the five sample countries, Russia and Serbia made important progress in improving their concession laws (see Section 1 in Annex 4 online). These were the countries where, following the assessments, the LTP concentrated its legal reform activities.\(^9\)
- During the last 20 years the EBRD has financed 17 PPPs in 10 countries in the water/wastewater sector and 16 PPPs in eight countries in the transport sector (see Annex 10). This relatively modest outcome of the Bank’s effort to promote PPP indicates fundamental difficulties (primarily political) in encouraging this type of infrastructure financing but may also point to underlying deficiencies of the PPP legal framework.\(^10\)

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\(^{8}\) UNIDO Guidelines for Infrastructure Development through BOTs (1996), EBRD Core Principles for Modern Concession Law (2005), OECD Basic Elements of a Law on Concession Agreements (2000).


\(^{10}\) The EBRD’s Transport Strategy (draft), 2012.
2.2 Corporate governance

The LTP has effectively monitored and evaluated the fundamental aspects of corporate governance in the Bank’s countries of operations through the following:

- comprehensive corporate governance assessments carried out in 2003, 2004 and 2007
- a Legal Indicator Survey, focusing on related party transactions, carried out in 2005
- the work described above fed into new legal reform projects in Armenia, Kazakhstan and Serbia
- the LTP’s corporate governance assessments have frequently been used by the EBRD when evaluating the corporate governance of potential investee companies. This is important as, for example, in 2011 over 15 per cent (£1.3 billion) of the Bank’s financing was through equity investments
- an assessment of the corporate governance of banks began in late 2010 and is currently ongoing. Its outcomes will be of importance to set the Bank’s, as well as the LTP’s direction for further work with the banks in the countries of operations, which is a priority for the Bank in the post-crisis environment.

2.3 Infrastructure regulatory reform and competition

Activities in this core area have concentrated on telecommunications and energy – sectors of high priority for the Bank and its clients. In this context, the LTP has measured regulatory and legal risk, primarily through the following actions:

- A 2009 telecommunications assessment examined the legal and regulatory infrastructure of the communication sectors. The resulting findings have provided direction for ongoing and future telecommunications law reform and the Bank’s financing of projects.
- The 2010 energy sector assessment, which represented the LTP’s most exhaustive, in-depth energy sector evaluation to date. It addressed the strengths and weaknesses of national frameworks, which regulate the energy industry. Economic, legal and structural impediments were examined, as most often they prevent competition (barriers to entry, for example). The impact of this fairly recent review has not yet been fully realised,
however there is clear evidence that its findings have significant implications for the LTP’s choice of legal reform projects aimed at improving the regulatory environment in this sector (for example, in Tajikistan).

− The LTP broke down its analysis to the sub-regional level, which allowed a consideration of the differing degrees of economic development within its countries of operations. Such hybrid methodology allowed consideration of the individual and unique characteristics and challenges that each region may bring.

2.4 Secured transactions

Secured transactions have been the LTP’s core work area since its inception and remains the one in which LTP has accumulated impressive experience and a track record of successful projects (see Section 4.4). The LTP has established a well-documented record of legal assessments within the secured transactions arena:

− It was one of the first core areas subjected to formal evaluation by the LTP. The regional survey of secured transactions was conducted in 2000. This was followed by the survey of charges’ enforcement in 2003, the survey of charges’ registration systems in 2004 and the regional survey of mortgages in 2007. These surveys produced significant information and data that proved instrumental for the development of subsequent law reform projects (see Section 4.4), as well as being useful for assessing the Bank’s lending risk.

− The assessments of secured transactions stand as an internal model within the LTP for developing long-term assessment strategies.

− The LTP developed diagnostic tools that have enabled it to accurately gauge the effectiveness of secured transactions laws. The credibility gained by the LTP in this area through its long involvement in assessing the viability of secured transactions has established the LTP as a leader in this type of analysis. It has also given the LTP an influential position from which to advise within the Bank’s countries of operations.
2.5 Insolvency

The legal assessment of insolvency laws takes on increased importance during times of economic instability and/or market contractions, where increased pools of non-performing loans and subsequent liquidations/restructurings have the potential to increase dramatically.

The structure of insolvency laws typically impact lender behaviour in that it can influence creditor decisions and thus reduce the capital and liquidity pools that are available. Issues such as commencement criteria, the effect of the stay or moratorium on enforcement, collection actions and the filing of claims are but a few of the most pressing concerns. The following characteristics of the LTP work in this area have been identified:

- The LTP’s expertise in insolvency law in general is not as extensive as it is, for instance, in secured transaction law. This is partly because the LTP has had difficulty in retaining a full-time staff member with sufficient expertise to manage such projects.11

- Nevertheless, the LTP has been conducting assessments of insolvency laws with the first sector assessment taking place in 2003, with subsequent assessments completed in 2006 and 2009, and another one currently under way.

- Each assessment has grown in terms of depth and sophistication. In addition, in 2004 the LTP undertook the assessment of insolvency legal indicators to evaluate the basic effectiveness of the existing insolvency laws and provided the first indication as to the perceived functionality of new laws that had been enacted in some of the Bank’s countries of operations.

- The 2009 assessment subsequently explored factors that impact more foundational areas, such as the roles of insolvency administrators and trustees. The assessment highlighted the importance of the relationship between creditors and insolvency administrators, as these practitioners have a direct influence on how the services (insolvency procedures) are delivered. Such a relationship is crucial in preserving creditors’ rights. The 2009 assessment further stressed the need for increased competency and training to build a more professional supporting body.

- The global financial crisis presented an opportunity for the LTP to focus on a critical analysis of the impact of the insolvency legal framework on the insolvency process. It is during crises that the

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11 In January 2012 the LTP reported that it had recruited an insolvency expert who will start in April.
inadequacies of an outdated regime become apparent. The LTP responded to this opportunity by concentrating on the Western Balkans and developing several projects, such as capacity building for the Serbian Bankruptcy Agency (see Section 5 in Annex 4).

2.6 Judicial capacity building

While the formal assessment of judicial capacity is a new endeavour, the LTP has already established itself as one of the key players in this field in some of the Bank’s countries of operations. Because of the inherent link between economic growth and judicial capacity, the LTP has renewed its focus on analysing the factors that impact judicial capacity. During this evaluation legal experts noted the originality and utility of the assessment methodology developed by the LTP.

- The LTP’s only assessment of judicial decisions was completed in 2010. The LTP utilised an innovative methodological approach that evaluated judicial decisions across seven dimensions of judicial capacity in seven CIS countries. The objectives were two-fold: to reveal the practices within commercial courts in terms of efficiency and quality of decisions; and to gather data for reform projects. This assessment analysed practices within diverse socio-economic regions at varying stages of economic maturity.

- The assessment brought some unexpected results, demonstrating that in some countries (for example, the Kyrgyz Republic or Russia) speed of justice was less of a problem than was generally perceived. In another dimension – impartiality of court’s decisions – the assessment showed that in only 60 per cent of cases where the state was a litigant, the state won. However this impartiality became more questionable in strategic sectors such as oil and gas, where the state entities won in nearly all cases (this is in line with research conducted by other organisations – see Table B in Annex 5).

- The LTP has recently completed deeper and more extensive judicial capacity assessments for Mongolia and Tajikistan that focused on a more precise identification of gaps in judicial capacity, providing the basis for new training programmes, which are now under way.

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13 These seven dimensions included: predictability of court decisions, quality of decisions, adequate legislative framework, speed of justice, cost of litigation, enforcement of judgement, impartiality.
2.7 Public procurement

Public procurement was the last major core legal area, added to the LTP only in 2009. This area was deemed a priority as the Bank expanded its operations, increasingly financing public infrastructure projects and encountering issues related to lacking or inadequate procurement laws. The LTP’s assessment activities within a public procurement environment have been undertaken in cooperation with UNCITRAL and focus on the effectiveness of law in practice.

- The first formal procurement assessment was conducted in 2010-11 and utilised an innovative methodology that considered the degree to which a law fulfilled its stated purpose or its “legal efficiency”.

- This assessment focused on remedies, rather than compensation. While there are instances where compensation is a recommended approach when remedies are not practical, LTP’s assessment approach seeks to examine ways of facilitating the procurement process, rather than slowing or halting that process.

- The LTP’s public procurement assessments were very comprehensive in both scope and depth. They display methodological and analytical robustness and ultimately provide the basis for future initiatives (see Section 4.7).

2.8 Securities markets

The LTP’s assessments of the securities markets utilise methodologies that weigh the effectiveness of legal frameworks in advancing growth and stability within the capital markets. The assessments benchmark the existing legal structures against international best practices.

- The LTP’s conducted security markets assessments in 2004-5 and 2007, referencing the supervisory principles of the International Organization of Securities Commission (IOSCO).

- These assessments identified gaps that impede capital market growth, providing the analytical foundations for future legal reform initiatives. They also enabled the LTP to initiate constructive policy dialogue in several countries (see Section 4.8).
− As for internal use of LTP’s assessment of securities markets, the EBRD Finance team admitted that they have been of limited use for them. They were of the opinion that the IOSCO principles may have been too sophisticated for many of the EBRD’s countries of operations, where capital development is only in its infancy.

− These assessments have been of more use to external stakeholders. However, there is little evidence of follow-up projects. The LTP observed that in practical terms, bringing a country’s security markets closer to the benchmarks set by IOSCO principles could divert resources that might be better used in tackling more basic issues, such as money markets.

2.9 Overall evaluation: legal assessments

The LTP’s performance in legal assessments across all its core legal areas is rated, overall, as Highly successful. This rating reflects the LTP’s role in developing or promoting innovative and sophisticated assessment methodologies that factored in the socio-economic intricacies of transition countries. This rating also recognises the high practical utility of these assessments for: (i) the Bank, to evaluate the legal risks of its operations, (ii) the Bank’s countries of operations, to identify the strengths and weaknesses of their legal framework and decide on reforms, and (iii) the LTP, to identify priorities for their legal reform projects. Moreover, the LTP’s expertise in assessing the legal frameworks of transition countries makes it especially well suited to apply it at an early stage of the Bank’s operations in the SEMED region (see Annex 7).

The LTP’s legal assessments determined the effectiveness of the existing legal and regulatory frameworks and identified barriers that impede growth and transition in the Bank’s countries of operations – a prerequisite for determining the degree and type of intervention needed within a given jurisdiction. Therefore the relevance of LTP’s work in this area is rated High. The rating applies to both internal relevance (for evaluation of the legal risk the Bank takes in its operations) and external (for the Bank’s countries of operations, helping identify their legal reform needs).

Operational effectiveness within this activity field is rated Excellent, due to the high quality and comprehensiveness of outputs and, in most

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14 Overall performance rating scale: Highly successful, Successful, Partly successful, Unsuccessful.
15 Relevance rating scale: High, Medium, Low.
16 Effectiveness, efficiency and impact and sustainability rating scale: Excellent, Good, Satisfactory, Unsatisfactory.
cases, wide applicability of the LTP’s legal assessments. Their methodology evolved over the years. Lessons from early assessments have been applied in follow-up assessments, which resulted in the use of methodologies that are fine-tuned specifically to transition economies.

**Efficiency** of legal assessments is rated **Good**. The LTP displayed originality and innovation in selecting research methods to assess specific characteristics in countries, which present unique and nuanced challenges. The LTP has allocated substantial resources (estimated at 15 per cent of its internal budget) over the last 10 years to conduct legal assessments. The allocation of the LTP’s staff to legal assessments varied by core area; in new areas (for example, procurement) it accounted for nearly 100 per cent of the dedicated expert’s time, falling to an estimated 10 per cent in more mature areas (for example, secured transactions). The expertise of other organisations (for example, UNCITRAL, IOSCO) has been utilised. Moreover, LTP’s legal assessments contributed to establishing the degree of legal risk to which the Bank’s proposed banking projects would be exposed.

**Transition impact and sustainability** within this activity field is rated **Excellent**. The LTP’s assessments were critical for legal policy development, creating a “road map” of strategic initiatives and future reform agendas. This was particularly strong in the early transition countries (ETCs) where no similar assessments have been conducted (for example, Armenia, the Kyrgyz Republic). However, even in more advanced transition countries (for example, Hungary and Russia), the assessments that targeted narrow, specific legal areas (for example, secured transactions or concession law) played an important role in setting the directions for legal reforms.

