The EBRD Legal Transition Programme has aimed – since its inception in 1991 – to enhance the rule of law, develop the legal structures necessary for growth, and more generally improve the investment climate in the Bank’s countries of operations. This article presents the evaluation of the Programme from the period 2001–10 conducted by a team of independent evaluators working with the EBRD Evaluation Department, and provides key recommendations for taking the Programme to the next level.
Introduction and background

Empirical studies have shown that legal and regulatory reform has a significant impact on economic development and growth, particularly in emerging and transitioning economies. This insight has come to form the cornerstone of the EBRD’s Legal Transition Programme (LTP). The LTP has pursued – since its inception in 1991 – a programme aimed at enhancing the rule of law, developing the legal structures necessary for growth, and more generally improving the investment climate in the EBRD’s countries of operations.

As the largest developmental lender within its region of operations, the EBRD continuously evaluates the performance of its completed projects and programmes through systematic analysis of the results both of individual projects and wider themes defined by the Bank’s policies. It is with this philosophy in mind that in 2011, the authors (the Evaluation Team) – in conjunction with the EBRD’s Evaluation Department – undertook an independent review of the LTP’s activities from 2001–10.  

The LTP and the scope of the evaluation

In advancing the transition towards a market-based economy in its countries of operations, the LTP has identified several key activities as being critical in the promotion of legal transition. 

- Legal assessments: The objective of the LTP’s legal assessment work is knowledge building on the existing legal frameworks in the Bank’s countries of operations, primarily to provide a basis for policy choices by a particular country. Dissemination of legal assessment information encourages local debate about the need for reform.
The Legal Transition Programme has identified several key activities as being critical in the promotion of legal transition: legal assessments, standard setting, outreach activities and legal reform within particular countries and also allows governments themselves to tap directly into this wealth of information.

- **Standard setting**: Standard setting focuses on developing appropriate guidance for legal and institutional reform, as well as criteria for assessment. This is in line with the Bank’s core objective under its transition mandate – to assist the countries in which it operates in establishing practice standards that are in harmony with international norms and practices.

- **Outreach activities**: This component focuses on disseminating the Bank’s work to maximise its impact. Of particular note are two major resources: Law in transition and the LTP website, both of which are valuable and easily accessible sources of information. Together they form a comprehensive source of information on legal and institutional transition in the Bank’s countries of operations.

- **Legal reform**: Legal reform projects are undertaken based largely on the political will and commitment of a country’s government and stakeholders to conduct reforms in pursuit of advancing their domestic economy. For transition economies, both the adoption of legislation supporting legal and institutional reform and its implementation are critically important. Legal and institutional reform needs to transcend the promulgation of “black-letter law” and, by necessity, should involve a development process that involves societal commitment and ownership of a rule of law doctrine that then advances to actual application, rather than merely creates a façade to satisfy the international community.

These general activity fields, together referred to as the “EBRD Virtuous Circle of Legal Reform” (see Chart 1), largely represent the overarching focus of the Bank’s resources and commitments and comprise the foundational activities of what the Bank does in the legal reform sector.

Within these activity fields, the Bank, through 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”).

During the evaluation period, the LTP was very active, having initiated 87 legal reform projects funded under the Bank’s Technical Cooperation Funds Programme for a total value of €26 million, benefiting 25 countries in its region of operations. Most of these projects have now been completed or are at an advanced stage of implementation. In addition, the LTP has completed a number of internally funded legal transition-related projects (assessment, standard setting, or outreach) totalling €1.35 million. To carry out the evaluation of such a large programme and to be able to gauge its overall coherence and effectiveness, it was necessary to organise a sampling of these activities that could be used as a proxy, while also undertaking a broad overview of the LTP. The evaluation therefore involved field visits to five sample

**Chart 1**

**LTP Toolkit – The “EBRD Virtuous Circle of Legal Reform”**
The evaluation concluded that the Legal Transition Programme made an important contribution to legal reforms in the Bank’s countries of operations, as well as enhanced the Bank’s operational objectives.

