

**The Wild East: The European Bank for Reconstruction and Development on the
Frontier of Insolvency Reform¹**
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Introduction to the EBRD

The European Bank for Reconstruction and Development (“EBRD” or the “Bank”) was established in 1991 as an international financial institution. It is owned by 62 “shareholders” consisting of 60 countries³, plus the European Investment Bank and the European Union. The EBRD exists to foster the transition towards market-oriented economies and to promote private and entrepreneurial initiative in its 27 “Countries of Operation”⁴.

The shareholders of the EBRD appoint a board of directors who, in turn, oversee the management and operations of the Bank. Contrary to popular conceptions of “development banking”, however, the EBRD does not make below-cost or low-priced loans in the Countries of Operation. The EBRD’s mandate is to make commercially sound investments (both debt and equity) in countries and sectors where the traditional private-sector lenders will either not venture at all or will not venture without the EBRD’s presence.

The Bank’s investment portfolio is in excess of €15 billion, making it, by far, the single largest investor in the Countries of Operation⁴. The Bank currently has hundreds of outstanding investments including such varied projects as a toll motorway in Hungary, a bank in Russia and a textile operation in Uzbekistan.

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³ Albania, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, FYR Macedonia, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Kazakhstan, Republic of Korea, Republic of Kyrgyz, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Moldova, Mongolia, Morocco, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russian Federation, Serbia and Montenegro, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkey, Turkmenistan, Ukraine, United Kingdom, United States of America and Uzbekistan.

⁴ The EBRD’s 27 Countries of Operation are: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyz Republic, Latvia, Lithuania, Moldova, Poland, Romania, Russian Federation, Serbia and Montenegro, Slovak Republic, Slovenia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan

In addition to financial investments, however, the EBRD's mandate also includes promoting technical co-operation projects to help the Countries of Operation create the type of environment in which democracy and capitalism flourish. Many of these projects are created through the Bank's Legal Transition Programme ("LTP"). The LTP is the EBRD's initiative to contribute to the improvement of the investment climate in the region by helping create an investor-friendly, transparent and predictable legal environment. LTP activities focus on the development of legal rules and the establishment of the legal institutions and culture on which a vibrant market-oriented economy depends.

The LTP focuses on five core, commercial-law areas which are highly relevant to the EBRD's investment strategies: capital markets and corporate governance, concessions, secured transactions, telecommunications regulatory reform and insolvency.

The EBRD's Role in Insolvency Law Reform

The EBRD is uniquely situated as both a commercial lender and an agent of legal reform. This gives the Bank an enormous wealth of practical knowledge in how insolvency systems work (or don't work), as well as access to the legal tools to effect the necessary changes. The Bank's own work in insolvency reform, as well as a number of academic studies⁵, have all shown that the better a nation's insolvency legal regime is perceived (through comparisons to international standards and best practises), the higher the level of foreign direct investment (FDI) and domestic credit that is available to the country. FDI and cost-effective domestic credit are two critical elements of promoting and fostering market economies. To this end, the EBRD's work in insolvency reform promotes the international standards and best practises developed (often with the EBRD's participation) by UNCITRAL, the World Bank, OECD and the IMF.

LTP's insolvency work falls into 4 broad categories:

⁵ La Porta, Rafael, Florencio Lopez-de-Silanes, Andrei Shleifer and Robert W. Vishny. *Legal Determinants of External Finance*. *Journal of Finance* 52 (July 1997): 1131-50; Ramasastry, Anita *Assessing Insolvency Laws after Ten Years of Transition*, *Law in transition*, Spring 2000

1. Standard Setting;
2. Assessment;
3. Reform; and
4. Outreach

The EBRD has been active in insolvency **standard setting** including participation in the development of the UNCITRAL Legislative Guide on Insolvency. The Bank's **assessment** work has included a comprehensive study in 2003⁶ on the compliance of insolvency laws in all 27 COO with international standards and, in 2004, will include an equally comprehensive study on the practical application of these laws⁷. Ultimately, the standard setting and assessment drive the key element of the Bank's insolvency strategy, **reform**. This reform work has, in the past, included assisting the government of Poland in its preparation of an entirely new, comprehensive bankruptcy law and conducting training sessions for bankruptcy judges in Poland on the implementation of this new law. Reform projects are run by the EBRD, with the assistance of external lawyers and consultants, and are funded by a variety of "donor countries". Finally, the **outreach** component of the Bank's insolvency work includes, among other things, publishing on insolvency matters in the EBRD's quarterly legal journal, *Law in transition*⁸.

For insolvency practitioners in western countries with advanced economies, the notions of developing standards for insolvency regimes, assessing compliance with these standards and attempting to reform existing laws may seem like quaint academic exercises. For countries that have emerged from the shroud of communism and command economies less than 15 years ago, however, such reform is vital to the development of a healthy market economy and, ultimately, a meaningful improvement in people's daily lives. As globalization draws the economies of all

⁶ Results of the 2003 *Sector Assessment Survey* can be found on the bank's website at <http://www.ebrd.com/country/sector/law/index.htm>

⁷ The Results of the EBRD's 2004 *Legal Indicator Survey* will provide an analysis of the operation of each COO's insolvency laws from the perspective of a creditor seeking to petition a debtor into bankruptcy and a debtor seeking to initiate re-organisation/rescue proceedings. These results will be published in the bank's *Transition Report* in November 2004.

⁸ The most recent edition of *Law in Transition* is available on the EBRD's website at: <http://www.ebrd.com/country/sector/law/index.htm>

countries closer together⁹, effective legal regimes, including insolvency regimes, will become critical to investors of all nationalities. The ultimate goal of the EBRD's Legal Transition Programme in insolvency is, like the EBRD itself, to be so successful that, one day, it renders itself obsolete.

⁹ On May 1, 2004, 8 of the COO joined the European Union (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovak Republic, and Slovenia) giving them access to, among other things, the world's largest zone for the free movement of capital and goods.