### 3. Standard setting

The second level of the LTP’s integrated approach, standard setting, focuses on developing appropriate guidance for legal and institutional reform, as well as criteria for assessment. This is closely in line with the Bank’s core objective under its transition mandate, to assist its countries of operations in establishing practice standards that are in harmony with international norms and practices. In the fast-growing economies within the Bank’s countries of operations, globalisation itself dictates that prudent norms be internationally consistent. It is widely recognised that adhering to international best practice policies backed by a predictable legal framework is conducive to attracting investment and boosting confidence in the legal capabilities of a given state. The most relevant
aspect of the Bank’s contribution within the standard setting is its cooperative work with other leading international institutions, which have a long-standing track record in establishing such standards (see Annex 6).

 Appropriately designed and disseminated standards have the potential to greatly leverage the work of the LTP in legal and institutional reform in the region, far beyond individual projects. However, while the LTP’s activities in legal assessment have taken on a structured form, applied across focus areas, because of their individual nature, standard setting is much more context specific. Therefore the LTP’s performance in this activity field is best evaluated in respect of each core legal area, as shown below.

### 3.1 Concessions/PPP

The LTP has worked extensively with UNCITRAL and UNECE when developing concessions and PPP legal standards. The United Nations views the partnership between government and the private sector as essential to increasing a state’s capacity to deliver services and goods. In conjunction with these entities, the EBRD has sought to identify gaps in the existing guidance literature and then to establish and promote internationally recognised best practices and viable concession principles. In particular:

- the LTP participated in the UNCITRAL Working Group and Expert Panel on Model Legislative Provisions on Privately Financed Infrastructure Projects (2001-02)
- the LTP’s expert takes part in the UNECE PPP Alliance activities (from 2003 ongoing), and is a member of the UNECE PPP team of specialists (from 2007 ongoing)
- the LTP contributed to the preparation of UNECE’s standard training modules for officials working on concessions and PPPs (2009 and 2011)
- internally, the LTP has worked on standard-setting activities in close coordination with the EBRD Banking department; in particular with the Transport and MEI teams.

### 3.2 Corporate governance

Standard setting within corporate governance seeks to establish best practice policies that reflect the increasing need for transparency and
accountability. Establishing (and adhering to) such standards lends credibility to a state and encourages capital inflows that support growing economies. In creating a balanced “playing field”, harmonisation can be advanced, preventing (as was seen during the financial crisis) regulatory arbitrage, where some states promote more lax and under-regulated environments in the hope of attracting additional foreign investments.  

- Working with OECD and IFC, the LTP developed the policy briefs for Eurasian and south-eastern European financial institutions. These briefs contained recommendations on actions to improve corporate governance of banks in these two regions.

- The LTP has worked closely with the Russian Federal Commission on the Securities Market (RFCSM), producing a corporate governance code that standardises practices and operating procedures.

- Working in cooperation with the Institute of Corporate Law and Governance (ICLG), the LTP developed a standard methodology for rating the corporate governance of Russian companies. The rating system provides investors with a guide as to which Russian companies pursue best international practice, while it also gives an incentive to the Russian companies to apply good governance standards in order to increase their attractiveness to potential investors.

- The LTP’s ongoing work in Armenia and Mongolia (see Section 2 in Annex 4) further illustrates its regional commitment to identifying and analysing key challenges impacting the implementation of higher corporate governance standards.

- The LTP is a founder and core member of the Development Financial Institutions Working Group on Corporate Governance, which sets the framework and standards for assessing corporate governance of investee companies by the IFIs.

3.3 Infrastructure regulatory reform and competition

The LTP’s standard setting within the telecommunications and energy sectors is largely affected by directives and benchmarks established by the European Union and other international bodies, thus the LTP was not required to be as active as it would normally be in the absence of such directives. EU countries have an abundance of reference models to

utilise for standard setting and harmonisation, while many non-EU countries have also adopted EU standards, particularly in the telecommunications sector.

− In respect of the energy sector, the LTP has supported international standards, such as the EU Directive on Energy Performance of Buildings.

− The LTP developed core principles for both the telecommunications and energy sectors.

− In the telecommunications sector in the Bank’s non-EU countries of operations, the LTP has assisted in promoting transparent practices, including principles developed by the World Trade Organization (WTO) that have been influential in unifying practices and operational protocols.

− The LTP’s standard-setting initiatives in telecommunications and energy are limited but it has been advocating regulatory uniformity, particularly in the ETC countries such as the Kyrgyz Republic and Mongolia.

3.4 Secured transactions

International guidelines for secured transactions encourage the uniformity and predictability that investors seek. There is evidence, notably from Asia, that capital inflows increase markedly when there are assurances that practices regarding secured transactions within a given state conform to international best practice.

The LTP has contributed significant scholarship within this sector. It has worked extensively in assisting the creation of standards, establishing a vast knowledge base that addresses the nuances and challenges of transition economies. A number of key documents have been developed, including:

− The EBRD Model Law on Secured Transactions
− The Core Principles for Secured Transactions
− The Guiding Principles for the Development of a Charges Registry
− The Core Principles for a Mortgage Law.

These documents contributed to defining best practice protocols.

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3.5 Insolvency

Standard setting regarding an insolvency framework has been critical to establishing the predictability of the legal process and court rulings in the case of a debtor’s bankruptcy, while protecting creditor rights and maximising a debtor’s assets in the insolvency process. Imposing insolvency standards is a difficult process for transition economies, in that many of the laws pertaining to the protection of creditor rights have only recently been enacted (for example, in the area of secured transactions), with legal frameworks still being shaped by changing socio-political and economic factors. Additional factors include the varying practice traditions in each state and the differing legal infrastructures currently in place. It is, however, the adherence to international best practices that ultimately attracts foreign direct investment.

In the transition countries, standards applicable to insolvency law are primarily promulgated through international entities such as the UNCITRAL Legislative Guide on Insolvency Law and the World Bank’s Principles and Guidelines for Effective Insolvency and Creditor Rights Systems. The LTP contributed to the promotion of these standards in the Bank’s countries of operations as follows:

− The LTP has consistently integrated UNCITRAL and the World Bank insolvency standards into the LTP’s advisory work, offering a unified voice from key international institutions.

− The LTP assisted the Commonwealth of Independent States (CIS) Inter-Parliamentary Assembly (IPA) with the development of a draft CIS model bank bankruptcy and liquidation legislation based on best international standards.

− Recently, the Russian government requested the assistance of the LTP to strengthen the insolvency administration profession by preparing standards of practice and conduct on key operational issues.

− An excellent example of standard setting in this area is the LTP’s Principles for Insolvency Office Holders, discussed in more detail in Box 1 below.
While the LTP has worked extensively with international entities and promoted the reference documents listed above, it has also taken a leading role in establishing standards for insolvency practitioners. In 2006-07, the Bank developed the Principles for Insolvency Office Holders, which reflect the increasing importance that administrators have over the insolvency process. The principles were pioneering in that they address the qualifications, conduct and regulation of administrative office holders and liquidators as they work throughout the insolvency proceedings and thus rectified a significant deficiency within the insolvency process. The principles have been well received by the international financial community and have been used as a foundation reference in the countries in which the Bank operates (for example, Russia and Serbia), in addition to being utilised by several IFIs.

3.6 Judicial capacity building

Standard setting in the judicial capacity arena directly impacts a state’s business climate and the potential for growth by providing a legal structure and practitioners that can be expected to perform at a level deemed acceptable by the international community. Attainment of and adherence to a certain standard of professional conduct helps to attract the foreign capital needed for growth and modernisation. It provides a backstop to help ensure the effectiveness of legal regimes that rely on the need for judicial assistance to protect legal rights, for example in the areas of secured transactions and insolvency. The LTP’s standard-setting work within judicial capacity has taken a trajectory similar to that of legal assessment, that is:

– In 2010 the LTP developed the Core Principles for Effective Judicial Capacity. These principles reflect international standards in defining the activities of the judiciary and other actors. They are also intended to guide the LTP’s work within judicial capacity building in other activity fields.

– The LTP’s Core Principles for Commercial Law Judicial Training in Transition Countries are intended to function as a similar guide for LTP policy initiatives. These principles have been developed against the background of the individual legal systems of the region and reflect practical challenges faced by the transition countries.

As the principles were only developed in late 2010, their utility and impact are yet to be seen. However it is clear that the LTP has taken steps towards framing internationally accepted standards for benchmarking the performance of those involved in the judiciary chain by defining its own judicial capacity standard-setting mandates. Having established core principles, the LTP has gained extensive experience in,
and knowledge of, judicial capacity building and is correctly positioning itself to advance international standards within this sector.

### 3.7 Public procurement

Standard setting within the public procurement sector is primarily represented by several international legal instruments. The revised 2010 **UNCITRAL Public Procurement Model Law** and the 2007 **WTO Government Procurement Agreement** are examples of international instruments that have made a significant impact on advancing uniformity and benchmarking. While the LTP refers to these best practice instruments, it has also individually contributed to the international standard-setting efforts in this arena. For instance:

- In 2010 the LTP devised the **EBRD Core Procurement Principles**. In seeking to harmonise recent scholarship, the core principles reflect the Bank’s dual position as a financier and often a technical adviser. They promote efficient and transparent legal frameworks that meet international expectations, in addition to focusing on corruption prevention and institutional and enforcement capabilities.

- The LTP cooperated closely with UNCITRAL to shape procurement policy in selected transition countries.

Given the early stage of the LTP’s activities in this area, a meaningful assessment is difficult. Based on the achievements so far, it can be expected that the LTP’s activities in this area will continue, with a specific focus on monitoring and audit, planning and eProcurement.

### 3.8 Securities markets

The LTP’s work on standard setting in securities markets concentrated on the preparation of several model laws in collaboration with the CIS Inter-Parliamentary Assembly. The key result from this work was:

- the adoption by the CIS IPA of an EBRD-sponsored model law in the area of investor protection and securities markets

- the LTP’s work on securities markets standards in other countries has drawn almost exclusively from the work of IOSCO

- the LTP does not currently engage in standard-setting work in this area as it is now covered by other organisations.
It is worth highlighting that important standard-setting work in this area was completed by the LTP prior to the evaluation period. For instance, the Model Securities Law (MSL), completed in 2001, was adopted in Armenia and Ukraine. A similar project concerned the Investor Protection Model Law and was adopted by several countries.

3.9 Overall evaluation: standard setting

The LTP’s overall performance in standard setting across its core legal areas is rated Successful. Setting legal and regulatory standards has been one of the strategic objectives for international organisations as it contributes to global stability and uniformity by providing for the creation and adoption of globally recognised best practices. Standard setting directly addresses the goal of removing uncertainty in the marketplace by eliminating the arbitrary application of weak or inefficient laws; all factors that hinder both domestic and international capital flows. For this reason, the relevance of LTP’s work in this area as rated High.

The ongoing objective of standard setting is not simply the establishment of international “soft law”, but the adoption of those standards into codified domestic “hard law” whenever feasible or appropriate. Additionally, standard setting has been an effective way for the Bank to establish itself as a leading proponent for effective legal change, providing strong support for prevailing guidelines from other international organisations such as the World Bank or IOSCO. Reflecting this view, effectiveness in this area is rated Good.

In terms of operational efficiency, the LTP has cooperated closely on standard setting with other international organisations such as the World Bank and IOSCO, while concentrating its own standard-setting efforts on highly specialised fields and the most capable partners such as CIS IPA. Such coordinated efforts and the support among international entities (regardless of where a document may originate from) speaks to the larger goal of creating a more unified legal structure. The LTP’s efficiency in this area is rated Good.

Transition impact and sustainability within this area is rated Excellent as, by adopting and utilising a number of legal standards developed or promoted by the LTP, the Bank’s countries of operations have advanced their integration into the global economy.
4. Legal and institutional reform

Legal and institutional reform typifies the general mandate of the EBRD in its countries of operations. It is a core activity and a foundational part of what the LTP does - an essential aspect of transition from a centrally planned to a free market economy. Legal reform projects are undertaken based largely on the political will and commitment of the respective country’s government and stakeholders to conduct reforms in pursuit of advancing their domestic economies. In many ways, the effectiveness of the LTP’s ability to initiate successful legal and institutional reform is dependent on the successful implementation of projects in other activity fields (mainly legal assessment and standard setting). This synergistic approach can be further enhanced by intensifying the LTP’s outreach activities.

