



European Bank
for Reconstruction and Development

Commercial laws of Slovenia

An assessment by the EBRD

April 2014

COMMERCIAL LAWS OF SLOVENIA

AN ASSESSMENT BY THE EBRD

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Basis of Assessment: This document draws on legal assessment work conducted by the Bank (see www.ebrd.com/law) and was last updated during the preparation of the 2014 EBRD Strategy for Slovenia, reflecting the situation at that time. The assessment is also grounded on the experience of the Office of the General Counsel in working on legal reform and EBRD investment activities in Slovenia and does not constitute legal advice. For further information please contact ltt@ebrd.com.

Overall assessment

Since joining the European Union in 2004, Slovenia succeeded in carrying out a range of legislative reforms aimed at harmonising its legal framework with EU standards. Multiple positive developments pertaining to commercial laws happened due to Slovenia's EU membership, including modernisation of the legal framework for the judiciary and approval of the EU-compliant regulatory framework for electronic communications in 2013. The electricity and gas markets have been fully open and unbundled since 2007. Energy efficiency has been determined as a priority area for energy development; national targets have been set for achieving energy saving, along with incentives for their implementation. A policy objective established by the National Renewable Energy Action Plan is to increase the renewable energy sources share to 25% by 2020. Slovenia has also modernised its Public Procurement Policy, institutional and legal frameworks. The national public procurement legal framework has also received a high score in the EBRD Public Procurement Assessment carried out in 2010. The 2007 Market in Financial Instruments Act transposes the EU Markets in Financial Instruments Directive. The EBRD 2007 Corporate Governance Assessment ranked Slovenia to be in "high compliance" with the OECD Principles of Corporate Governance.

Despite the above-referenced positive developments, a range of matters deserves additional attention and may require further development. Judicial decisions in commercial matters are generally predictable and of good quality, however there are some issues as regards access to court decisions. Slovenia has also set rather ambitious energy efficiency and renewable energy targets that are attainable only with an intensive EE policy and effective measures to reduce energy consumption. While reforms happened in the Slovenian secured transactions framework in 2002, the legal framework still has some drawbacks that may increase the complexity of certain sophisticated commercial transactions. The recently introduced amendments to the legal framework for restructuring and insolvency are yet to be tested in practice.

Legal system

Constitutional and political system

The Constitution of the Republic of Slovenia, adopted in 1991, proclaims Slovenia a democratic republic and stipulates the separation of legislative, executive and judicial powers.¹

The legislative power is vested with the National Assembly composed of ninety deputies elected under the principle of proportional representation with a four-percent threshold. The National Assembly is elected for a period of four years. By Constitution, one deputy of the Italian and one deputy of the Hungarian national communities must always be elected to the National Assembly. There is also a requirement that at least 35 percent of the National Assembly members are women.

The institutional structure of Slovenia also includes the National Council, a representative body for social, economic, professional and local interests. The National Council is composed of 40 members who are representatives of employers, employees, farmers, crafts and trades, independent professions, non-commercial fields and local interests. The National Council members' term of office is five years. The National Council has the right to, inter alia, propose laws to the National Assembly, make inquiries on matters of public importance and issue opinions on all matters within the National Assembly competence.

The President of the Republic of Slovenia is elected by a direct general vote for a term of five years and may be elected for a maximum of two consecutive terms. The President represents the Republic and is charged with promulgating laws, calling elections to the National Assembly, appointing certain state officials and carrying out other duties determined by the Constitution.

The Government includes the President of the Government and the ministers. The President of the Government is elected by the National Assembly upon the proposal of the President of the Republic. Ministers are appointed and dismissed by the National Assembly upon the proposal of the President of the Government. The powers of the President of the Government and ministers cease once the new National Assembly convenes after elections.

The Constitution proclaims that the right to vote is universal and equal. Every citizen of eighteen years of age or older has the right to vote or be elected.

¹ <http://www.us-rs.si/en/about-the-court/legal-basis/>

Recent years have been characterised by certain political instability. Early elections were held in 2011, however because of public discontent with stagnation of economy and political corruption, the Government collapsed after hardly a year in office. The most recent elections to the National Assembly were also extraordinary, held in July 2014 following the May 2014 resignation of the Government. The current Government was formed in September 2014.

Freedom of information

The Constitution (Article 39) proclaims the right of every person to obtain information of a public nature in which such person has “a well-founded legal interest under law,” except in cases where it is prohibited by law.

Access to Public Information Act was adopted in 2003 and stipulates free access to public information. Public information is defined as (i) information originating from the field of work of the public sector body, (ii) that is in the body's possession and (iii) contained in certain materialised form. There are exceptions based on which access to information may be denied, such as classified information or personal data protected by privacy laws. The government is reported to provide access to information both to Slovenian and foreign nationals, including the foreign media.

Relevant bodies are required to make certain types of their documents available through electronic means. If an application for access to information is made, the decision in this respect must be made within 20 business days (this term may be extended to a maximum of 30 business days). Should there be no response within the designated period of time the application is deemed refused and the interested person may file a complaint with the Information Commissioner, an autonomous independent body charged with supervising matters related to the protection of personal data and access to public information. According to the Information Commissioner's 2013 Annual Report,² in 2013, the number of complaints received by the Commissioner as regards the non-responsiveness of first instance authorities has grown compared to 2012 (339 in 2013 as opposed to 242 in 2012).

Judicial system

Slovenia's judiciary comprises courts of general jurisdiction dealing with civil and criminal matters, as well as specialised labour and administrative courts. First instance courts of general jurisdiction include county / local courts and circuit / district courts. The former hear disputes involving claims of up to EUR 20,000; the latter deal with the larger civil disputes, as well as certain specific matters such as copyright and competition. Appeals from the first instance courts lie to one of four appellate courts. There are no specialised commercial courts as such, however, each instance of courts of general jurisdiction has specialised commercial departments hearing exclusively commercial matters. The Supreme Court is the final instance of appeal in all matters.

The Judicial Training Centre at the Ministry of Justice is responsible for continuous training of judges and court personnel and for administration of bar examinations. In addition to passing a bar examination, a candidate to a judicial position has to undertake specialised professional training on drafting legal decisions administered by the Ministry of Justice. Appointment to a judicial position in a commercial law department requires commercial law experience.

The *EBRD Judicial Decisions Assessment* found court judgments in commercial law matters in Slovenia to be generally predictable and of reasonably good quality. Access to court decisions remains problematic, mainly due to the fact that decisions are expected to be accessed by their file identification number, which is normally known only to the parties to a dispute. EU membership prompted modernisation of the legal system in line with higher standards, though the new framework and the jurisprudence developing under it are still relatively young. Notable legislative improvements of recent years include amendments to the Enforcement Act, aiming at simplifying enforcement proceedings where creditors face unsubstantiated objections in enforcement proceedings. However, enforcement of court judgments still leaves room for improvement. The workload of bailiffs is high, even though efforts have been taken recently to address the problem, including by new hires and attracting more legal trainees. Speed and efficiency of enforcement processes still vary according to the type of matter, with seizure of bank accounts generally much easier than seizure of land.

The slow pace of justice is the major concern in Slovenia's judiciary. This is consistent with data from the *EBRD / World Bank Business Environment and Enterprise Performance Survey*, where only 8% of Slovenian respondents considered that the court system was quick. Recent measures to clear backlogs include strengthening alternative dispute resolution mechanisms, with an emphasis on the introduction of commercial mediation, though the effect

² https://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Annual_Report_2013.pdf

of these measures is yet to be seen. Impartiality of courts remains to be another concern. Efforts to address the issue have included holding open public discussions on the matter, though efforts in this direction have to be strengthened.

Recent developments in the investment climate

As Slovenia has been a European Union member since 2004 and a Eurozone member since 2007, its legal framework has been closely harmonised with that of the EU. At the same time, certain concerns have been expressed as to the quality of legal reform efforts due to legislation being sometimes passed in haste.

Overall, the protection given to investment is adequate. There is no discrimination against foreign investors, and various incentives are offered for investments in economically underdeveloped areas. The legal framework for intellectual property and anti-money laundering and counter-terrorist financing also appears to be adequate.

The 2015 Doing Business Report of the World Bank Group³ ranked Slovenia 51th out of 189 economies in the global ranking of ease of doing business, five points down compared to the 2014 rating. The getting credit criterion has declined the most, scoring five points below the 2014 ranking.

Slovenia was hit hard during the recent financial crisis. Government efforts to bailout banks had a significant fiscal impact. The two largest banks are still state-owned, with one of them due to be privatised in 2015, and there is a great need for further fiscal and structural reforms to reduce sovereign risks. Access to finance has deteriorated, particularly for small and medium enterprises, which made them among the most vulnerable in the aftermath of the crisis. Private investment has declined in recent years, largely because of the crisis, significant state involvement in the economy and an inefficient business environment.⁴

There is a risk of continuing political instability with the coalition in the incumbent Government believed to be prone to internal disagreements. There is also a record of public referenda disrupting the introduction and implementation of government policies.