Overall assessment

The evaluation concluded that the LTP made an important contribution to legal reforms in the Bank’s countries of operations, as well as enhanced the Bank’s operational objectives. Overall, the LTP’s performance was evaluated as “Successful”. Through promoting legal reforms, the LTP directly supports the Bank’s objectives of assisting countries in the transition to open market economies and the establishment of entrepreneurial opportunities within a multiparty democratic system. The Bank deliberately keeps the LTP’s efforts within a narrow focus to make a targeted contribution to legal transition.

The relevance of the LTP’s work was 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 required improvements needed by the legal environment to better enable its operations.

The LTP’s overall effectiveness was rated “Good”, mainly on account of strong evidence that the LTP’s advice has largely been followed. Many laws and regulations 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 it has not always been able to verify the effectiveness of such training. However, some institution building projects were of lower effectiveness and this is an area on which the LTP may need to focus more in the future.

The LTP’s overall efficiency was rated “Good”. It varied across the eight core legal areas and depended largely on the LTP’s success in attracting and keeping high-calibre specialists in the given core areas.

It was also noted that the LTP has successfully consolidated and mainstreamed its activities within the EBRD and substantially enlarged its reputation among its partners in the countries of operations and with international organisations.

Main findings

The evaluation shed light not only on the LTP’s activities and the strengths of its model, but also on its weaknesses.

- 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 continues to require attention in all of the Bank’s countries of operations. Institution building has been an important part of almost all of the LTP’s projects to date. 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.

- 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.

- 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 proactively promote its work more to the Bank’s banking unit, 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 in the regional offices.
A well-functioning, investor-friendly and free market-oriented legal structure is at the core of transition initiative. The LTP's projects usually have a high degree of transition potential, but their actual impact varies depending on the determination of the LTP's local partners. The strongest impact was achieved in those core legal areas where the LTP had well-developed in-house expertise and in those countries where its staff were able to focus their efforts for an extended period. However, there are clear limitations to the impact of the LTP's work as exogenous conditions may and sometimes do hinder LTP reform efforts. For instance, although 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.

In considering the Bank's expanding operations remit, 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 serve as a useful starting point, although country-specific assessments will largely dictate the practice and policy areas of concentration. However, the difficulties inherent in assessing local conditions in a new and totally different region cannot be overstated.

Key recommendations for taking the LTP to the next level

Despite the LTP's many achievements, the Evaluation Team made a number of recommendations aimed at further improving the impact of the programme, especially in the light of an ever challenging economic environment and the expansion of the Bank's activities to a new region in the SEMED.

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 a prerequisite to further actions. The LTP should continue updating its assessments and fine-tuning the set standards.

The Bank, via the 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, other international financial institutions), with a view to re-orienting its focus in some areas (for example, securities markets to take account of the Bank's major Local Currency Capital Markets Initiative [LC2], 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, public-private partnerships). 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 and/or transport regulation specialist(s) would be required to build the LTP's reputation in these fields.

The LTP should sharpen its focus on projects that directly support legal reform processes, particularly with institutional capacity building and well-designed training programmes for judges, registrars, PPP and procurement officials. Such training should incorporate specific targets for expected outcomes/accomplishments and specific measures to verify impact. The LTP has recognised the importance of such measures with its more recent projects.

More focus on company law is needed as this area greatly facilitates the Bank's engagement and is at the core of transition. Increased efforts are needed in developing local capital markets. In this respect, the LTP could usefully intensify its work on capital market development, possibly within the framework of the Bank's LC2 Initiative.

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

The Legal Transition Programme 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 region.
Conclusion

The socio-political and legal landscape within the Bank’s region of operations has undergone and continues to undergo, significant change. In the evaluation upon which this short article is based, the Evaluation Team concluded that the Bank and the LTP are properly positioned not only to continue as a relevant force within the EBRD’s current countries of operations, but also to enter new markets, relying on both its experience and analytical tools.

Notes


2 For full details and ratings, see id.

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