Legal and institutional reform transcends the promulgation of “black-letter law”, and by necessity, calls upon a development process involving societal commitment and an ownership of a rule of law doctrine to then advance to actual application, rather than merely a façade to satisfy the international community. For transition economies, both the adoption of legislation supporting legal and institutional reform and their implementation are critically important.

Thus, the Bank, primarily through the LTP, expends considerable resources in advising within this area, as it is a key element in building a sound investment climate. The performance of the LTP in supporting legal and institutional reform across each focus area is considered below, while its sample countries specific performance in each core legal area is presented in Annex 4).

4.1 Concessions/PPPs

The promotion of private sector participation in the delivery of public services is at the heart of the Bank’s transition mandate in the infrastructure sector (please see a detailed assessment of the relevance of all core legal areas in Annex 3). Therefore the LTP’s work on concessions/PPP legal reform is very closely correlated with that of the Bank itself and usually follows the Bank’s “leads” for potential projects. This is because the interest of key decision makers (often at the local

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19 See Figure 1 in Section 1.
level) and the political will to explore concessions or PPPs is a prerequisite for the LTP to start working in this area.

Moreover, the prospect of a concrete project materialising due to the enactment or the adoption of a new concessions/PPP law fuels interest and provides an incentive for local politicians to cooperate with the LTP. The LTP’s assistance in this area has included:

- providing draft laws
- advising on supporting regulations
- assisting in formulating policy
- providing institutional advice
- drafting concession template documents
- designing training modules
- producing heads of terms for concession and non-concession PPP agreements.

The LTP concessions/PPP specialist has been based in Moscow since 2009 and therefore the LTP’s recent impact in this area has been mainly in Russia. It included amendments to the Russian Concession Law, formulation of local concessions/PPP laws and input to the PPP strategy for toll road development. The LTP has also worked extensively on re-drafting the Hungarian concession law in support of the bank’s toll road projects. However the new law has not been enacted (see section 1 in Annex 4).

4.1.1 Concessions/PPPs: overall evaluation

- The LTP has fully recognised the importance of the concessions/PPP legislation for both the countries of operations and the Bank itself, and moved decisively, particularly in Russia, filling the legal expertise gap in this relatively new area. The LTP’s efforts in supporting legal reforms in respect of concessions/PPP legislation are rated overall as Successful. This rating takes into account the important role played by the LTP, mainly in Russia, promoting amendments to the concession law and leading the development of the regional PPP law for Perm, which now serves as a model for other Russian regions.

- The effectiveness of the LTP’s interventions in this area is rated as Satisfactory. Although laws have been drafted and had an important demonstration effect, they are yet to be enacted (for
example, Perm, Hungary) and tested in practice. This is largely beyond the LTP’s control, nevertheless it defines the practical effects of the LTP’s work. Moreover, the Bank’s relatively modest success with promoting PPPs to date (see Annex 10) might also indicate a limited effectiveness of the LTP’s efforts in this area.

– The LTP’s efficiency is rated **Good**. This rating combines the LTP’s excellent efficiency in Russia and satisfactory-to-good efficiency elsewhere. As LTP has one concessions/PPP expert on its staff, it decided to concentrate primarily on one country (Russia), rather than spread such a valuable resource thinly among many countries. This strategy enabled LTP to work very efficiently with the Russian counterparts; however it left limited capacity to intervene elsewhere, particularly outside the CIS.20 However, this decision is seen as the right choice as Russia offered (and still does) a good combination of the need for legal assistance in this area and the prospects of potential PPP projects, which might be pursued by the Bank (close cooperation of the LTP’s concessions/PPP expert with the Bank’s MEI and the Transport teams has been noted).

– Nevertheless, the EBRD’s recent Transport Strategy (still in draft form) states that “Improvements need to be made to the legal framework and tender process in many countries if they are to apply the PPP concept successfully”,21 indicating that other countries could also benefit from the LTP’s assistance in respect of developing/reforming their concessions/PPP laws. This view is reinforced by the LTP’s own assessment of concessions/PPP laws in the Bank’s countries of operations, which demonstrated that even the “advanced transition” countries such as Croatia, Hungary and Poland suffer from defective laws, regulations and practices in respect of concessions/PPPs.22 Therefore, as the promotion of PPPs across its region of operations is of strategic importance for the EBRD, the LTP should consider strengthening its resources in this area (see Recommendations below).

– The impact and sustainability of the LTP’s interventions in the concessions/PPP area is rated **Good**, primarily on account of the demonstration effect of the regional law drafted for Perm on other Russian regions. Also the LTP’s efforts in respect of the toll road PPP regulations in Hungary had a regional impact, providing

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20 In addition to Hungary and Russia, dedicated LTP legal reform projects in concessions/PPP were recently conducted in Kazakhstan, Romania and Ukraine. Earlier, also the Baltic states, Serbia and Slovenia benefited from the LTP’s advice in respect of their concession/PPP laws.


a blueprint for legal solutions in other countries in Central Europe (for example, Poland, the Slovak Republic). Lastly, due to the ability of its expert to develop close working relations with the State Duma Committee on PPP, the LTP raised awareness among influential decision makers in Russia of the benefits PPPs can bring. This should yield tangible benefits in the longer term. Going forward, to increase the impact and sustainability of its interventions, the LTP should move beyond enacted legislation as a benchmark of success to a focus on implementation as the key to ensuring practical and long-term impact.

4.1.2 Concessions/PPPs: findings

− Work on concessions/PPP legal reform requires a focused, hands-on approach. The best results are achieved when the legal expert is based in the target region/country and can work on a daily basis with the decision makers.

− Bi-partisan “buy in” at the political level at the beginning of the reform process is critical in mitigating political risks (Hungary).

− Concessions/PPP law reform at the federal level in large countries with diverse regions (for example, Russia) is particularly complex. To achieve a sustainable demonstration effect, the focus should be on regional solutions through regional projects.

− Due to current resource limitation, LTP involvement in concessions/PPP law reform in smaller countries (for example, Armenia) is best structured alongside the Bank’s efforts to develop concrete projects.

− There are often no legal solutions to “PPP bottlenecks” as many of the Bank’s countries of operations have adequate concessions/PPP laws. However their governments’ capacity to implement PPP projects remains limited. Addressing this issue is more in the realm of the EBRD’s Banking teams (MEI and Transport) in respect to prospective projects (through, for instance, The Vienna Institute), rather than LTP.

4.1.3 Concessions/PPPs: recommendations

− Work on concessions/PPP is particularly resource intensive and best done from a regional base. The LTP should consider adding a PPP legal specialist who could focus on at least one more
region, which is of strategic importance for the development of PPP projects by the Bank (for example, Central Asia, Western Balkans).

- **Russia:** prioritise involvement with specific projects at the regional level based on the counterpart’s commitment, and leverage the Perm PPP project to provide a “best practice” model for similar projects. Consider providing more substantial EBRD/LTP TC assistance for the preparation of the most promising PPP projects. Include building public awareness and education in such assistance. At the federal level, future involvement should focus on input to the Experts’ Council and educational efforts.

- **Armenia:** utilise the Russian experience with regional projects to focus on project-driven legal input. For example, in the proposed Yerevan water and/or Metro project, seek an early stage involvement with the local champion and stakeholder to assume a leadership role in the relevant Working Group or Steering Committee, with a view to obtaining bi-partisan support and buy in from the local population.

### 4.2 Corporate governance

Three projects and one theme stand out as the key achievements of the LTP in the corporate governance core legal area in the sample countries:

- **The Russia Corporate Governance Project,** implemented from 2002 onwards, where the LTP assisted the RFCSM in preparing a voluntary corporate governance code for listed companies. Compliance with the code is now achieved via a “comply or explain” rule. This code has played a significant role in shaping the corporate governance landscape in Russia.

- **A similar project in Armenia** (jointly undertaken with the International Financial Corporation (IFC)).

- **A project on company law reform in Serbia.**

The key internal benefit of the LTP’s work in this area is the application of corporate governance principles when the EBRD reviews potential investments. Under this process, corporate governance counsel from the LTP reviews the structure and practices of the Bank’s potential investee companies to ensure that they are consistent with basic requirements and to assess how they can be improved via contractual covenants. This contributes to the achievement of both internal and external efficiencies.
The EBRD’s Banking department values the LTP’s work on corporate governance highly, particularly in respect of banks.23 Because the EBRD takes a minority stake in investee companies, their corporate governance, especially in respect of minority shareholders, is of critical importance to the Bank.24 The LTP developed corporate governance checklists, which the Bank have found very useful. However some bankers noted that the “reality on the ground” was sometimes different and it was not always possible to apply one template to all investee companies. More interaction between bankers working with the investee companies and the LTP could provide better feedback on practical issues (including loopholes) and to better ground the LTP in local practices. This in turn should enable the LTP to prepare country/sector-specific checklists (see Section 2 of Annex 4).

4.2.1 Corporate governance: overall evaluation

The LTP’s performance in promoting good corporate governance is rated overall as Successful. The main achievement supporting this rating has been the development of the corporate governance code in Russia, which has had important and lasting implications on business practices. Moreover, the LTP also contributed to elevating corporate governance standards in other countries (for example, Armenia and Mongolia). The effectiveness of LTP’s interventions in this area is rated Excellent. All completed corporate governance projects achieved their objectives, as the governance codes were enacted and are widely used in practice. Moreover, the LTP’s work on corporate governance also directly benefited the Bank as it remains one of the top investors in the region. The efficiency of LTP’s intervention is rated Satisfactory. During the evaluation period the LTP (with only a single corporate governance expert at its disposal) concentrated on developing legal reform projects in only four countries.25 Nevertheless, these were priority countries for the Bank in terms of corporate governance and the most willing to cooperate with the Bank on these issues. High resource concentration paid dividends as all projects attained a high success rate. Nevertheless, as the improvement of corporate governance remains a cornerstone of the transition impact in many of the Bank’s operations, the LTP’s resource review (see Recommendations) should analyse the needs in this core area particularly closely, with a view to intensifying and

23 See, for example, Corporate Governance of Banks in Eurasia – a Policy Brief (EBRD, 2008).
24 Equity investments account for 15 per cent of the EBRD’s business volume (2011) or €1.3 billion.
25 In addition to the three sample countries mentioned above, the LTP also implemented a dedicated corporate governance project in the Kyrgyz Republic.
expanding the coverage of the LTP’s corporate governance-related activities.

Transition impact and sustainability within this area are rated Excellent. Promotion of high standards of corporate governance is one of the six key elements of the Bank’s transition agenda.26 Transcending any one sector, establishing sound corporate governance practices is an essential element for transition economies. Such objectives exemplify transparency and predictability of practice, which, in turn, attracts both external capital and private sector investors, bolstered by confidence in a system that follows the rule of law.27

The LTP’s projects in this area had a strong, tangible impact on corporate governance practices in Armenia, Russia and Serbia. Corporate governance codes prepared with the LTP’s assistance are still used and are expected to be so for the foreseeable future. There is no evidence of the LTP’s corporate governance projects having a wider (regional) demonstration effect. As the LTP’s own assessment demonstrates, nearly all transition countries suffer from highly deficient corporate governance legislation.28 Therefore, the LTP should step up its efforts to build on its successes in Russia to develop similar projects in other CIS countries, as well as capitalising on important achievements in Armenia to improve corporate governance in other Caucasus countries.

4.2.2 Corporate governance: findings here

– One of the reasons that corporate governance projects have a high success rate is that they do not require legislation per se, therefore avoiding the typical difficulty of drafting and passing reform legislation.

– Key stakeholders (stock exchanges and governments) can be expected to support corporate governance projects as international standard-setting bodies and competitive pressures drive the case for reform.

– Thus, corporate governance proved to be a very good target for the LTP with a high success rate and strong transition impact. This suggests that the LLT should increase its efforts to identify more corporate governance projects in other countries (and

26 The remaining five being: enhanced competition, market expansion, framework for markets, skills transfer and demonstration effect.
these, as indicated by the LTP’s legal assessment of this area, are plentiful).