There is still significant work to be done to make the economy more competitive. The current government priorities include addressing tax evasion issues and simplifying tax returns process particularly for small and medium sized businesses. A gradual reduction of corporate income tax has also been observed. Further positive developments are expected from the privatisation process initiated by the Government.⁵

Commercial legislation

The EBRD has developed and regularly updates a series of assessments of legal transition in its countries of operations, with a focus on selected areas relevant to investment activities. These relate to investment in infrastructure and energy (concessions and PPPs, energy regulation and energy efficiency, public procurement, and telecommunications) as well as to private-sector support (corporate governance, insolvency, judicial capacity and secured transactions).

Detailed results of these assessments are presented below starting with infrastructure and energy and going into private sector development topics.

The completed assessment tools can be found at www.ebrd.com/law.

³ <http://www.doingbusiness.org/data/exploreeconomies/slovenia>

⁴ http://ec.europa.eu/priorities/jobs-growth-investment/plan/docs/country_profiles/slovenia-country-file_en.pdf

⁵ See IHS Economics and Country Risk Report on Slovenia, dated January 2015

Infrastructure and Energy

Electronic Communications

The main legal basis for electronic communications regulation is the Electronic Communications Act, 2013, as supplemented. Prior amendments to transpose the 2009 European Union (EU) regulatory framework in 2010 and 2011 were deemed insufficient, resulting in infringement proceedings by the European Commission and the imposition of a fine on Slovenia. Legislation resolving the matter finally came into effect in January 2013.

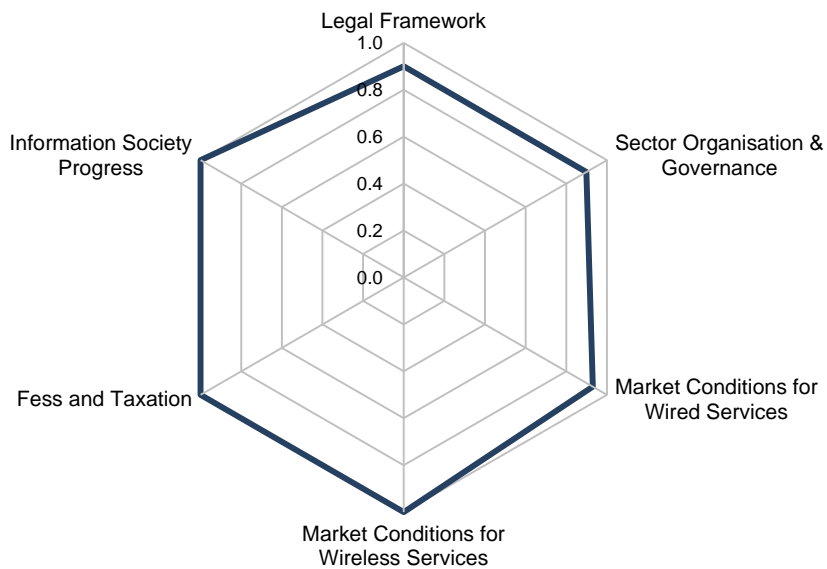
Slovenia is a member state of the EU with fully liberalised electronic communications markets. The Post and Electronic Communications Agency (APEK) is the regulatory authority for electronic communications. The Ministry for Infrastructure and Spatial Planning (MZIP) is responsible for policy making. The state still holds a majority stake in the incumbent operator Telekom Slovenije (TS), and while a number of efforts have been taken in recent years to privatise the remainder of the company, none has yet come to fruition. Market access has been fully liberalised and is subject to a general authorisation scheme. All of the competitive safeguards foreseen in the EU regulatory framework have now been implemented, including interconnection and infrastructure access, tariff rebalancing, carrier pre-selection, wholesale broadband access, wholesale line rental and number portability. TS and the alternative operator T-2 are deploying fibre access networks, with good coverage and take-up. APEK has addressed NGA networks and obliged TS to offer wholesale broadband access over fibre networks, which is actively used in practice. APEK also imposed duct access and fibre unbundling. Slovenia has four mobile network operators (Mobitel, Si.mobil, Tušmobil and T-2), all offering 3G services. TS, Si.Mobil and Tušmobil were awarded licences for additional frequencies in the 1800MHz and 2100MHz bands, suitable for 4G in mid-2013.

The main reform efforts are understood to be centred on continuing vigorous implementation of the most recent EU framework (2009).

The EBRD 2012 Electronic Communications Comparative Assessment revealed nearly full compliance of the legal / regulatory risk for telecommunications in Slovenia with international practice, with only the legal framework and sector organisation and governance criteria receiving slightly lower scores compared to the rest (see Chart 1).

In common with most EU peers, among Slovenia's challenges in the future is keeping pace with the evolving EU framework and ensuring its effective implementation as part of the EU Digital Agenda. Key issues in this respect include resolving uncertainties as to the frequency strategy and the delayed allocation of available spectrum resources, which have slowed the development of LTE in Slovenia and are affecting decisions on investments. Slovenia is particularly lagging behind in terms of mobile broadband take-up. Progress in the deployment of high-speed (>30 Mbps) and very high-speed broadband (>100 Mbps) has also been slow. Although fibre access penetration in Slovenia is relatively high compared to other countries, and the proportion of broadband lines with a speed of more than 30 MBps is low.

Chart 1: Comparison of the overall legal/regulatory risk for telecommunications in Slovenia with international practice



Key: Extremities of the chart = International best practice

Note: The diagram shows the quality of the legal framework as benchmarked against international standards (European Union). The extremity of each axis represents an ideal score of 100 per cent, that is, full compliance with international standards. The fuller the "web", the closer the overall telecommunications legal framework of the country approximates these standards.

Source: EBRD 2012 Electronic Communications Comparative Assessment.

Energy

Electricity

The electricity market has been fully open and unbundled into generation, transmission and distribution since 1 July 2007, meaning that all customers may choose their suppliers, although much remains under full state ownership (the Transmission System Operator (TSO) and Distribution System Operator (DSO)) or majority state ownership (generation and supply). Slovenia has one of the largest percentages of state ownership in the sector within the EU-27, at approximately 80%. Private sector participation has increased recently, with an increasing number of suppliers.

The Energy Act (the “EZ”) regulates power and other energy matters in Slovenia. The EZ sets forth the basic principles of Slovenia’s energy policy, rules that regulate the operation of the energy markets and the provision of commercial services, and basic standards for the operation of power plants and other energy installations, including requirements for the issuance of licenses and related matters.

The EZ requires that parties be licensed to engage in power generation and transmission activities, operate transmission systems, supply energy (i.e., retail sales), organise a power market, and represent and intermedicate for other parties on the organised power market. Notably, wholesale power trading does not require a license.

The EBRD 2011 Energy Sector Assessment demonstrated rather high quality of energy (electricity) legislation in Slovenia; with certain improvements required in the area of public service obligations (see Chart 2).

The chief energy regulator in Slovenia is the Energy Agency, which is an independent public agency. The Agency serves as the market regulator, and is authorised to supervise the transparency and competitiveness of the gas and electricity markets, as well as access to transport and distribution networks. In connection with the EU’s third legislative package on energy that entered into force in March 2011, a new Energy Act is expected to be introduced in Parliament that will propose measures to increase the independence of the Energy Agency, including restricting the government’s current authority to recall the Agency’s director and council of members and limiting the number of times that the terms of those parties can be renewed. It is expected that the EU’s third energy package directives will be transposed into local law by September 2013.

Borzen d.o.o., a state-owned entity, regulates the organised power market. The only system operator in Slovenia is the state-owned ELEKTRO-SLOVENIJA, d.o.o.

By law, the electricity market is open, meaning any consumer is free to choose its own supplier; however, the leading power producer/actor in the market is the state-owned Slovenske elektrarne d.o.o., which owns the following significant power generating entities: Dravske elektrarne Maribor d.o.o., Soške elektrarne Nova Gorica d.o.o., Hidroelektrarne na spodnji Savi d.o.o., Termoelektrarna Šoštanj d.o.o. and Termoelektrarna Trbovlje d.o.o.

The market is made up of: the TSO, founded by the Energy Law in 1999; the DSO, established by an Act amending the Energy Act in 2006; separate distribution companies (separation from the DSO having taken place in 2007); a market operator (Borzen PLC); eight companies operating in large facilities with a capacity of over 10 MW are active in the electricity-production market; and 14 suppliers.