− Corporate governance projects are also highly beneficial for the Bank, as it remains one of the top investors in the region. In this respect, the LTP’s “virtuous circle” provides a useful paradigm to be considered by the LTP when selecting target areas.

### 4.2.3 Corporate governance: recommendations

− Through its work in Russia, Armenia and Mongolia, the LTP has built a good reputation in respect of corporate governance projects and it should seize the opportunity to build on this success and expand to other countries.

− At the same time, the LTP should consider expanding beyond the corporate governance of listed companies to address overall company law and corporate governance issues, especially for small and medium-sized enterprises. The transition impact in this respect is likely to be much greater, and more directly related to Bank investments. In this context, working closely with the Bank’s equity teams is recommended.

− There is now a set of well-known international benchmarks suggesting that further work on Code drafting may be a task better left to other agencies.

− There is still strong demand for corporate governance education in respect of banks and enterprises, particularly state-owned. The LTP should consider developing such targeted training, keeping in mind close coordination with other international organisations which are also targeting this area in selected countries.

− The development of corporate governance-assessment tools for EBRD investments is a particularly significant development for EBRD operations. There is much scope for further promulgation (and perhaps even commercialisation) of this tool.

### 4.3 Infrastructure regulatory reform and competition

Infrastructure regulatory development is an important driver of economic growth. Establishing an adequate regulatory framework is a challenge for transition countries as they try to ensure fair competition and transparency to attract investors. At the same time, a significant part of
this challenge is a fundamental internal debate, still unresolved in some countries, as to what the priorities in this sector should be and where the balance between the national interest and the need for investments may best be struck. The LTP has been active in facilitating legal and regulatory reforms primarily in the telecommunications sector, starting from the early days of LTP’s existence. It stands out among the LTP’s activities as the core legal area with the largest number of country-beneficiaries.29 In its work in this sector, the LTP has sought primarily to create a legal structure that removes barriers to access and provides for the elimination of anti-competitive behaviour so that healthy, efficient competition can thrive. In effect, the Bank’s efforts in relation to supporting transition in the telecommunications sector have been actually led, by and large, by the LTP. From 2007 onwards, the LTP decided to expand its activities in this area into infrastructure sectors beyond telecommunications and currently the Infrastructure Regulation and Competition core area consists of: telecommunications, energy (electricity and gas), energy efficiency, natural resources and general competition.

The LTP has focused on the broader interdependency of infrastructures, finding that there are rarely stand-alone, isolated problems, but rather challenges to the larger, systemic regulatory environment. This has resulted in an increased dialogue between the LTP and country authorities, in that the LTP is now involved in problem-solving throughout the entire policy process. This has been particularly beneficial in regards to the shifting regional focus towards the ETCs and the Western Balkans.

The LTP achieved impressive results in this area in all sample countries (except Hungary, where major work has been done before the evaluation period). Application of an integrated approach meant that following the development of regulatory regimes, the LTP assisted in the training of the regulators and the establishment of the regulatory agencies. Although there was no energy regulation LTP project in the sample countries during the evaluation period, the LTP has already engaged in this important new sub-sector in some other countries, for example, in Kazakhstan where the Network Infrastructure project (2006) was requested by the Banking team and was closely linked to an investment project. (see section 3 of Annex 4).

29 The LTP provided telecommunications regulatory reform support to 19 of the Bank’s countries of operations.
4.3.1 **Infrastructure regulatory reform and competition: overall evaluation**

The LTP’s intervention in respect of telecommunications regulation is rated overall as *Highly Successful* for its efficiency and effectiveness, while the team’s activities concerning other infrastructure regulations are rated as *Partially Successful* due to their limited extent and impact so far.

The telecommunications and energy sectors are often seen as “engines of economic growth and modernisation”. In weighing the question of the LTP’s success within the telecommunications sector, a member of the Bank’s management team asserted that the sheer scale of the LTP’s engagement in this area could testify to its success, while the impact of the telecommunications regulatory training arranged by the LTP could be seen when dealing with telecommunications sector officials before and after such training.

In terms of energy regulation, the EBRD practitioners expressed the opinion that the LTP needs to integrate more into the Bank’s culture and engage in substantive activity, rather than pursuing matters that “academically suit them.” It was noted that there is a need for the LTP to engage with sector bankers as currently the LTP pursues its objectives without seeking adequate input from those deeply involved in energy-related infrastructure issues. It was noted that although energy is a top priority for the Bank, it did not seem to have the same level of importance within the LTP. There was a consensus among EBRD departments that the addition of a dedicated energy regulatory/legal specialist to the LTP, would improve responsiveness to the needs of the Bank’s Power and Energy team, as well as to the priorities of the countries of operations.

The LTP’s *effectiveness* in this area is rated *Good* (with effectiveness in the telecommunications regulatory reform tilting towards *Excellent*). The LTP usually applied an integrated approach to its interventions in the telecommunications area, engaging in policy advice, drafting of legislation and regulatory procedures, as well as the training of practitioners. Moreover, the LTP also supported the approval of the legislation, effectively explaining the implications of the proposed new regime to the legislators, which proved to be particularly important for it to be enacted into law. Even where the LTP’s interventions were not entirely effective (Mongolia), the training provided to regulators was highly beneficial.

The LTP’s telecommunications projects were well coordinated with the Bank’s investment activities, facilitating the financing of four telecommunications operations in Armenia, 11 in Russia, five in Serbia...
and one in Mongolia, during the last five years. This was important given the global crisis and the constraints on commercial bank lending.

The efficiency of the LTP’s work on telecommunications regulatory reform is rated Excellent, while that on energy regulatory reform is Unsatisfactory (with the potential to become Satisfactory/Good if sufficient resources are allocated to this area). Out of all LTP core legal areas, the largest proliferation projects were in the field of telecommunications regulation. These projects benefited 19 countries and in cases where there has been only one LTP project in a country, usually it has been a telecommunications regulatory reform project, sometimes in several phases (for example, Bosnia and Herzegovina, Estonia, Kosovo, Montenegro and Turkmenistan).

The transition impact and sustainability within this area are rated Excellent. Many countries in the bank’s region made substantial progress in strengthening their regulatory regimes (with Ukraine being a notable exception, see table E in Annex 5). Ensuring fair competition is essential for the transition process to succeed and the LTP has provided valuable inputs for creating legal systems that are more sophisticated and better suited to defining and protecting investor interests. Most of the legislation on which the LTP assisted with in the sample countries was enacted and is widely utilised, serving as an important demonstration to other countries in the region which have not yet opened their telecommunications markets to competition. The demonstration effect was particularly strong in respect of the LTP’s (still few) energy sector regulation projects. Innovative projects like Ulaanbaatar Clean Air deserve particular mention in this respect. Also in Mongolia, the LTP’s cooperation with EITI is hoped to have a strong impact on the mining industry, promoting transparency of financial flows.

The fluid state of both telecommunications and energy technology, coupled with the consideration of such issues as environmental and social impact, are highly complex and difficult topics for transition countries when economic and technical resources are at a premium. Therefore the LTP’s assistance in these areas has had a particularly strong impact. Lastly, it needs to be highlighted that the technological advances in both telecommunications and energy have also had a strong developmental impact on the countries’ population.

Telecommunications is particularly important in connecting populations in geographically remote areas of countries such as Mongolia, Russia or Kazakhstan, with the rest of the world.
4.3.2 Infrastructure regulatory reform and competition: findings

- Telecommunications regulation is often highly political, with deeply entrenched pockets of power that resist change, particularly the introduction of competition and transparent laws and regulations.

- Energy security is a top priority for the most transition countries and will remain so for the foreseeable future.

- One important reason for the LTP’s success in the telecommunications regulation area has been its ability to convince the Bank’s Telecommunications team of the high value of its services and to align its interventions very closely with the Bank’s telecommunications projects. The LTP has not yet developed such a relationship with the Bank’s Power and Energy team.

- State-owned monopolies are often the greatest hindrance to reform and change in energy and telecommunications sectors.

4.3.3 Infrastructure regulatory reform and competition: recommendations

- Dedicate more resources to energy/energy efficiency regulatory reform. For example; adding technical in-house expertise.

- Improve the efficiency of internal communications with the Bank’s energy specialists through structured, periodic meetings to discuss current issues and the Bank’s priorities in the sector.

- Focus on projects supporting regulations for easing market entry to facilitate growth in the sectors.

Infrastructure development is a priority for SEMED countries. The LTP must ensure that it has the ability to quickly assess this new region’s needs in this area and provide assistance (see Annex 7 for more details on SEMED).

4.4 Secured transactions

Together with telecommunications regulatory reform, the LTP has been most active in secured transactions law reform which is also where the

30 The Bank has been pursuing selected projects with state-owned enterprises in the energy sector in some countries (for example, Ukraine). Such projects have always reform-related conditionality, however it is not always effective (see Power and Energy Sector Review, 2011, PE11-526S).
impact of its interventions has been the strongest. The LTP is recognised as the leading authority on secured transactions legal issues in the Bank’s countries of operations. Also, within the EBRD, many of the bankers interviewed during this Review indicated that their first, often only, interaction with the LTP was in the area of secured transactions. This is because many of the Bank’s operations are product-driven, so the LTP’s work on legislation enabling new financing products (for example, mortgages, securitisation) has a direct impact on the Bank’s operations.

The difference in the degree of secured transactions law development among the Bank’s countries of operations is even bigger than in other core legal areas. The advanced countries are now moving from secured transactions laws to specialised markets such as securitisation. In contrast, many ETCs are still struggling to develop a basic framework to enable secured transactions (Russia seems to be a special case, “putting the cart before the horse”, as it embarked on the development of specialised markets legislation with unfinished framework law reform).

The LTP has been instrumental in developing or amending secured transactions law in all sample countries. In most cases, training of registrars followed legislation reform projects. In some countries (for example, Hungary) the LTP has been active for more than 15 years. Its critical contribution in the early days of transition is still well remembered and appreciated. Moreover, the LTP worked on innovative securitisation solutions in Russia and other countries, which are expected to enable warehouse receipt financing (see Box 1 in Annex 4). The case of Georgia illustrates the LTP’s less successful intervention in the area of secured transactions legal reform, which is also targeted by other international organisations.

4.4.1 Secured transactions: overall evaluation

The LTP’s overall activities in secured transactions are rated Highly Successful. Despite minor setbacks with some projects the depth and scope of the interventions undertaken in this area underscore the excellent transition impact achieved in a large number of countries, as well as the LTP’s contribution to the Bank’s operations, which were facilitated or even made possible, thanks to the LTP’s secured transactions projects.

The effectiveness of the LTP’s assistance in this core area is rated Good and can be evidenced by the large number of transactions completed by the Bank for which security packages incorporated pledges on receivables, pledges on movables, mortgages, and so on. The secured
The transaction core legal area is one of the most challenging among those pursued by the LTP, as to work effectively it requires an approved law, well-coordinated with other laws and secondary legislation, as well as a number of auxiliary institutions, for example, charge registers. The LTP was able in most cases to deliver advice on the full set of these elements, sequencing them carefully and ensuring that functional systems were put in place. However the real test of the effectiveness of a new law comes only in cases of borrower default or, even more, fully fledged bankruptcies. The Bank’s Corporate Recovery team (which deals with financially distressed clients) confirmed that the LTP’s work helped them recover lender losses and retain a very low impaired asset ratio (2.6 per cent in 2011).

Some imperfections were identified in the integration of secured transaction systems developed with the LTP’s assistance (for example, in Hungary and Russia). However it would be difficult to make the LTP responsible for these as legal reforms on secured transitions remain susceptible to political interference. Also, the effectiveness of new legislation in providing SMEs with increased financing has not yet been fully demonstrated.

The efficiency of LTP’s work in secured transactions is rated **Excellent**. Over the last decade, the LTP, working primarily with one experienced specialist, has been engaged in secured transactions projects in 14 countries, ranging from advanced (for example, Poland, Slovak Republic) to ETCs (for example, Azerbaijan, Mongolia, Georgia). The LTP is currently exploring a pledge law reform project in Turkey and a project in Turkmenistan on the credit information reporting system and secured lending. The LTP helped develop comprehensive regimes for a wide variety of secured transaction types (for example, pledges on moveable and immovable assets, mortgages, leasing and post-harvest financing).

The transition impact and sustainability of the LTP in this area is rated **Excellent** and can be exemplified by generally well-functioning regimes, which have been in continued operation and widely utilised, including by the EBRD. The elements of secured transaction projects, such as institution building and education via the training of key personnel in the secured transactions process, had a particularly strong transition impact (for example, in Serbia). Groundbreaking projects (for instance, the introduction of mortgage law in Moldova) or those promoting innovative solutions (such as the warehouse receipt project in Russia) provided an important demonstration effect.
4.4.2 Secured transactions: findings

− Secured transactions and bankruptcy are strongly intertwined; the true test of the effectiveness of a security is whether it will be effective if the debtor becomes insolvent. A number of the LTP’s projects were put to such tests through the work of the Bank’s Corporate Recovery team. This generally confirmed the effectiveness of the systems supported by the LTP’s projects.

− Secured transactions is an area of law reform in which the LTP’s expertise is internationally recognised and the involvement of the LTP in such a law reform project can bring visibility to the EBRD, as demonstrated for example, in Hungary.

− The introduction of a new secured transactions law does not have an automatic impact on SMEs.

− Legislation without adequate enforcement limits the viability of secured transaction systems.

− The LTP might consider projects that assist country registrars with data collection regarding debt collection and enforcement, which would support the monitoring of debtors’ overall debt burdens.

4.4.3 Secured transactions: recommendations

− Secured transaction legal reform projects overlap in some instances with judicial capacity building and insolvency and therefore should be better coordinated and sequenced\(^\text{31}\) to achieve an even stronger impact. For instance, the LTP might consider complementing secured transactions projects with components addressing judicial capacity building with a focus on insolvency matters.

− After a secured transaction law reform project is completed, the LTP should always follow up on it with implementation support and institution building projects to ensure that the law achieves its intended goals.

− The LTP should consider allocating more resources for the development of innovative collateral-based lending models (such

\(^{31}\) It might be interesting for the LTP to look at the lessons from the many Asian jurisdictions that reformed their insolvency laws in the aftermath of the 1997 Asian financial crisis without giving appropriate consideration to the need for secured transactions reform. Ideally, secured transaction law reform should precede or run concurrently with insolvency law reform.
as pre-harvest financing: see Box 1 in Annex 4) that can increase lending to individuals from rural, economically disadvantaged regions who currently have difficulty accessing capital.

4.5 Insolvency

Insolvency laws are critical to a well-functioning banking system, yet they remain underdeveloped in many of the EBRD’s countries of operations. Moreover, banks are often reluctant to commence insolvency cases, knowing that the process will be costly and regulators may pressure them if they admit to bad debts. This failure to act creates a blockage in the system. Moreover, in many countries the insolvency process is very expensive and the banks cannot write off the debts until all enforcement actions are exhausted.

So far, the LTP’s involvement in insolvency legal reform has been relatively limited. However the recent global financial crisis prompted the LTP to renew its examination of insolvency issues. It found that the region is still plagued by inadequate legislation. While the global recovery slowly continues, it is greatly dependent on creating a legal framework that emphasises the responsibilities and rights of debtors and creditors and assists in the restructuring of viable business concerns and the distribution of assets when enterprises fail.

While the creation of a balanced and fair legal structure is imperative, there is also a continuing need for improvement in administrator capacity. Increasing the qualifications and professionalism of insolvency administrators is a crucial step to ensuring an effective and ethical insolvency regime. The LTP’s two-pronged focus – legal structural analysis and professional administrator focus, addresses burdensome, ambiguous insolvency laws and trains administrative officials who are not yet well-adapted to best practice norms. This approach has been implemented with mixed results in Russia and Serbia, as well as on a regional level (see section 5 of Annex 4).

4.5.1 Insolvency: overall evaluation

The LTP’s overall performance in insolvency law reform is rated as Partly Successful, mainly on account of the limited effectiveness and efficiency of its interventions. For many years, the main issue has been the LTP’s inability to attract and retain an experienced insolvency specialist. Therefore the LTP does not have as much expertise in insolvency law reform as it does in other areas and its interventions lack continuity.
The **effectiveness** of the LTP’s work in insolvency has been mixed and is rated **Satisfactory**. There were several notable successes before the evaluation period (for example, in Hungary and Russia), however due to the loss of internal expertise, the LTP missed the opportunity to build on these early successes and expand in this area. Nevertheless, in recent years several well-prepared and targeted projects in insolvency have been initiated (in Serbia and Russia, for example) and are expected to bring practical and tangible results in terms of better training of insolvency administrators.

The **efficiency** of LTP’s work in insolvency is rated **Satisfactory**. In addition to the three sample countries, the LTP also initiated insolvency projects in Georgia, Romania and Uzbekistan. Compared with other core legal areas, this was a rather unimpressive record. However the evaluation took into account the prolonged periods without an insolvency expert during the last decade.

The **transition impact and sustainability** of LTP’s interventions in this area is rated **Good**. In elevating the performance of key entities (such as Insolvency Office Holders), the LTP has contributed to improving the efficiency and the reliability of insolvency practice, strengthening important market institutions. The Serbian legislative implementation assistance project is a good example, as it has been followed up by a second phase, focused on insolvency regulatory capacity building, which should reinforce the impact of the first phase. Nevertheless, the task ahead of the LTP in this area remains challenging. Most of the Bank’s countries of operations have been ranked at the bottom of the list in “resolving insolvency” category of a recent “Doing Business” review by the World Bank (Serbia was ranked 113 – the worst in Europe, save for Ukraine, see table C in Annex 5).  

### 4.5.2 Insolvency: findings

- The global financial crises highlighted the need for more efficient insolvency legal structures within the Bank’s countries of operations (for example, Serbia, Hungary).

- Legislation without adequate enforcement (for example, in the area of secured transactions) limits the viability of any (even good) insolvency law and procedures (for example, in Serbia and Russia).

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32 Comparisons with the oldest available “Doing Business” index (2004) demonstrate that little progress has been achieved. For instance, in Serbia no improvement was registered in respect of two out of three indicators (only the share of recovered debt slightly increased from 20 per cent in 2004 to 24 per cent in 2011).
− Initiatives that go beyond legislative enactments and legal frameworks, such as assisting insolvency regulators with data collection regarding insolvency cases, help identify gaps in the system’s effectiveness.

− Projects that focus on the interconnection of secured transactions and bankruptcy laws offer good opportunity for the Bank to have wider impact.

4.5.3 Insolvency: recommendations

− Bolster in-house insolvency expertise and improve the retention of quality legal counsel in this field. The LTP needs a senior lawyer with sufficient experience and expertise to manage large-scale insolvency law reform projects.33

− Consider increasing the number of insolvency training and capacity building programmes for judges and insolvency administrators.

− Investigate the cross-border aspects of insolvency law frameworks in selected of the Bank’s countries of operations.

4.6 Judicial capacity building

The attractiveness of a country for foreign investors is often determined by its ability to assure that an investor’s legal rights will be enforced and protected by an effective and efficient judiciary system. While there have been significant advances in the Bank’s countries of operations in the development of black-letter law, (law on the books), implementation and practical application has often been weak and unpredictable due to limitations in judicial skills throughout the legal process.

Furthermore, impediments such as lack of resources, corruption and the lack of an independent judiciary are additional factors that are often inherent in transition economies and counterbalance economic development.

The LTP has not been active in judicial capacity building in the sample countries (with the exception of Mongolia, where a project has been recently initiated), therefore the evaluation reviewed the LTP’s performance in this area in other, mainly CIS countries. The LTP made substantial efforts to train judges in the Kyrgyz Republic, implementing together with the International Development Law Organization (IDLO),

33 The LTT reported that a new insolvency specialist joined the LTP in April 2012.
five phases of a judicial capacity building project, which benefited over 300 judges. The focus of this training was on dealing with commercial legal cases and included structured courses, creation of a judicial training centre in Bishkek, as well as apprenticeship at Russian and Kazakh courts. However the impact of the first four phases of the course was uncertain as the judges have not been subject to any verification of their knowledge acquired at the end of these courses, while the judicial training centre had problems running courses on its own when one of the phases of the programme terminated. Following phase five of this training project, the LTP implemented the judicial decisions evaluation project, focused on expert qualitative analysis of randomly selected judicial decisions made by judges who participated in the LTP’s courses, with the view of testing the impact of the training project (see section 6 of Annex 4).

4.6.1 Judicial capacity building: overall evaluation

The LTP’s activities in judicial capacity building are rated overall as Partly Successful, mainly on account of their uncertain effectiveness and limited efficiency, which was mainly due to a late arrival of an expert dedicated to this area.

The effectiveness of the LTP’s activities in judicial capacity building is rated Satisfactory. A substantial number of judges in the Kyrgyz Republic and some other ETCs have benefited or are now benefiting from the LTP’s training programmes. However, a lack of competence exams at the end of the courses makes it impossible to systematically verify their effectiveness. A randomised judicial decisions assessment was only introduced after phase five, following the recruitment of a dedicated judicial capacity building expert. An expended, “real-life” judicial training impact assessment is to be tested during the LTP’s Tajik project, which is to be implemented in 2012-14. Moreover, the effectiveness of the institution building components of the LTP’s projects is also uncertain. The Kyrgyz experience demonstrates that even willing counterparts might be unable to create institutions which will outlive a project. On the positive side, over the years the LTP has received several unsolicited comments from various businesses (for example, the Bank of Moscow) praising the LTP’s efforts to improve the quality of judiciary decision-making in the CIS countries and stressing the practical importance of this work for them.

34 This assessment project (blessed with a budget of GBP 350,000) will be implemented by consultants managed by the OCE (with input from EvD) during a three-year period. It is expected to provide a better understanding of the effectiveness and the impact of the LTP’s judicial training.
The LTP’s efficiency in this area is also rated Satisfactory. The LTP hired its judicial capacity building expert only in 2009 and by the end of the evaluation period he developed phase five of the Kyrgyz project and initiated new projects in Mongolia and Tajikistan. Therefore it is evident that due to the delay with recruiting a dedicated expert, project development in this area has been less dynamic than that for other LTP core legal areas. However, the difficulties in ensuring cooperation in this sensitive field from local counterparties are recognised. It is commendable that the countries targeted by the LTP were ETCs – that is, those which might not be easy to work with but were in the greatest need of such assistance. In the case of its “flagship” project in this area (in the Kyrgyz Republic), the LTP teamed up with IDLO, which substantially increased the efficiency of its intervention. The World Bank has been implementing similar judicial capacity building projects in Azerbaijan, FYR Macedonia, Romania and Russia in recent years. The LTP has been monitoring these projects although no joint initiatives have been developed yet.

Transition impact and sustainability of the LTP’s activities in judicial capacity building is Not rated. 300 Kyrgyz judges were trained during phases 1-4 of the project, however its impact is impossible to verify due to the lack of any tests at the end of the courses. Only the last phase introduced a randomised judicial decision assessment, while a full-scale impact verification is planned for a similar project in Tajikistan (see footnote below). Moreover, the Kyrgyz Republic (the country of focus for the LTP’s activity in this area) has been recently ranked 135 (among 142 in the world) – the worst among all of the Bank’s countries of operations for judicial independence (see table B in Annex 5). This implies that the impact of any capacity building projects in the Kyrgyz Republic may be limited as fundamental issues, such as judiciary independence, remain unresolved.

Furthermore, during the evaluation period the LTP projects in this area have been relatively narrowly focused on a few selected ETCs. Recent international data indicate that virtually all of the Bank’s countries of operations display acute deficiencies in their dispute resolution process (see table A in Annex 5). Although such rankings should be viewed with caution, it is telling that even advanced countries are ranked at the bottom of the list (for example, Poland 97 or the Slovak Republic 139 out of 142 countries in total).

35 The LTP reported that the development of judicial capacity building projects has been particularly dynamic in recent years (after the Evaluation Period). New projects were developed in Albania, Moldova, Bulgaria and Bosnia and Herzegovina.