Most of the major players in electricity production are connected under the parent company of Holding Slovenske Elektrarne (HSE). All the significant power plants with the notable exception of NEK, Sava river hydro plants and three smaller thermal power plants, TE- TOL, TEB and TE T, are owned in majority by the HSE. HSE also has the majority of ownership in the lignite mine in Velenje. NEK is owned in equal shares by Slovenian and Croatian legal successors of the founders of the power plant. On the Slovenian side, the Slovenian half of electricity produced in NEK is owned by the company Gen energija, 100% owned by the state.

The transmission network of Slovenia (and TSO) is operated by Elektro Slovenia d.o.o. (ELES), whose main responsibility is to ensure the best possible and transparent use of the existing transmission grid management, operational reliability and security (defined in the Energy Act). The transmission system also makes it possible to buy, sell and transit electricity across borders. There are three voltage levels in the transmission grid – 400 kV, 220 kV and 110 kV – as well as corresponding transformer substations. The nuclear power plant in Slovenia is owned 50-50 by Slovenia and Croatia. There is discussion of constructing a new plant for security of supply and reduction of greenhouse gases.

Wholesale competition and retail competition exist. Two market forms are active: an organised spot exchange and a bilateral contracts market. The market operator, Borzen PLC, organised the exchange from 2002 until the end of 2008, with the volume of spot traded energy decreasing constantly over that period. From 2009, BSP, a regional energy exchange, is now also in operation. A challenge Slovenia faces is enhancing competition in a net import market with limited cross-border capacity.

Regulated network tariffs are set ex ante following a consultation process by the Energy Agency. Network charges are set for transmission and distribution levels separately, based on the utilisation and customer categories. Network tariffs for each customer category are uniform across the country. Network tariff categories are: voltage level, connection to substations, utilisation, seasonality, night/day use; household and public lighting. Regulated full service tariffs for end customers do not exist.

The network tariff methodologies are incentive-based price cap, and include performance-based components. Additional quality-based incentives are planned (from 2011).

The household price of electricity in Slovenia is not significantly lower than the average price in the EU-27.

Generators are not charged for accessing the network; customers pay 100% of network charges. There have been no cases of refusal of access except as a result of cross border congestion. Mechanisms for the calculation of total transfer capacity are proposed by the TSO. According to EU Regulation 1228/2003, these mechanisms should be subject to the approval of the regulatory authority; in practice this has not yet occurred.

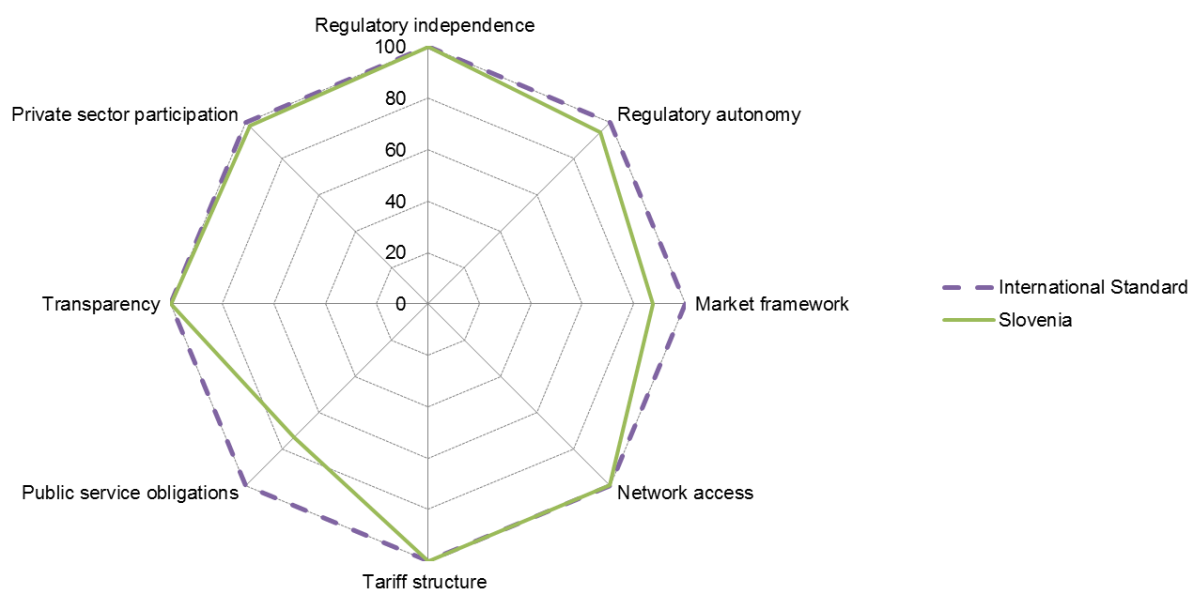
The Agency issues separate licences for each type of activity in the chain, from production (above 1 MW) to retail sale, with conditions set by the Government consistent with EU Directives. The requirement for a licence to trade has been eliminated. The Agency issues numerous licences and publishes a register of all licence holders.

The Energy Act and General conditions for the supply and consumption of electricity from the transmission and distribution networks define the cases and conditions for a supplier of last resort. The responsible party for such supply is the DSO, which must supply a customer if its supplier cannot do so, for example in cases of bankruptcy. Household customers and small companies that meet maximum employee and budget requirements may also obtain supply from this source.

Supply to vulnerable customers, defined as persons whose life or health would be endangered without electricity and who cannot afford electricity or gas, is provided by the DSO under specific conditions set by the law, with the costs covered from network charges. Vulnerable customers may not be cut off from supply. Customers seeking this service must apply for the supply to vulnerable customers and prove that they fulfil the conditions with certificates issued by the social security authority.

In accordance with the Energy Act, the Energy Agency issues an annual report on the energy sector and submits it to government. The report is published on the website, and includes details on the allocations of cross-border capacities, a mechanism to eliminate congestion, the time needed by the system operator for connections and repairs, details regarding access to the network and details on the connection of new electricity generators.

Chart 2 – Quality of energy (electricity) legislation in Slovenia



Note: The spider diagram presents the sector results for Slovenia in accordance with the benchmarks and indicators identified in an assessment model. The extremity of each axis represents an optimum score of 100 that is full compliance with international best practices. The fuller the “web”, the closer the overall regulatory and market framework approximates international best practices. The results for Slovenia are represented by the green area in the centre of the web.

Source: EBRD 2011 Energy Sector Assessment

Gas

The Slovenian market for natural gas has been fully opened since July 2007. All customers, including households, have the option to switch gas supplier, but the distribution of natural gas will still be provided by the current system operator. Slovenia depends almost entirely on imported gas; in 2007, 50% came from Russia, 30% Algeria and 19% from Austria.

The EBRD 2011 Energy Sector Assessment demonstrated that public service obligations and the market framework are the key weaknesses of the Slovenian energy (gas) legal framework, noting the otherwise high compliance with international standards (see Chart 3).

There is one TSO (Geoplin plinovodi d.o.o), legally unbundled from its parent, the transmission company, Geoplin d.o.o, which owns and operates the 970 km of pipeline within Slovenia, which is part of the European gas network. Slovenia is geographically advantaged by its pipeline system with neighbouring Italy, Austria and Croatia. The state is the largest shareholder in Geoplin. The mandatory national public service of the gas transmission-system operation is carried out by one provider, the TSO, while the optional local public service of gas distribution system operation is carried out by 17 providers active in 68 local communities.

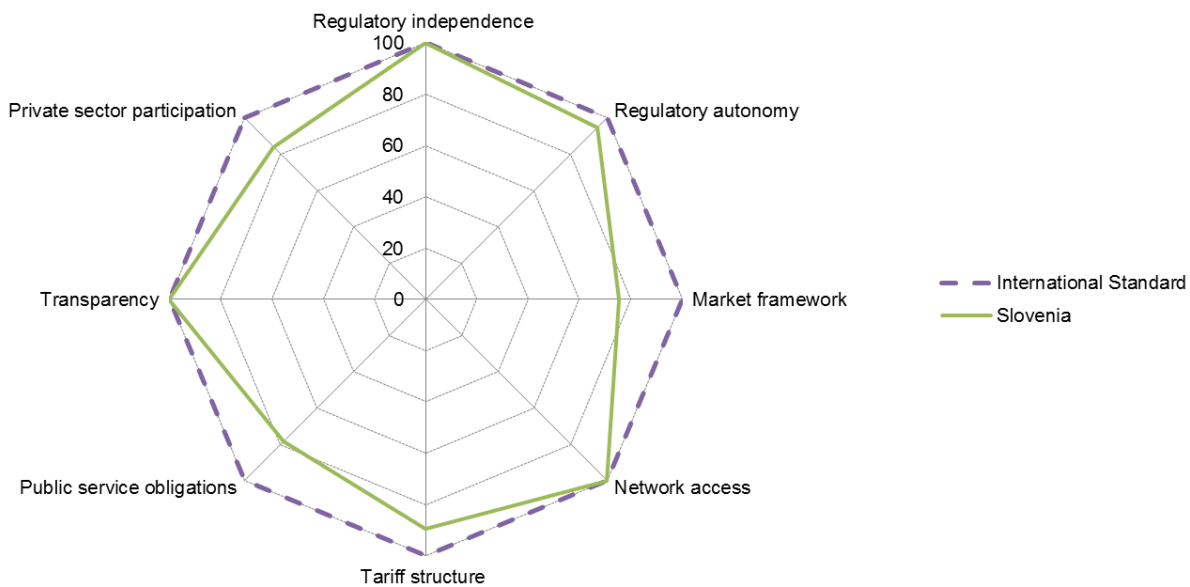
After 1 July 2007 all the gas suppliers and gas customers participated in the retail market (all could choose their supplier). The retail market consists of customers connected to the (high voltage) transmission network and the customers connected to the distribution networks. In comparison with 2006, the market shares of the retail suppliers did not change in 2007. Geoplin, d.o.o., has a 76.1% share of the Slovenian retail market, while the suppliers to the customers on the distribution networks have a total of 23.9% of the market.