36 The Global Competitiveness Report 2011-2012, chapter 1.06 “Judicial Independence”.


EBRD Evaluation department
June 2012
4.6.2 Judicial capacity building: findings

- Legal reform without the development of supporting institutions is unlikely to succeed. For example, secured transaction and insolvency law regimes are more likely to take hold in jurisdictions in which the judiciary and supporting personnel have received training on the goals and technical aspects of the legal reforms (based on Hungarian, Serbian and Mongolian experience).

- It is impossible to assess the impact of capacity building projects, which do not include competency tests at the end of the programme or other impact verification measures.

4.6.3 Judicial capacity building: recommendations

- Reassess the utility of training programmes not connected to specific sector reforms that can be monitored, such as with respect to judiciary independence.

- In countries which suffer from a lack of the judiciary system’s independence, the LTP should make an effort to combine training programmes with (or make dependent on) the reforms increasing such independence.

- Competence exams at the end of the training courses to verify their impact and effectiveness should be mandatory and their inclusion a condition for the approval of future projects in this area. Depending on the experience from the (soon-to-be-implemented) impact assessment project in Tajikistan, try to design a standardised judicial decision impact assessment measures, which could be introduced following most of the LTP’s judicial training projects.

- Consider increasing resources for judicial capacity building to expand the scope and countries covered by the LTP’s intervention in this core area.

- Consider administering an ex post competency tests to those judges who passed through earlier LTP training programmes.
4.7 Public procurement

Issues related to gaps and inefficiencies in public procurement laws in the Bank’s countries of operations emerged during the last decade as one of the main obstacles to the successful implementation of the EBRD’s public sector projects (mainly related to infrastructure). Thus, in late 2009, on the strong recommendation of the Banking department and the Procurement department, the LTP added Public Procurement to its core legal areas. Therefore this is a relatively new area for the LTP, in which its activities over the last few years have focused on the assessment of existing laws and standard setting (see sections 2.7 and 3.7).

Other IFIs (for example, the World Bank, ADB) have been involved in public procurement issues for decades and as a very latecomer to this area, EBRD has much to learn from them.

The LTP’s activities related to legal reform in procurement started only recently and so far have been concentrated on Albania and Ukraine. Neither of them is one of the sample countries, however, the evaluation undertook a brief desk review of the LTP’s activities which was undertaken to assess their expected impact and effectiveness. The project in Albania aims to strengthen the newly created Review Commission on Public Procurement, to enable it to efficiently resolve complaints. It comprises training on the core tribunal competencies essential to the fair and effective review of complaints. The LTP is also assisting the Public Procurement Authority of Albania (APP) to implement a comprehensive reform of the utilities procurement law, including the introduction of an eProcurement platform. The LTP has also recently initiated two projects in Ukraine: Capacity Building of Public Procurement and Public Procurement Policy Development and Regulatory Capacity Building. They aim to develop a dedicated training curriculum and provide training directly to the Procurement Review Commission members. However, the most pointed example of the LTP’s legal and institutional reform work in this area to date is its cooperation with UNCITRAL to assist CIS countries and Mongolia, to adopt procurement law largely based on the most recent (2011) UNCITRAL Public Procurement Model Law.

4.7.1 Public procurement: overall evaluation

The LTP’s law reform efforts in public procurement are still in their infancy, and do not, as of yet, provide a significant track record. Overall they are rated Partly Successful. This rating reflects the scope and depth
of the LTP’s activities to date, which are limited, but growing, reflecting their importance to both the Bank and its countries of operations.

Effectiveness of the LTP’s intervention in this area is rated Satisfactory to Good, mainly on account of the opinions expressed by EBRD bankers and the Bank’s Procurement department staff who appreciated the LTP’s work in Albania and Ukraine, as well as its assistance in resolving ad hoc procurement issues related to the Bank’s public sector projects. The establishment of public procurement as a core area speaks to the increasing integration of the LTP into the Bank and testifies to the LTP’s responsiveness to the Bank’s priorities. However, there is no empirical evidence yet of the effectiveness of the LTP’s pilot projects initiated in this area.

Efficiency is rated Satisfactory to Good as, so far, only two countries have been targeted by the LTP’s public procurement reform projects. Nevertheless, the LTP’s orientation in this initial stage was towards assessment and promoting international standards of compliance, which had a wider impact on the regional level. One of the most important aspects of the LTP’s procurement work came from its involvement in and use of the model UNCITRAL law. With up to seven countries involved, the relationship with UNCITRAL was very important to advancing the LTP’s initiatives and work within the Bank’s countries of operations. An UNCITRAL representative expressed his appreciation for the LTP’s involvement with UNCITRAL. Given the agency’s limited budget and the personnel restrictions under which it operates, the LTP was able to harness resources that UNCITRAL would not have on its own.

Transition impact and sustainability of the activities in this area is rated Satisfactory as it has not yet been evidenced. It has strong potential to become Good or Excellent when the projects are completed. Promotion of a fair, open and transparent procurement process, where competition can flourish, is crucial for the opening of what have largely been monopolistic markets. Furthermore, transfer of skills features strongly in the LTP’s procurement projects started to date and is expected to make an important positive impact.

4.7.2 Public procurement: findings

– The LTP’s work on public procurement is one of its core areas, the most closely interlinked with the Bank’s projects.

– Auditing and supervisory functions remain crucial to improving public procurement efficiency.
Cooperation with other international organisations can leverage the LTP’s resources and increase the efficiency of its interventions.

4.7.3 Public procurement: recommendations

- Consider focusing increasingly on supporting the implementation of public procurement legal reforms (law in practice).
- Given the importance of this core area for the Bank and the beneficiaries, consider allocating more funding and personnel resources to public procurement.
- Step up cooperation with international organisations and other IFIs which consider efficiency of public procurement in their countries of operations to be of critical importance (for instance, ADB in respect of Central Asia and AfDB in respect of SEMED).

4.8 Securities markets

The LTP’s work in securities markets during the evaluation period was limited due to the proliferation of similar work initiated by other institutions. Already before 2001, considerable work had been completed by the European Commission (EC) on securities regulation. After 2001, the pace of reform increased as the EC implemented the third and final phase of the Financial Services Action Plan (FSAP – comprising 42 directives). The Bank’s EU and EU-candidate countries of operations adopted these directives, as did several non-candidate countries to facilitate foreign portfolio investments in their countries. Lastly, a number of EBRD countries of operations also have institutions that are members of International Organisation of Securities Commission (IOSCO) and seek to meet IOSCO standards. In addition, the fallout from the “roaring nineties”, the 1997 Asian Financial Crisis, and the Russian crisis in 1998, were among the events that prompted a rethink of worldwide stock market regulation and corporate governance.

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38 See Niamh Maloney, EC SECURITIES REGULATION (Oxford University Press, 2002). Here, the term “securities regulation” is conventionally glossed as including securities markets. Note that the EBRD gives the term “securities markets” a wide connotation.
At the same time, a set of competitive pressures was forcing consolidation in the industry 40 (for example, NASDAQ OMX Armenia).41 Thus, there were (and remain today) a powerful set of forces external to the LTP, driving change in securities markets regulation. Therefore securities markets are not a priority area for the LTP.

EBRD bankers and treasury officers interviewed in the course of this Review expressed the view that the LTP’s recent focus on local capital markets has been a move in the right direction.42

4.8.1 Securities markets: overall evaluation

The LTP’s activities in the securities markets law reform are rated Partly Successful mainly on account of its diminishing relevance during the evaluation period, which also affected the effectiveness and efficiency of the LTP’s intervention in this area.

Effectiveness of the LTP in security markets is rated Satisfactory. It achieved its main successes in this securities markets legal reform before the evaluation period. Nevertheless there have been several more recent projects aimed at advising governments on revising their insolvency legal framework to allow for close-out nettings. Two other important projects which achieved their objectives in this area should be mentioned: improving the legal and regulatory framework governing the Russian debt capital markets and drafting a new law on corporate and municipal bonds in Albania that was adopted in 2010.

The LTP’s efficiency in this area is rated Good. This rating does not reflect a high proliferation of LTP projects in securities markets (which was not the case) but rather a wise decision to optimise its operations and in the view of limited opportunities, to dispense with a separate security markets specialist. Instead, the LTP’s corporate governance specialist has been covering securities markets part-time, and only recently was a junior specialist recruited to focus on local capital markets.

Transition impact and sustainability of the LTP’s efforts in this area are rated Satisfactory. The creation of a strong capital market is imperative for domestic growth and global integration and therefore it has high transition potential. Supported by a sound regulatory and legal

42 Since 2010 the LTP dedicated a new staff member to work on capital markets, primarily local.
framework to oversee trading practices, a state’s capital markets offer
the means to raise debt capital to finance growth and development.
However, the LTP’s capacity to make an impact on the securities
markets has been clearly limited by the predominance of EU securities
regulation law and IOSCO guidelines, which provided the main incentive
for many of the Bank’s countries of operations to reform their capital
markets. The EU directives and IOSCO guidelines are now significant
factors impacting the legal regimes of many of the Bank’s countries of
operations. Nonetheless, the LTP’s contributed to this process by
advising how such legislation can be transposed to or made to work in
the context of local law.

4.8.2 Securities markets: findings

− Securities markets regulation and law reform is an area better
  left to other international agencies and stakeholders.

− Securities markets have been correctly identified by the LTP as a
  low priority area for the foreseeable future.

− However, there remains a key role for the LTP in promoting
  higher corporate governance standards, as well as in niche
  products such as municipal bonds or the regulations related to
  local currency markets.

4.8.3 Securities markets: recommendations

− Continue strategic refocus of this legal area on local capital
  markets. To better reflect this change consider renaming this
  core area as a “Local Capital Markets Law and Regulations”,
  reflecting its new focus.

− Strengthen links with the Bank’s Treasury department, whose
  staff have acquired unique securities markets expertise in the
  Bank’s countries of operations. Consider how this expertise
  could be utilised.

− Continue careful resource management in respect of staffing
  and allocating funds to securities markets activities.
4.9 Overall evaluation: legal and institutional reform

Table 4 summarises the LTP’s performance rating for legal and institutional reform in all core legal areas. The overall rating for the LTP’s legal reform activities across its core areas is Successful. Legal and institutional reform is a primary objective of the LTP, as it seeks to achieve concrete results in terms of improved legal framework across the Bank’s operating region, which better responds to investors’ needs.

The LTP has sought to overcome legal impediments to investments by providing legal and institutional reform assistance in support of a viable investment climate hallmarked by transparency and an adherence to the rule of law, as seen through a predictable and stable legal structure.

Table 3: Legal and institutional reform – core legal areas’ rating summary

<table>
<thead>
<tr>
<th>Core Legal Areas</th>
<th>Overall</th>
<th>Effectiveness</th>
<th>Efficiency</th>
<th>Transition Impact and Sustainability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concessions/PPPs</td>
<td>★★★☆</td>
<td>⬤⬤⬤〇〇</td>
<td>⬤⬤⬤〇〇</td>
<td>⬤⬤⬤〇〇</td>
</tr>
<tr>
<td>Corp. Governance</td>
<td>★★★☆</td>
<td>⬤⬤⬤⬤</td>
<td>⬤⬤⬤〇〇</td>
<td>⬤⬤⬤⬤</td>
</tr>
<tr>
<td>Infrastructure</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regulatory Reform</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-telecommunications</td>
<td>★★★★</td>
<td>⬤⬤⬤⬤</td>
<td>⬤⬤⬤⬤</td>
<td>⬤⬤⬤⬤</td>
</tr>
<tr>
<td>-energy/other</td>
<td>★★★☆</td>
<td>⬤⬤⬤⬤</td>
<td>⬤⬤⬤⬤〇〇</td>
<td>⬤⬤⬤⬤</td>
</tr>
<tr>
<td>Secured transactions</td>
<td>★★★★</td>
<td>⬤⬤⬤⬤</td>
<td>⬤⬤⬤⬤</td>
<td>⬤⬤⬤⬤</td>
</tr>
<tr>
<td>Insolvency</td>
<td>★★★☆</td>
<td>⬤⬤⬤⬤</td>
<td>⬤⬤⬤⬤〇〇</td>
<td>⬤⬤⬤⬤</td>
</tr>
<tr>
<td>Judicial Cap. Build.</td>
<td>★★★☆</td>
<td>⬤⬤⬤⬤</td>
<td>⬤⬤⬤⬤〇〇</td>
<td>Not rated</td>
</tr>
<tr>
<td>Public Procurement43</td>
<td>★★★☆</td>
<td>⬤⬤⬤⬤〇〇/</td>
<td>⬤⬤⬤⬤〇〇/</td>
<td>⬤⬤⬤⬤</td>
</tr>
<tr>
<td>Securities Markets</td>
<td>★★★☆</td>
<td>⬤⬤⬤⬤〇〇</td>
<td>⬤⬤⬤⬤〇〇</td>
<td>⬤⬤⬤⬤</td>
</tr>
<tr>
<td>Overall</td>
<td>★★★★</td>
<td>⬤⬤⬤⬤</td>
<td>⬤⬤⬤⬤〇〇</td>
<td>⬤⬤⬤⬤</td>
</tr>
</tbody>
</table>

43 LTP core area only since late 2009, which provided a limited basis for full evaluation (further described in section 4.7).
### Effectiveness, efficiency and Ti rating scale:

<table>
<thead>
<tr>
<th>Rating</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>✔✔✔✔✔</td>
<td>Excellent</td>
</tr>
<tr>
<td>✔✔✔✔</td>
<td>Good</td>
</tr>
<tr>
<td>✔✔✔</td>
<td>Satisfactory</td>
</tr>
<tr>
<td>✔✔</td>
<td>Marginal</td>
</tr>
<tr>
<td>✔</td>
<td>Unsatisfactory</td>
</tr>
<tr>
<td>✔</td>
<td>Highly Unsatisfactory</td>
</tr>
</tbody>
</table>

### Overall Rating scale

<table>
<thead>
<tr>
<th>Rating</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>★★★★</td>
<td>Highly successful</td>
</tr>
<tr>
<td>★★★</td>
<td>Successful</td>
</tr>
<tr>
<td>★★</td>
<td>Partly Successful</td>
</tr>
<tr>
<td>★</td>
<td>Unsuccessful</td>
</tr>
</tbody>
</table>

In some cases, promoting a culture of reform was hindered by local resistance to change, where for some entities it is simply more profitable to adhere to the current inefficient status quo. Additionally, the uneven global recovery has also put pressure on new legal and economic ideas and structures; sometimes resulting, again, in a desire to maintain past patterns of behaviour.

The overall effectiveness, efficiency, as well as transition impact and sustainability of the LTP’s interventions are rated **Good**, reflecting the high importance of the LTP’s work and its direct relation to the Bank’s mandates and objectives. The majority of the LTP’s projects brought expected and sustainable results, particularly in respect of black-letter law. One aspect of the LTP’s projects which proved especially challenging was ensuring the sustainability of institutional strengthening measures in the context of its projects.

## 5. Outreach

This final component of the LTP integrated approach focuses on disseminating its work to maximise its impact. Of particular note are two major resources: *Law in transition* and the LTP web site, both of which are invaluable and easily accessible sources of information. Combined, they form the best comprehensive source of information available on legal and institutional transition in the Bank’s countries of operations. *Law in transition* in particular is used to disseminate all aspects of the LTP’s work. Moreover, it is used as a tool to develop approaches, often in conjunction with particular assessment, standard setting, legal and institutional reform or outreach activities (such as conferences). Issues and focus topics covered in *Law in transition* during the evaluation period are listed in Annex 11. The sections below briefly evaluate the overall effectiveness of outreach in each of the LTP’s core legal areas.
5.1 Concessions/PPPs

Outreach activities in this area are rated *Highly Successful*. The dissemination of information related to concessions/PPP structure and legislation is seen as critically important due to there being relatively little information on such concepts, which are still new to many of the Bank’s countries of operations. The above rating reflects the LTP’s success in producing a number of high-profile publications, including two major Russian language publications on PPPs, issued in 2009 and 2011 (see section 1, Annex 4). Such publications still remain quite unique and effectively fill the information gaps on the intricacies of concessions and PPPs. Although they concentrate primarily on the Russian experience, the fact that the LTP funded their high quality translation (verified by the Bank’s PPP practitioners and lawyers), ensures their wider application, for instance in other CIS countries.

Moreover, several *Law in transition* reports (in English, for example, 2007) had a special focus on concessions/PPPs, sharing information on regional concessions/PPP projects, the evaluation of their implementation and assessments of the foundational, and evolving laws that support them. The LTP’s concessions/PPPs expert based in Moscow has been a keynote speaker in many workshops and conferences in Russia and the impact of his activities in spreading PPP expertise cannot be overestimated.

5.2 Corporate governance

Outreach efforts within a corporate governance field focus on the dissemination of information relevant to establishing a viable governance framework and promoting the transparent practices, and an adherence to the rule of law. Through its outreach efforts, the LTP seeks to share information that advances the strengthening of domestic capital markets and thereby assists in forming stronger regulatory and supervisory capacities within its countries of operations. The LTP has worked extensively with international organisations to advance the dissemination of its expertise and experiences in this area. Its work with the Organisation for Economic Co-operation and Development (OECD) has been especially noteworthy in that they have jointly produced valuable findings disseminated through policy briefs, workshops and the legal journal *Law in transition* (for example, 2006, 2009). Recent high profile Corporate Governance Roundtables in London, Georgia and Serbia served to advance the Bank’s governance initiatives, while solidifying relationships with other key entities. Outreach performance in this area is rated *Successful*. 
5.3 Infrastructure regulatory reform and competition

The LTP’s outreach focus within the regulatory and infrastructure reform arena, has been dominated by cooperative work with other leading international organisations, such as the World Bank and the European Commission. The LTP frequently participates in joint publication projects and conferences where key information is produced and distributed. In addition to adding to the literature and discussions through such activities, it also serves to strongly promote the LTP’s expertise in these fast-evolving areas. The focus on renewable energy, in the face of increasing evidence of climate change, is central to advancing the pursuit of such environmental integrity, which the Bank considers a cornerstone of its policy.

The LTP’s outreach activities in this area are rated *Highly Successful*. The LTP’s regional conference work has been particularly valuable in granting the LTP the ability and opportunity to authoritatively frame the legal and regulatory reform debate surrounding the telecommunications and energy sectors.

5.4 Secured transactions

The LTP’s outreach activities within the secured transactions sector are rated *Highly Successful*, reflecting the high profile, long-standing work done by the LTP, both individually and in conjunction with other international organisations. Both avenues have been highly successful and have had a substantial impact within the international community. In terms of cooperative work, the LTP has worked extensively with UNCITRAL and the World Bank’s legal department in presenting secured transactions reform information. The involvement in the Global Collateral Laws and Registries Program with the World Bank, in addition to the work done with the Swiss Secretariat for Economic Affairs (SECO), are high profile activities that have helped showcase the LTP’s expertise and influence in this area. The LTP has established itself as a resource for complex secured transactions reform in advanced, mature markets, as well as in emerging and transitioning economies. The LTP’s opinions and findings in this area are highly regarded and sought after. This bodes exceedingly well in terms of supporting other projects outside the Bank’s current region of operations.
5.5 Insolvency

Much of the LTP’s outreach activities in insolvency are done in cooperation with UNCITRAL and the World Bank, in addition to the IMF, which, in a post-crisis environment, has been involved with an increasing number of insolvency issues. Outreach activities in insolvency are concerned with publicising and disseminating research findings and experiences concerning creditors’ and debtors’ rights, administrative capacity and other issues relating to insolvency laws. The LTP works closely with the World Bank as a member of Insolvency and Creditor/Debtor regimes Task Force, and in this capacity the LTP’s staff participates in workshops on insolvency matters. The LTP’s outreach activities within the area of insolvency are rated *Partly Successful*. The global and financial crisis has presented extraordinary challenges to emerging and transitional economies. How debt is handled is a key element in preserving market stability and preventing defaults. The work that the LTP undertakes in insolvency is limited but valuable in that it contributes to strengthening the secured transactions and insolvency structures within the Bank’s countries of operations.

5.6 Judicial capacity building

Outreach in terms of judicial capacity entails disseminating information about the “professionalisation” of the judicial sector. Issues such as the education and training of judges and supporting legal administrators are critically important in developing a legal structure that can support economic growth. Under those ideals, the LTP’s outreach activities are typically coordinated with other international organisations such as the World Bank. The LTP has taken part in conferences on capacity building and judicial training. The LTP’s participation in regional conferences (for example, in the Kyrgyz Republic) has led directly to the development of additional projects within the Bank’s countries of operations (for example, Mongolia).

The LTP’s outreach activities within the area of judicial capacity building are rated *Partly Successful*. Judicial competency is directly linked to the confidence that external investors have in the legal system of a given state. Transition economies are often faced with unique and nuanced challenges that frequently require a multi-disciplinary problem-solving approach. The LTP’s outreach activities are useful in that they potentially provide forums whereby information and experiences are shared. While the LTP’s work within judicial capacity building is still being shaped, the LTP’s recent, more aggressive outreach efforts are likely to raise awareness of issues related to the remaining inefficiencies in the judicial
systems of some of the Bank’s countries of operations (for example, *Towards Better Courts - Law in transition*, 2011).

### 5.7 Public procurement

The LTP’s specific outreach activities in the area of public procurement are represented by its collaboration on joint outreach projects with other international organisations. The Bank’s partnership with the World Bank and the Asian Development Bank for the 2010 Regional Public Procurement Forum held in Georgia, is an example of such cooperative outreach efforts.

Based on the Bank’s current efforts, the LTP’s outreach activities within the public procurement environment are rated as *Partly Successful*. While these outreach efforts are at an initial stage, the LTP’s participation at high profile conferences, such as the one in 2010, bode well for its future anticipated public dialogues within this sector. This opinion is bolstered by LTP’s close working relationship with UNCITRAL, which will undoubtedly have a long-term positive future impact on the dissemination of timely and practical procurement information.

### 5.8 Securities markets

The outreach activities in this area are rated as *Partly Successful*. The LTP ensured the dissemination of relevant assessment results related to securities markets through the EBRD web site and *Law in Transition* (2008). Given the more limited scope of the assessment and the limited activities in this sector, outreach achievements have been minimal.

### 5.9 Overall evaluation: outreach activities

The LTP’s overall outreach activities across all core legal areas are rated *Successful*. Notwithstanding outreach activities, separate for each core legal area (as described above), in the last 10 years the LTP considerably strengthened its capacity to disseminate its knowledge through collective, well-designed measures, specifically: (i) the establishment of *Law in transition* as a key vehicle for disseminating the LTP’s research. It is a unique publication among IFIs published twice yearly in English and Russian, containing a synthesis of the LTP’s assessments, country projects, as well as views from international legal
experts, including those from the Bank’s countries of operations; (ii) the launching of the LTP internet page, which is regularly updated with publications of research and legal information. It includes an interactive tool enabling readers to do comparative analysis of the LTP’s assessments and test different scenarios; and (iii) the appointment of a dedicated person within the LTT in charge of legal knowledge management, whose sole job is to ensure that the LTP’s outreach objectives are achieved.

The impact of many of the LTP’s outreach activities has been amplified due to cooperation with other international organisations such as the World Bank, the IMF and UNCITRAL, among others. By participating in high-profile international events, LTP is able to advocate its various positions regarding legal reform. Outreach activities have additionally successfully showcased the LTP’s expertise and have contributed to solidifying its reputation as a leader across its core areas. As an important additional benefit, the LTP’s outreach activities, while directed externally, have also raised awareness of the LTP within the Bank. Nevertheless, there is some room for improvement of the LTP’s “internal outreach”, particularly in respect of increasing the awareness among the Bank staff based at the regional offices about the LTP’s activities being undertaken in their countries.

6. Conclusions and recommendations

6.1 Overall evaluation

Overall, the LTP’s performance is evaluated as Successful. Through promoting legal reforms, the LTP directly supports the Bank’s operational objectives of assisting its countries of operations in the transition to open market economies and the establishment of entrepreneurial opportunities within a multiparty democratic system.