There are four wholesale market participants; 18 companies compete in the retail market, serving 68 municipalities. As all the distribution companies provide a service to less than 100,000 customers (the EU-mandated limit for required legal unbundling), they are only account unbundled.

Because the market is fully unbundled, there are no end-user regulated tariffs. There is regulated Third Party Access; a price cap methodology is used for the network tariffs. The Agency may impose performance-based components. The Agency licenses all activities on the gas market separately, as in electricity.

There is no supplier of last resort; the market remains dominated by Geoplin, although some competition began in 2008 with a new supplier in the market.

Char 3 – Quality of energy (gas) legislation in Slovenia



Note: The spider diagram presents the sector results for Slovenia in accordance with the benchmarks and indicators identified in an assessment model. The extremity of each axis represents an optimum score of 100 that is full compliance with international best practices. The fuller the “web”, the closer the overall regulatory and market framework approximates international best practices. The results for Slovenia are represented by the green area in the centre of the web.

Source: EBRD 2011 Energy Sector Assessment

Energy efficiency/renewable energy

The draft National Energy Programme up to 2030 (NEP) recognises energy efficiency (EE) as one of the priority fields of energy development and envisages concrete targets and measures to improve EE in various sectors in line with EU objectives. The draft NEP sets out ambitious targets for Slovenia up until 2020, including a 20% improvement in energy consumption efficiency; reduced end-use energy consumption, excluding transport, of 7% relative to the base level of 2008; ensuring a 100-percent share of almost zero-energy buildings among new and renovated buildings by 2020, and in the public sector by 2018; and other EE commitments for the public sector.

The Second National Energy Efficiency Action Plan (NEEAP 2) of Slovenia adopted in 2011 has set an energy savings target of 4.3 TWh (or 366 ktoe) for 2016. The NEEAP 2 provides financial incentives for the households and services sectors in relation to thermal retrofitting of existing buildings, construction of energy-efficient buildings, high-efficiency heating systems and rational electricity use. It also establishes minimum energy efficiency requirements for electrical appliances.

Improved energy efficiency of residential buildings is a key aspect of meeting the state targets for lower energy consumption. The state is planning on setting incentives for a comprehensive programme of energy-saving building restoration, development of financial mechanisms for their implementation and an increased role of energy suppliers for the promotion and implementation of the efficient use of energy projects. The leading role in the restoration of buildings will be played by the public sector. The government should review and update the current housing legislation that regulate the management, maintenance and upgrade of multi-storey apartment housing, as well as representation and decision making powers by home-owners associations. The aim of these improvements would be to facilitate further and better energy efficiency investments in the housing stock.

In accordance with Directive 2009/28/EC of the European Parliament on the promotion of the use of energy from renewable energy sources (RES), Slovenia has adopted the National Renewable Energy Action Plan for 2010-2020 (NREAP). The policy objectives of Slovenia for developing renewable energy, as set out in the NREAP include an increase to 25% share of RES in the final energy consumption and 10% share of RES in transport by 2020, which would entail doubling the energy generated from renewable sources relative to the base year 2005. Further, NREAP has placed efficient

energy use and renewable energy sources on the country's priority list for economic development and aims at halting the growth of final energy consumption.

Electricity from RES is mostly promoted through a feed-in tariff with a premium and through a series of subsidies and low-interest loans. Renewable energy sources for heating purposes are promoted mainly through loan and subsidy schemes offered by the Eco Fund (Eko Sklad) and the Ministry of Infrastructure and Spatial Planning. Electricity produced from RES has grid access priority over electricity produced from other sources. There are a number of state policies aimed at promoting the development, installation and use of RES installations. The main incentives for RES use in transport are a quota system and a tax regulation mechanism (including tax exemptions). The quota system obliges the state to achieve a certain percentage of biofuels in the fuel market.

Slovenia has set ambitious targets in line with the EU 2020 strategy and even the NREAP itself states that these targets are reachable only with an intensive EE policy and effective measures to reduce energy consumption. The NREAP defines the possibility of implementing a quota system in addition to the feed-in system, which would mean that the obligation would fall on the electricity suppliers.

Public Private Partnerships / Concessions

Slovenia modernised its Public Private Partnerships (PPP) policy, institutional and legal frameworks, which compare favourably with those in other EBRD countries of operations. The PPP Act is a fairly comprehensive piece of legislation, regulating both contractual and institutional PPPs. It applies to both service concessions and works concessions, including BOT ("build, operate, transfer"), BOO ("built, own, operate"), thus covering quasi privatisation too. The PPP Act refers to contractual PPPs as relations based on either concessions or public procurement. However, due to its expressly subsidiary nature the PPP Act needs to be consulted in combination with other sector laws and general laws (e.g. the Public Procurement Act or the Public Utilities Act) to ascertain exactly which rules should apply. This approach may not necessarily prove the most attractive for investors and their advisors alike as the act remains complex and somewhat confusing.

The more favourable aspects of the PPP Act are as follows: It is applicable to both commercially viable infrastructure assets and to social infrastructure services. The law provides a degree of flexibility and a variety of instruments. It provides for a mandatory feasibility study of pros and cons for the use of a PPP

for a particular project before entering into a public contract.

The EBRD 2012 Assessment of the PPP/Concession laws throughout its countries of operations revealed that Slovenian laws were in high compliance with the best international standards, with only Security and Support Issues scoring lower than the other indicators (see Chart 4). On the implementation side, PPP Law enforcement received a very high grade, whereas institutional and policy frameworks are behind (see Chart 5).

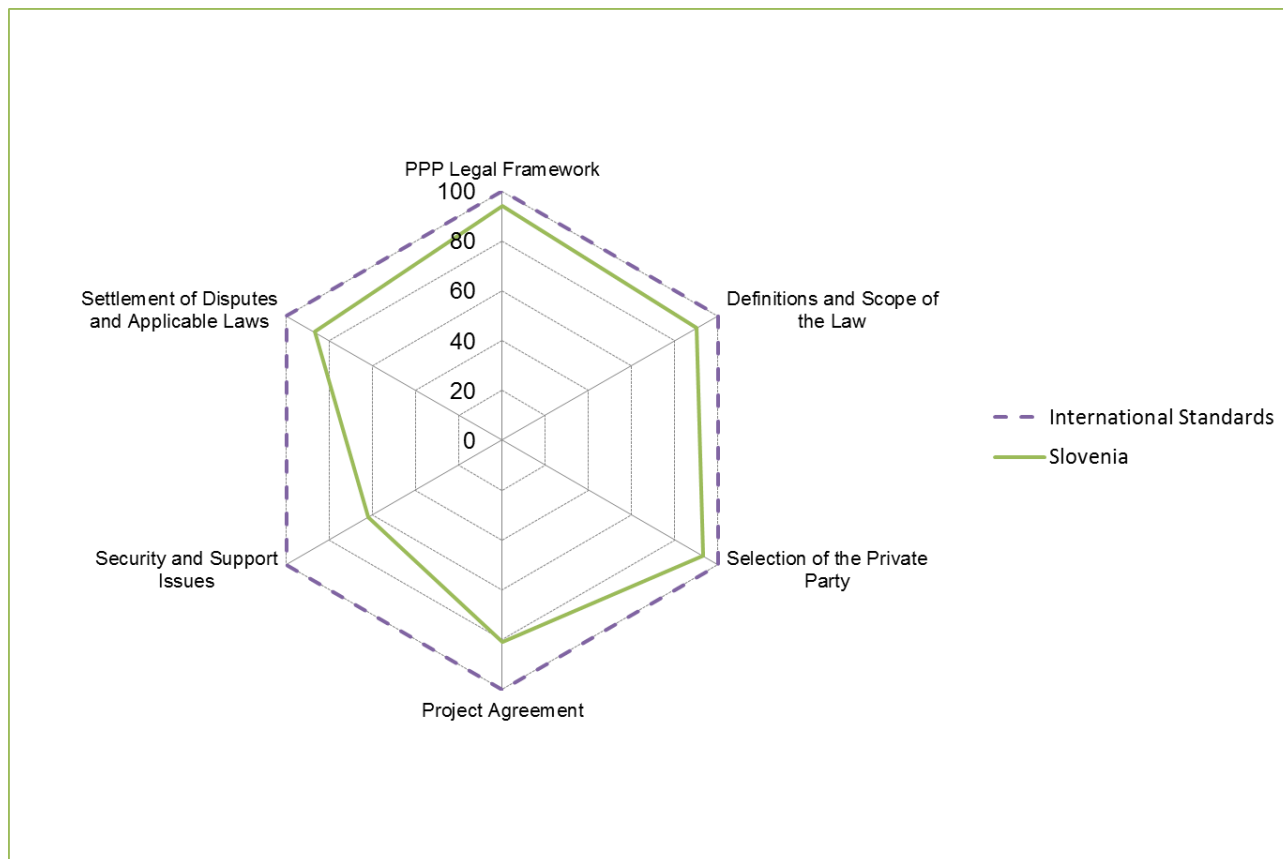
Among the areas for potential improvement are the following: a) the contents of the concession agreement and, in particular, termination provisions, b) security package available to the lenders, and c) the government support provisions and mechanisms.