The relevance of LTP’s work in this respect is rated High. The LTP’s core areas represent key legal transition areas in which both the LTP and the EBRD have accumulated extensive experience. These core areas are distinct, yet interrelated, and reflect the needs of transition countries in addition to reflecting the Bank’s priorities in terms of improvement needed to the legal environment to enable its operations. The LTP has been successful in identifying gaps within the larger legal structure, while segmentation has allowed it to systematically address issues
within legal frameworks (see the detailed justification of the relevance rating in Annex 2).

The LTP’s overall effectiveness is rated **Good**. There is compelling evidence that the LTP’s advice has been largely followed; many laws and regulations which the LTP helped to draft were approved and are utilised; while a substantial number of legal practitioners in the Bank’s countries of operations benefited from the LTP’s training, although this is not always possible to be verified. Some institution building projects were subject to lower effectiveness and this is the area where the LTP should focus more in the future. The effectiveness of LTP’s efforts, which is manifested through its degree of engagement with its countries of operations, is strongly associated with and complemented by the efficiency with which services are delivered.

Although notable progress was made in many countries of operations, the region’s legal system still suffers a high degree of inefficiency (see Annex 5). In terms of effectiveness in serving the Bank, with some exceptions there is a growing cohesiveness and compatibility between the LTP and the Bank (which was not always the case during the initial period of the LTP’s work). As one interviewee in London stated, “although the EBRD is transaction-driven, whereas the LTP is policy-driven, the relationship has grown stronger and more productive”. The two entities are moving towards being on the “same page” in terms of goals and objectives.

The LTP’s overall efficiency is rated **Good**. It varies across the eight core legal areas and depends largely on the LTP’s success in attracting and keeping, more or less permanently, high calibre specialists in any given core area, as well as on the LTP’s management’s decisions how to allocate scarce resources. The LTP was successful in attracting permanent experts to some core areas (such as secured transactions, telecommunications regulation, corporate governance and more recently judicial capacity building), while other areas proved more challenging (insolvency). However, the ever-increasing sophistication of the LTP’s country law assessments and its legal reform-related interventions suggest that LTP’s overall efficiency may become universally good (see recommendation in relation to the LTP’s resource review).

Overall transition Impact and sustainability stemming from the LTP’s activities are rated **Excellent**. The LTP is, by definition, at the core of transition and it has achieved a high degree of transition impact by providing technical assistance for the development of legal structures, via projects, which support the development of free market economies and promote legal reform. The LTP’s work has been shown to greatly influence domestic policy formation, impacting frameworks for markets that promote function and efficiency. Skills transfer has also made an
important impact, particularly through the LTP’s outreach activities and
dedicated training programmes. Nevertheless it is noted that this impact
has been concentrated relatively narrowly on the countries on which the
LTP chose, or was able, to focus, given available resources. Moreover,
this impact cannot always be verified, which constitutes a serious
impediment to the LTP’s efforts (for example, the first four phases of
judicial capacity building in the Kyrgyz Republic).

Although this review evaluated the LTP against key criteria and focus
areas, the “soft power” impact of the LTP on EBRD operations should not
be overlooked. Local stakeholders highly appreciate the work of the LTP;
it is seen as a formidable “calling card” for the EBRD and is clearly
project-enabling. If the work of the LTP was initially seen as at the
“fringe” of the Bank’s activities, it is now perceived as “mainstream” with
a strong presence in several countries. This perception was highlighted
in Russia where one interviewee described the EBRD (via his experience
with the LTP) as the “only player with the political and financial influence
and confidence of the Russian state”.44

The outcome of this evaluation bears remarkable similarity to that of the
MTR ten years ago. Under both evaluations the LTP’s “flagship” core
legal areas of secured transactions and telecommunications regulation
were evaluated as “highly successful”, corporate governance as
“successful” and the remaining core legal areas as “partly successful”
(with the exception of Concessions/PPPs which is now rated
“successful”) in respect of the legal reform, while legal assessment
activities are now rated firmly as “highly successful”.

This rating is at one level only marginally higher than that attained during
the mid-term review conducted in 2000. However, this likely does not
fully capture the consolidation and mainstreaming of the LTP at the
EBRD or its substantially enlarged reputation among partners in the
countries of operations and international organisations.45

The rating should also be seen in the context of very uneven allocation of
resources among different core legal areas by the LTP’s management
which purposefully promotes certain priority areas, while limiting the
LTP’s involvement in other areas. The four core areas which attained the
rating “highly successful” or “successful” accounted for 78 per cent of
the LTP’s budget and 83 per cent of its experts’ time allocation, while
the other four areas rated “partly successful” accounted for less than a

44 Interview with a partner of a leading international law firm in Moscow, 27 July 2011.
45 This opinion has been recently confirmed in a reputable publication by Terence C. Halliday and Bruce
2009. On page 92 it singled out the LTP/EBRD’s approach to legal reform support as the most effective
and concluded that: “The result is an unusually nuanced approach to the fundamental tension between
global uniformity and national particularities that stalks all IFI initiatives.”
quarter of the LTP’s commitments and only 17 per cent of its expert’s total time allocation.

Nevertheless, important challenges remain and warrant careful review and consideration going forward. The section below presents the main general findings and recommendations stemming from this evaluation, while specific recommendations for the LTP’s strategy directions in the new SEMED region are laid out in Annex 7.

6.2 Findings

− The need for “law on the books” reform assistance varies widely across the Bank’s countries of operations. However, the functioning of legal systems and institutions in practice is still universally substandard in all of the Bank’s countries of operations (see Annex 5). Institution building has been an important part of almost all of the LTP’s projects so far. To further strengthen the impact of its interventions, the LTP should now put even more emphasis on training legal practitioners and establishing institutions and administrative competency (see Recommendations).

− Most of the LTP’s projects have defined operational and funding lifespans, whereas the process of legal reform is usually long and highly susceptible to change in priorities, personnel and political configuration of the recipient country. In addition, there is often a lack of clarity and measurability in project-level benchmarks.

− The LTP’s core legal areas are also key operational areas for the EBRD. In turn, LTP activity fields respond to the technical needs of the Bank and its countries of operations. In dividing the needs of transition countries across several focus areas, the LTP has identified gaps within the larger legal structures. Such gap analysis has enabled the LTP to address systemic issues within legal frameworks.

− A well-functioning, investor-friendly and free market-oriented legal structure is at the core of transition. Therefore the LTP’s projects usually have a high degree of transition potential, however their actual impact varies, depending mainly on the determination of the LTP’s local partners. The strongest impacts were achieved in those core legal areas where the LTP had well developed in-house expertise and in the countries where its staff was able to focus their efforts for an extended period (for

46 Enacted legislation.
example, PPP expert based in Moscow). Due to the LTP’s relatively limited resources, such impact has been fairly “localised” and narrowly focused on selected countries (except for secured transactions and telecommunications regulation, which achieved a strong impact across most countries of operations).

− While there has been increased compatibility and cohesiveness between the Bank’s operational departments and the LTP, a recurring internal view is that the LTP should more pro-actively promote its work to the Banking department, while liaising more closely with staff from other support units keeping them informed about its operational priorities. The improvement of an “internal outreach” should be directed particularly towards EBRD’s staff based at the Resident Offices.

− The LTP has built an adequate repository of information and experience that can contribute and add value to the Bank’s future projects in the southern and eastern Mediterranean area (SEMED). The current core legal areas and activity fields can serve as a useful starting point, although country-specific assessments will largely dictate practice and policy areas of concentration. The difficulty of accurately assessing local conditions in a new and totally different region cannot be overstated, as expanding the Bank’s mandate will be complicated by fluid socio-economic structures where understanding and adherence to rule of law and transparency issues are generally weak. Thorough and detailed legal assessments remain critically important (see Annex 7).

− The LTP’s three-year action plans lack clear objectives, milestones and timetables.

− In its legal reform projects the LTP has paid due attention to simplicity and transparency of proposed legal structures. These efforts should continue to avoid over-regulation, which may delay transition.

− In some of the LTP’s activities, there is simply not enough hard evidence to properly assess their success and/or their impact.

− There are clear limitations to the impact of the LTP’s work as endogenous conditions may and sometimes do hinder LTP reform efforts. For instance, while an LTP mortgage training manual was heavily utilised by the local banks in Moldova, the growth of mortgage lending has been hindered by the global financial crisis and low salaries.
6.3 General recommendations

− The Bank/OGC should undertake a strategic review of the LTP’s priorities, core areas, resource allocations, and the modes of engagement with the rest of the Bank, as well as external players (IFIs), with a view to re-orienting its focus in some areas (for example, securities markets to take into account the LC2 initiative or telecommunications regulations to take account of the fast development and convergence in the ICT market), while increasing activities in other areas (for example, energy law and regulation, corporate governance, PPPs). Historically the LTP has achieved the greatest success in these areas to which considerable resources (funds and staff) have been dedicated over the longer term. To strengthen and expand the impact of its projects, the LTP will require a gradual increase in its resources. For example, adding a concessions/PPP expert could result in the LTP making a stronger impact beyond Russia. Similarly, a dedicated energy regulation or/and transport regulation specialist(s) would be required to build the LTP’s reputation in these fields. Corporate governance is another important area where the LTP has been successful, however benefiting only a few (four) countries due to resource constraints.

− Over the last 10 years, the LTP has dedicated substantial resources to conducting legal assessments and developing legal standards. These were highly successful undertakings and prerequisite to further actions. The LTP should continue updating its assessments and fine-tuning the set standards.

− The LTP should sharpen its focus on projects which directly support legal reform processes, particularly in respect of institutional capacity building and better designed training for judges, registrars, PPP or procurement officials. Such training should always incorporate specific targets with respect to expected outcomes/accomplishments and specific measures to verify impact. This has not always been the case (for example, in respect of early phases of judicial capacity building) and has been a significant impediment to gauging the relevance and impact of this important work. The LTP has recognised the importance of such measures in respect of its more recent projects.

47 See the last recommendation.
While the ultimate success of legal reform projects depends to an extent on external factors, the LTP should set more precise and measurable objectives in its three-year action plans (or in its annual plans, if such plans are to be introduced). This would improve monitoring and provide the potential for the implementation of these plans to be effectively evaluated.

The LTP should integrate a “Project Results” column to its “LTP legal reform Projects” list (see Annex 8), which would briefly summarise the concrete results of each project (for example, listing the main outcomes and impacts, giving the date when the law was enacted, commenting on whether it is utilised, or why it was not approved, results of competency tests following training, and so on).

The LTP should better structure (for example, by organising it in a more systematic way), its collaboration with other organisations, setting specific objectives and plans for such a collaboration in its three-year action plans.

More focus on company law and secured transactions is needed as these areas greatly facilitate the Bank’s engagement and are at the core of transition.

Increased efforts are needed in developing local capital markets. In this respect the LTP might usefully intensify its work on capital market development, possibly within the framework of the Bank’s Local Capital Markets and Local Currency Initiative.

### 6.4 Recommendations in respect of LTP’s activity fields

#### 6.4.1 Legal assessment

- Increase the practice of combining in-house assessment information with that of other international entities, particularly when moving into SEMED.

- Factor into assessments the impact that culture and society has on the legal system in any given country and the impact it may have on the Bank’s subsequent interventions, especially in SEMED region.

- Each legal assessment should also include a detailed outreach and dissemination plan, with reasons, actions and timetables specifically set out.
6.4.2 **Standard setting**

- Increase cooperative initiatives with other leading IFIs and organisations.

6.4.3 **Legal and institutional reform (general)**

*(see section 4 for recommendations related to each core legal area)*

- Consider increasing resources, particularly for energy regulatory reform, concessions/PPPs, corporate governance and judicial capacity building (in addition to any increases needed to properly address challenges in SEMED).

- Step up efforts aimed at institution building. A continued awareness that laws alone are not the sole effective solutions for advancing transition is needed.

- Introduce rigorous impact assessments on completion of projects, with particular attention to those related to training and capacity building.

- Adopt a clear set of objectives for legal reform projects, which should be stated in the three-year action plans and updated annually.

6.4.4 **Outreach**

- Increase “internal outreach” efforts to keep bankers informed on the LTP’s activities, particularly those based at the Regional Offices and in respect of the LTP projects, which may directly affect banking projects.

Annexes to this study are available at [http://www.ebrd.com/evaluation](http://www.ebrd.com/evaluation).
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