In addition, the applicability of international arbitration seems restricted for PPP project parties.

According to the PPP Act, the Ministry of Finance plays a major role in PPP implementation. Specifically, it is empowered with the task to regulate PPP regulations, form a special unit within its structure to develop and monitor the implementation of PPPs, draw up manuals for operating PPPs and undertake other measures in order to improve PPP practices. The Minister of Finance is also required to lead the PPP Council, which formulates PPP policy.

Slovenian PPP policy, institutional and legal frameworks are generally considered to compare favourably with those in other EBRD countries of operations; yet there is room for improvement.

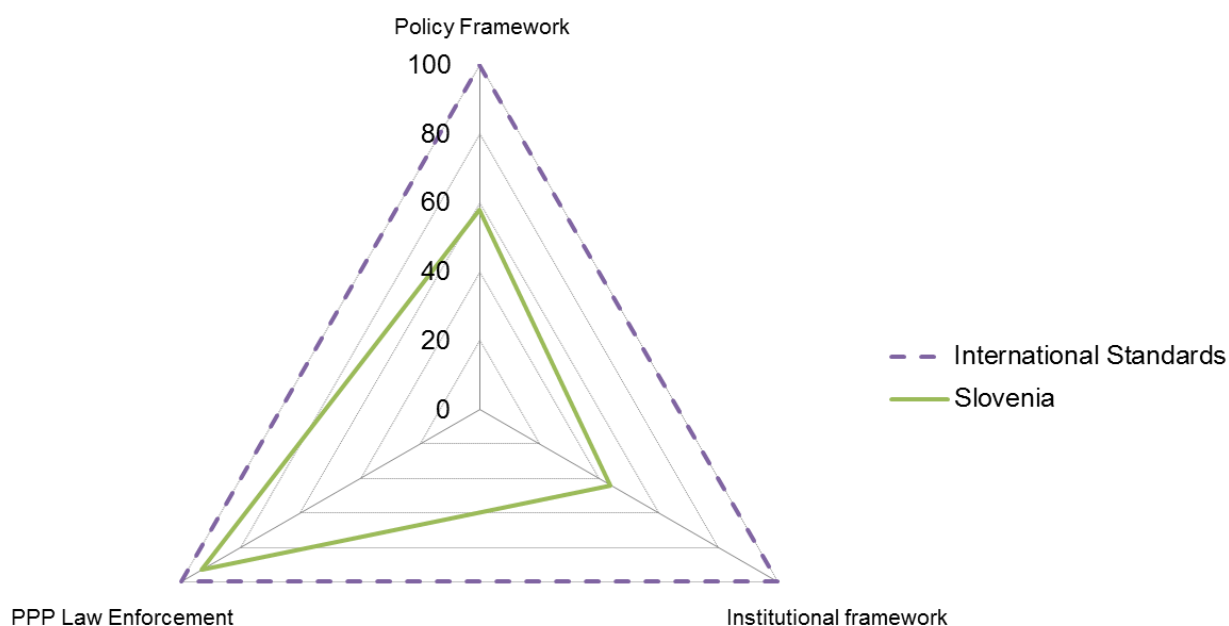
Chart 4 – Quality of the PPP legislative framework in Slovenia



Note: The extremity of each axis represents an ideal score in line with international standards such as the UNCITRAL Legislative Guide for Privately Financed Infrastructure projects. The fuller the “web”, the more closely concessions laws of the country approximate these standards.

Source: EBRD 2012 PPP Legislative Framework Assessment (LFA)

Chart 5 – How the PPP law is implemented in practice in Slovenia



Note: The extremity of each axis represents an ideal score, that is, a fully effective legal framework for PPPs.

Source: EBRD 2012 PPP Legal Indicator Survey (LIS).

Public procurement

In the EBRD 2010 assessment the Slovenian Public Procurement Law (PPL) scored high to very high in compliance with international best practice. The PPL covers national and local government procurement, as well as providing specific procurement rules for public law institutions and the utilities sector. Moreover, the PPL clearly differentiates between public procurement contracts and procedures and concessions.

Chart 6 below illustrates the quality of public procurement legislation in Slovenia. Uniformity and accountability received the highest score in the 2010 assessment, whereas stability, proportionality and integrity are the indicators scoring the lowest. The picture for the public procurement practice in Slovenia is however different, where areas for improvement include integrity, accountability and economy of the process (see Chart 7).

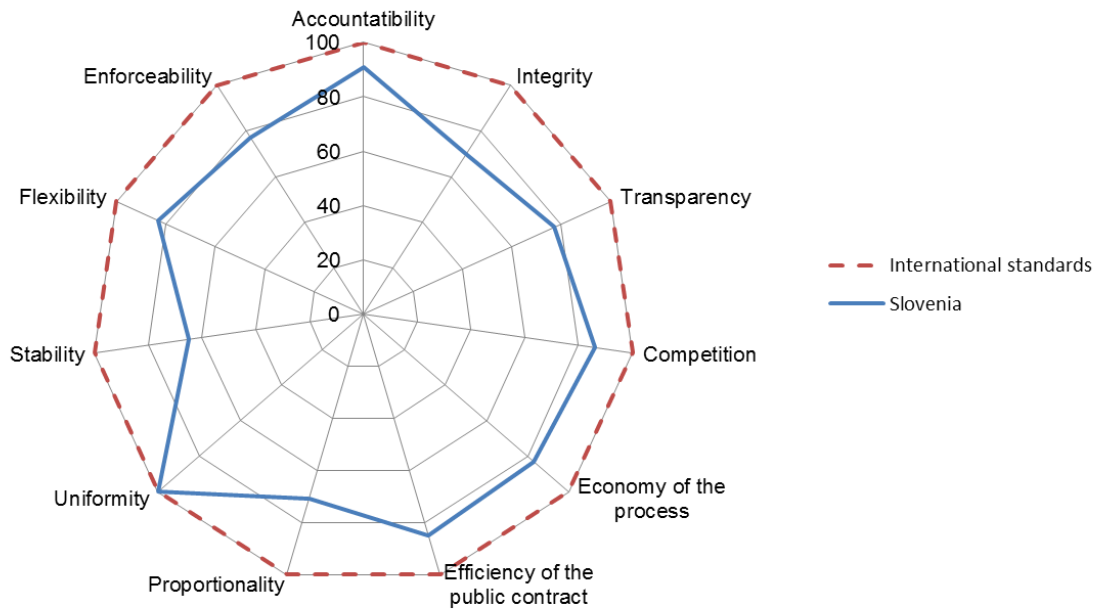
The PPL in Slovenia clearly promotes transparency, competition and uniformity in public procurement and ensures fair competition. The PPL provides for modern, uniform and comprehensive regulation, in accordance with the EU PP Directives. Furthermore, the legislative framework follows the principle of proportionality, distinguishing between small and high value contracts, as well as providing for different procurement procedures suitable for different contract types.

The PPL does not have major weaknesses. However, the efficiency and the economy of the public procurement process showed a lower compliance, due to the insufficient adoption of procurement efficiency instruments in the pre-tendering and post-tendering phases of the regulation. Also, in certain aspects PPL is not modern enough: e-Procurement has not been fully implemented, electronic communication is not mandatory and the PPL does not require procurement monitoring and administration to be computerised.

The PPL should definitely improve in terms of the accountability of contracting entities. This can be achieved by adopting specific efficiency instruments as recommended by international standards or expanding regulation of the pre-tendering and post-tendering phases of public procurement.

The Slovenian institutional framework is quite comprehensive but some regulatory gaps were identified, in enforcement, in particular. Local procurement practice is uniform and rather efficient but could benefit from introducing modern purchasing techniques.

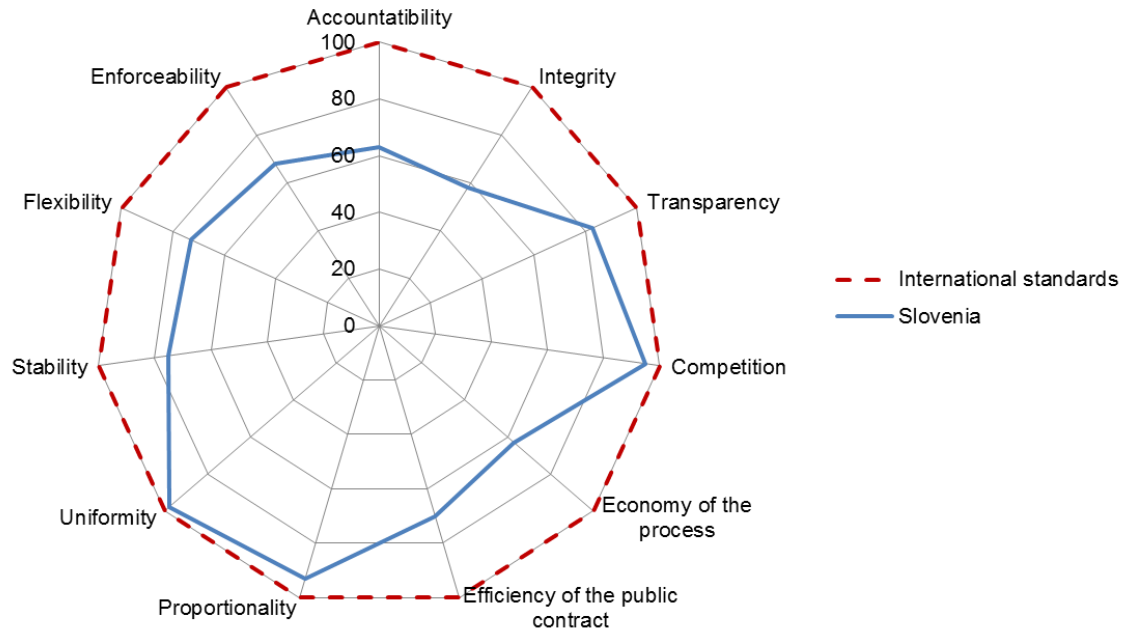
Chart 6 –Slovenia's quality of public procurement legislation



Note: The chart shows the score for the effectiveness of the national public procurement laws. The scores have been calculated on the basis of a questionnaire on legislation that is developed from the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each Core Principles benchmark indicator. The bigger the “web” the higher the quality of legislation.

Source: EBRD 2011 Public Procurement Assessment

Chart 7 - Quality of public procurement practice in Slovenia



Note: The chart shows the score for the extensiveness of the national public procurement laws. The scores have been calculated on the basis of a questionnaire on legislation that is developed from the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each Core Principles benchmark indicator. The bigger the “web” the higher the quality of legislation.

Source: EBRD 2011 Public Procurement Assessment

Private Sector Support

Access to finance

The Slovenian secured transactions legal framework was reformed in 2002 and it displays many of the features of modern legislation, but still contains important limitations, which may increase the complexity or legal costs and decrease legal certainty of some sophisticated commercial transactions.

The 2002 Law on Property Act covers both pledges over movable assets and rights as well as mortgages. The Act allows for the creation and enforcement of possessory and non-possessory pledges on movables. To create a pledge, the parties must execute a notarial deed in which the debtor can consent to direct enforceability, and register the pledge either in the specific asset register if the pledged assets are subject to title registration (e.g. Central Securities Clearing Corporation for shares in public joint stock companies) or in the Register of Non-Possessory Liens and Seized Movable Property if the pledged asset has a serial number or a similar identification.

The Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES) maintains the Register of Non-Possessory Liens and Seized Movable Property. This register contains data on pledged or seized motor vehicles, inventories, equipment and certain animals which can be assigned unique identifiers. The registration is done by AJPES based on a request filed by a notary public, executor, court debt collection bailiff or another public authority empowered by law to lodge registration requests. The registration is constitutive in nature, meaning that the liens are only valid after registration is complete. Information from the register is public and can be obtained on line. AJPES also issues registration certificates and official extracts from the register. However the register cannot be searched against the name of the debtor but instead the exact identification number of the object of the pledge has to be used. Although a step in the right direction, the register is thus a rather heavy and patchy attempt to provide publicity and opposability vis-à-vis creditors' rights.

Other limitations exist in the pledge legal regime: Slovenian law does not recognise the concept of an enterprise charge (pledge over all present and future assets of a company) – it only provides for a so called “warehouse charge”, which allows for all the assets at a single location to be pledged.

The notarial deed must specify the exact amount of the debt (the principal and the interest rate) and the debt's maturity – so a secured revolving debt or credit line do not seem legally possible.

The mortgage legal regime is defined in the 2002 Property Act, a valid mortgage requires a mortgage agreement with signatures certified by a notary public to be registered with the relevant land registry in accordance with the procedures laid down in the Land Registry Act. If the mortgage agreement is executed as a directly enforceable notarial deed, creditors will benefit from a less burdensome procedure for enforcing their rights, as in the case of default the debtor is deemed to agree with the sale of the property and with vacating the premises within one month following the sale. Without the mortgage agreement being prepared as an enforceable notarial deed, the amount of secured debt has first to be proved in court before starting enforcement. A mortgage can secure any type of debt insofar as it is quantifiable in monetary terms and the maximum amount of debt is stated.

The Land Registry is digitised and maintained by the district courts under the supervision of the Ministry of Justice. Registration of a mortgage is a rather quick process.

Apart from the traditional secured lending finance, market participants have access to others forms of asset based finance such as leasing and factoring as well. There is no specific law on factoring or financial leasing – these structures rely on general provisions on assignment and lease found in the Obligations Act. A leasing company will need a license if dealing with consumers. Apart from this, the market is unregulated.

According to the 2012 Financial Stability Review issued by the Bank of Slovenia, the leasing sector's operations have been affected in recent years by lower economic activity and the deteriorating creditworthiness of clients.

An interesting development of factoring services and a novelty of the Slovenian factoring market (and in the region) is the creation in May 2012 of the first organized market for the trading of receivables between Slovenian business entities - Borza Terjatev (hereafter BT). It represents an online trading platform which allows registered users access to a secure, standardized and automated sales process of receivables. A seller posts receivables for sale, specifies terms of the sale and the time of the auction. The necessary information includes the name of the debtor and its credit rating, amount of receivables, maturity and any possible guarantees. Further, possible terms of sale could also include the price for the immediate sale of receivables or an option of sale with recourse. Subsequently, buyers can browse through the list of all ads of receivables available for sale and decide about their action. Buyers enter binding offers for the advertised receivables at the time of the auction. If the seller allows it, buyers could also choose the purchase of receivables with recourse. The seller can accept the highest bid at any

time during the auction and no later than one day after the auction. At this stage the identity of the final buyer and the seller is disclosed. The contract is automatically prepared and sent to the seller and the buyer in electronic form, together with the notice of completion of the auction. The seller and the buyer sign the contract. As an annex to the contract the seller is obliged to provide a proof of existence of receivables. The seller needs to notify the debtor about the sale of receivables to the buyer and in addition send a proof of notification to the buyer. Finally, the buyer is obliged to pay to the seller within three working days from the day of signing the contract.

Although it is still too early to assess the success of the system, development of this type and similar on-line accounts receivable exchanges (accounts receivable clearing systems, reversed factoring platforms, etc.) can help overall access to finance, especially for SMEs troubled by the systemic payment illiquidity.

In accordance with the Banking Act, commercial banks and savings banks under the auspices of the Slovenian Banking Association have organised in 2008 a system for exchanging information on the level of indebtedness of individuals (SISBON). In 2012 an independent company was established to take over and manage the system. Apart from banks the system has gradually incorporated financial institutions that provide financial leasing services and credit card companies. Since 2011, in accordance with the Law on Consumer Credit, creditors not included in SISBON, may have access to a selective set of data as well.

Legal entities that submit data to the system are the users and are responsible for the administration of the collected personal data of their clients - private persons in SISBON. They are also responsible for the maintenance and monitoring of their data within SISBON, as well as its accuracy and protection towards their customers and third parties under the Personal Data Protection Act and the Banking Act.

An individual has the right to a printout of their personal data from SISBON, including information on who provided the data, and who, when and for what purpose acquired it. If an individual has a reasonable substantiated objection with regards to the personal data entered in the system, they are entitled to write a request for its deletion, modification or correction. Based on a justified request this information has to be deleted, corrected or supplemented within 7 working days from receipt of the application.

The data that is being collected is limited to loans (including overdrafts), financial leases, deferred payment cards (including instalment purchases), credit cards and other guarantees).

For corporates, a sort of credit rating service exists under the AJPES framework. The credit rating assessment is based on analysing financial statements and the occurrence of payment default events over a longer period of time. A payment default event is defined as the occurrence of at least one of the following events: initiation of bankruptcy, composition, liquidation or compulsory liquidation proceedings. AJPES has direct access to all data related to bankruptcy proceedings, compulsory composition proceedings, liquidation or compulsory liquidation proceedings and these are included in the assessment.

Capital Markets

The basic legislative framework for securities markets is established in the Market in Financial Instruments Act of 2007 ("Financial Instruments Act"), which implemented the EU Markets in Financial Instruments Directive. The Act regulates securities markets, market intermediaries, clearing and settlement, public offerings and reporting by public companies. Other relevant legislation are the Companies Act of 2006, the Banking Act of 2006, and the Law on Dematerialization of Securities of 1999. Slovenia adopted a new Mortgage Bond and Municipal Bond Act in 2012, which replaced an existing act from 2006.

The securities market regulator is the Securities Market Agency. The banking regulator is the National Bank of Slovenia, whereas the Insurance Supervision Agency regulates the insurance sector. There is only one stock exchange, the Ljubljana Stock Exchange ("LJSE"). The LJSE capitalisation at the end of 2012 was about EUR 4.911 billion, with 61 listed companies. There is a single depository providing clearing and settlement services, the Centralna klirinško depotna družba.

Since Slovenia's accession to the EU, its legal framework has implemented various EU directives, including a prospectus directive, settlement finality directive and collateral directive. The capital markets legal framework in Slovenia is rather robust and supports development of the market. In terms of money markets, in 2011 ISDA issued the legal opinion for Slovenia, confirming the enforceability of such concepts like netting and close-out netting. The opinion was further amended on 27th of June 2013, following the adoption, on 15 of June 2013, of the amendments to the Slovenian Insolvency Act that further widened the types of transactions falling within the scope of the recognized netting arrangements.

Slovenia is a rather small economy with an even smaller capital market; thus it should focus on progressing the steady development that would prevent a deterioration of the market and help build liquidity. Improving the low

levels of liquidity and market capitalization could ensure better access to capital for domestic companies and institutions.

Corporate governance

The principal legislation on corporate governance in Slovenia is the Companies Act of 2006, as amended. The Banking Act of 2006 (as amended) lays down further guidelines for the corporate governance of banks. Slovenia adopted an Action Plan for Corporate Governance in 2009, as part of which it passed the Law on Corporate Governance of State Capital Investments for State-Owned Enterprises (SOEs), which establishes a separate central ownership agency to coordinate all government ownership actions.

The Ljubljana Stock Exchange (“LSE”), along with the Manager’s Association of Slovenia and the Slovenian Director’s Association issued a Corporate Governance Code (“the Code”) for listed companies in 2004, the most recent version of which was issued in 2009.⁶ Although earlier versions contained mandatory provisions, the current code is voluntary, based entirely on the “comply or explain” principle.

The EBRD’s 2007 Corporate Governance Sector Assessment ranked Slovenia to be in “*high compliance*” with the OECD Principles of Corporate Governance, and changes to the regulatory framework since the assessment were largely positive. The highest scoring indicators were the legal framework for the role of stakeholders in corporate governance and for ensuring the basis for an effective corporate governance framework, whereas the provisions on responsibilities of the Board received the lowest score out of the selected indicators (see Chart 8). As for implementation, the speed of both redress and disclosure scored the lowest (see Chart 12). The EBRD’s 2005 Legal Indicator Survey revealed that the country’s legal framework is relatively effective.

The Companies Act provides the option for companies to choose between one-tier (board of directors only) and two-tier (supervisory board and management board) governance system. For listed companies, disclosure on corporate governance is mandatory (both by the Act and the LSE rules) however, there are no specific mechanisms for monitoring the “comply or explain” mechanism.

A major feature of Slovenia’s corporate governance framework is the importance of managing SOEs to ensure that there is a consistent and transparent ownership policy; that the State acts as an informed and responsible shareholder; and that the SOEs board are appropriately composed to ensure that they have the skills and authority to exercise their functions. SOEs are a significant component of both the listed and unlisted sectors and the Government has significant direct⁷ and indirect⁸ control over a large number of companies.

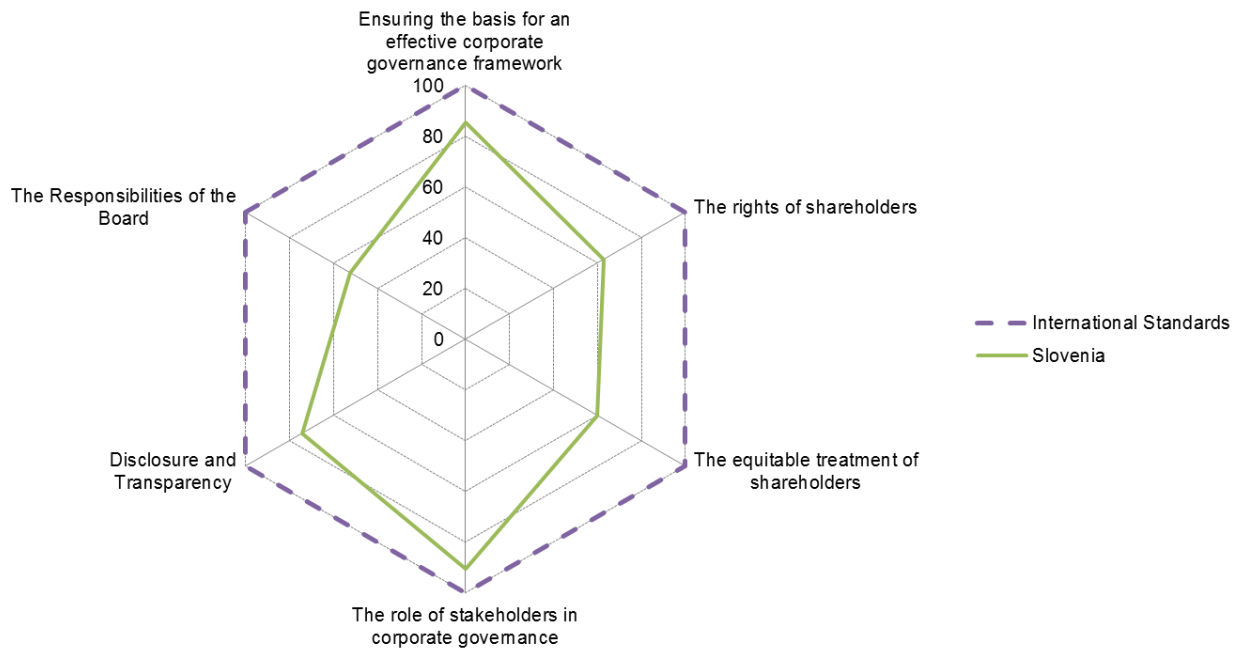
The Slovenian financial system has been hard hit by the crisis. Weak governance in public banks and a credit boom financed externally and directed in significant part towards construction companies and management buyouts/corporate takeovers are at the root of the problems. In this context, to ensure recapitalization of state-owned banks and strengthen their governance is therefore a priority.

⁶ The Code is available at http://www.ebrd.com/downloads/legal/corporate/slovenia_code.pdf

⁷ Direct holding are concentrated in infrastructure, banking and insurance sectors, where SOEs hold a dominant position.

⁸ Indirect holding are managed principally through the two state controlled funds that were established as part of the privatisation process: the pension fund (KAD) and the restitution fund (SOD).

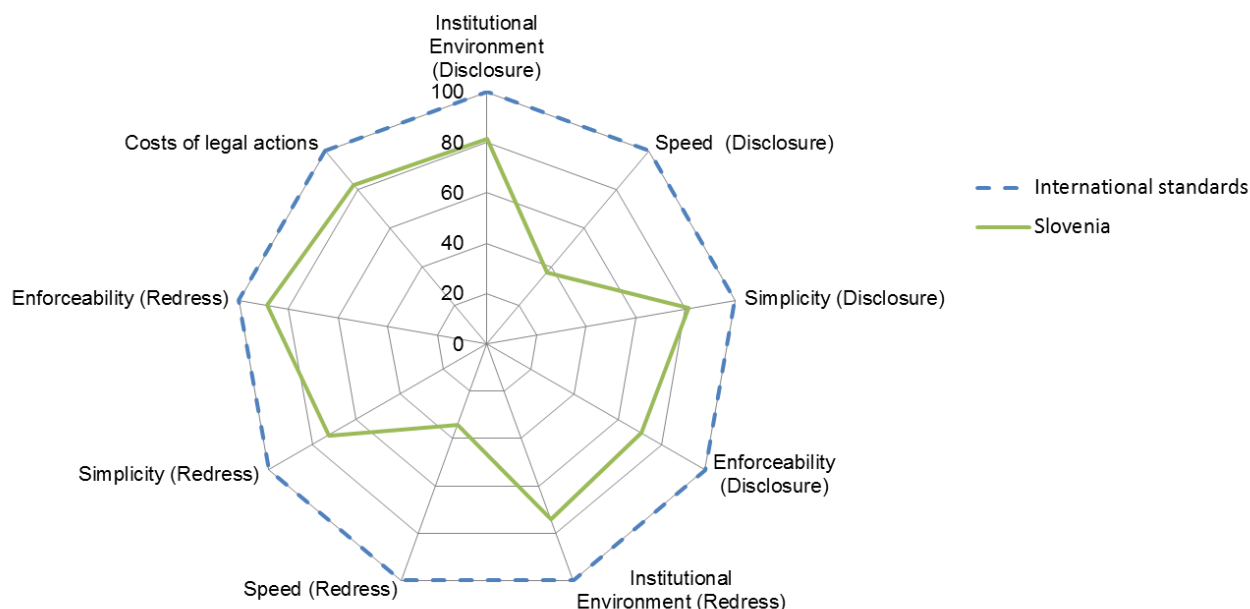
Chart 8 – Quality of the Corporate Governance Legislative Framework in Slovenia



Note: the extremity of each axis represents an ideal score, that is, legislation fully in line with the OECD Principles of Corporate Governance; the fuller the 'web', the better the quality of the legislative framework.

Source: EBRD Corporate Governance Assessment 2007

Chart 12 – How the corporate governance framework works in practice in Slovenia



Note: the extremity of each axis represents an ideal score: the fuller the 'web', the more effective the corporate governance framework.

Source: EBRD Corporate Governance Assessment 2007

Debt restructuring and bankruptcy

The law on insolvency has undergone multiple amendments throughout 2013. As a result, the legal and institutional framework for restructuring and insolvency is relatively new and untested. Implementation remains a concern. Legal procedures for insolvency and restructuring have in the past tended to be protracted and have resulted in low recovery rates for creditors. A number of issues in the insolvency framework have been addressed through the June and December 2013 amendments to the Insolvency Law, yet some concerns about the effectiveness of the insolvency and restructuring framework remain.

The amendments to the Insolvency Law adopted in early December 2013 encourage greater corporate restructuring and deleveraging. These amendments provide two new regimes for Slovenian medium to large enterprises: (i) preventive insolvency proceedings for non-insolvent enterprises (conducted mostly out of court); and (ii) modified compulsory settlement proceedings for insolvent enterprises (court driven proceedings), both of which will be aimed at reorganisation or restructuring of the debtor's business.

Nevertheless a number of issues have been identified with respect to the Slovenian insolvency and restructuring framework and it remains to be seen whether these will improve going forward under the new legal framework:

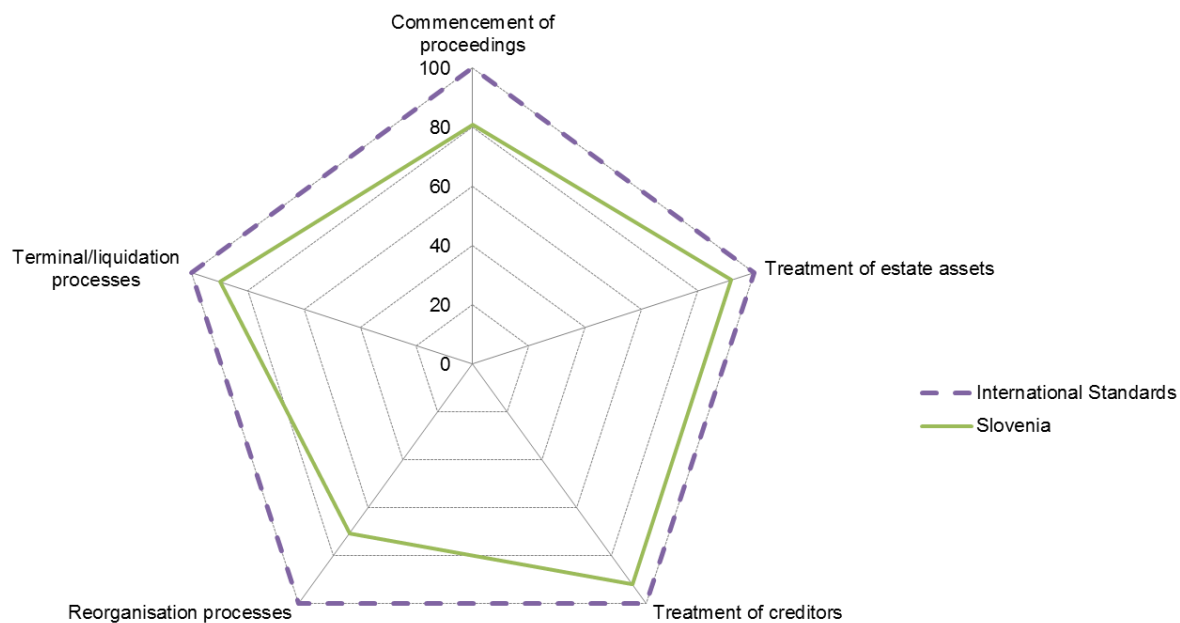
- *Lengthy insolvency proceedings:* Insolvency proceedings in Slovenia are widely perceived by stakeholders as lengthy and inefficient and, consequently, value-destructive. Part of this derives from overly complex insolvency laws, which require a high level of court involvement and approvals at numerous stages throughout the insolvency process. Another reason is the lack of judicial capacity: courts are struggling to meet the rising demand arising from the sharp increase in the number of insolvency cases since 2009.
- *Complex out-of-court restructuring environment:* There are few syndicated loans in Slovenia. Most loans are extended by one lender to one or more borrowers on a bilateral basis. In many cases, banks have different collateral positions in respect of the same corporate debtor. Loans are frequently cross-collateralised within a borrower group. This creates a complex restructuring environment, in which banks are typically unwilling to surrender their individual security or compromise their position in favour of a common restructuring deal that envisages a shared pool of secured assets. A significant obstacle to multi-bank restructurings in the country is therefore the lack of a common security portfolio and alignment of bank interests.
- *Lack of liquidity:* Following a corporate restructuring, debtors are typically in need of liquidity to carry on their business as a going concern. Many insolvencies are triggered by a lack of working capital in the first instance. Given the lack of liquidity amongst domestic banks, there is a real need for foreign bank lending. All local and foreign banks consulted by the EBRD acknowledged the importance of the principle that new lenders should be given super-priority above other liabilities in a restructuring scenario, given the increased risk taken by the new money provider. Nonetheless obstacles for the provision of new money in restructurings include a poor assessment of individual lenders of the financial situation of the corporate debtor and the incapacity of corporate management who often delay in appointing professional advisors to assist with a financial restructuring until it is too late.

The 2009 EBRD Insolvency Sector Assessment gave Slovenia an 83% score for the general insolvency law assessment, indicating high compliance, with the reorganisation processes scoring several points below the other indicators (see Chart 13). The most recent 2012-2014 EBRD Insolvency Office Holder (IOH) Assessment⁹ noted that the IOHs need to be appropriately licensed by the Ministry of Justice and that there exists an official list of IOHs easily accessible on the Ministry of Justice website. The positive effect of these developments is however somewhat reduced by the reported lack of transparency and fairness of the IOH appointment procedure.

A complete assessment of the insolvency and restructuring framework will only be possible once the amendments to the Insolvency Law, effective as of December 2013, are tested in practice. To date there have been no cases of the new preventive procedure. These amendments constitute an improvement to the existing Insolvency Law, but do not give any real discretion to the judiciary to determine either the classes or groups of creditors voting on the reorganisation plan or the overall fairness of such a plan. This may give rise to issues with their effective implementation.

⁹ The section on Slovenia is available at <http://assessment.ebrd.com/insolvency-office-holders/2014/country-results-and-notes/slovenia.html>

Chart 13 – Quality of insolvency legislation in Slovenia



Note: the extremity of each axis represents an ideal score, that is, legislation fully in line with international standards such as the World Bank’s Principles and Guidelines for Effective Insolvency and Creditor Rights Systems, the UNCITRAL Working Group’s “Legislative Guidelines for Insolvency Law”; and others. The fuller the ‘web’, the better the quality of the legislative framework.

Source: EBRD Insolvency Sector Assessment 2009