



**European Bank**  
for Reconstruction and Development

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2 June 2009

Dear Dr Tułodziecka,

***EBRD Mortgages in transition economies***

On behalf of Mr Mirow, President of the EBRD, I am responding to your letter of 10 February 2009 and the accompanying opinion concerning the above publication.

I would like to thank you for the detailed review your organisation has prepared on *Mortgages in transition economies* (the “EBRD Report”) and the complimentary words you have for its purpose and outcome. It is very pleasing to see that you recognise the innovative approach the EBRD Report took and its practical contribution to market development.

I also note that there are core aspects of the EBRD Report where the Foundation sees things differently. I cannot in this letter reply to all the points the opinion raises but I would like to do so on a few, with the hope that our respective organisations could in the future carry on our dialogue on this important subject matter.

- On page 7 of the opinion you state that “the time that it takes to enter a mortgage and to enforce from the property is the universal objective and primary measure for giving positive ratings of the reliability of particular national legal systems in the analysed countries, even at the cost of the quality and incontrovertibility of the mortgage.” As you can see from our analysis on page 9 of the EBRD Report and throughout the work, the EBRD’s view is that legal efficiency of a mortgage law requires a number of criteria to be fulfilled, of which **speed** is only one. Other criteria include simplicity, cost, certainty and ‘fit-to-context’. Therefore, the statement on page 8 of your opinion that “from the point of view of the risk in mortgage financing it does not seem right to treat the short waiting time as more important than stability and certainty of mortgage” is unwarranted.
- There also seems to be some misunderstanding surrounding some of the ideas put forward in the EBRD Report, in particular on **mortgage registration**. On page 6 of your opinion you state that “as recommended by the authors, the role of land registers should come down to just recording



information - good faith, liability for entries and, in particular, any role of judges is treated here as an obstruction or something actually increasing the risk of financing.” Our position is quite different. As clearly stated on page 22 of the EBRD Report, we draw a fundamental difference between mortgage registration and other rights’ registration, in particular title: “[T]he case for land register providing the public with guaranteed information on ownership of land is unquestionable, but the position for mortgage is different.” We are not sure, reading the opinion, that this position was well understood. We would also like to stress that we did not use this approach as a benchmark in the survey because we recognise that if a country is able to guarantee validity of the mortgage entry through a process that is quick, inexpensive and simple, this is to be applauded. Unfortunately, this does not seem to be the case in most surveyed jurisdictions.

- You note on page 9 of your opinion that there are major discrepancies in the number of categories of respondents we contacted for our survey, and express specific concerns vis-à-vis **Polish mortgage law** (at pages 13 and 14). You appreciate, I am sure, the challenges of collecting comprehensive and representative information on 17 different jurisdictions. However, in the case of Poland, to which you are naturally sensitive, our inquiries were particularly thorough since, only a few months before, we worked with the National Bank of Poland on reviewing the Secured Credit Market, which included mortgage market.<sup>1</sup> During the project we met many market players (lawyers, notaries, banks and non-banking financial institutions, including your organisation - altogether 22 organisations) and collected many details on practical legal regime for mortgages. Our analysis in the *EBRD Mortgages in transition economies* work derives to a large extent from this previous study. Thus we are confident that we fairly depicted the situation as perceived by Polish market players. Although we took great care to ensure that we were up-to-date in terms of law and regulations, we appreciate this may not be the case, and thus would be happy to correct *factual* errors that you think existed in the Survey at the time of its publication.
- We are somewhat surprised that you perceived the publication as being **negative or overly critical** of the mortgage legal frameworks in transition economies. Quite the contrary, the conclusion on page 54 of the EBRD Report states that “providing the right legal framework – or to use the concept underpinning the whole of this work, an efficient legal framework – is very much within the reach of transition countries. Commitment to reform has already paid off: the Mortgage Regional Survey shows that a number of countries already go a long way towards offering efficient systems, which over coming years may compare favourably with systems in operation in western markets.” We found that the general perception of Eastern European

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<sup>1</sup> *The impact of the legal framework on secured credit market in Poland*, 2005, National Bank of Poland and the EBRD, see in English: <http://www.ebrd.com/country/sector/law/st/facts/nbpeng.pdf> and in Polish: <http://www.ebrd.com/country/sector/law/st/facts/nbppol.pdf>.



mortgage legal regimes is too often unfairly negative and uniform. Closer analysis revealed that the region is much more diverse than people usually expect, and that many countries had developed very efficient systems. Our intention, however, was to draw attention to certain aspects of the legal regimes which could valuably be strengthened so that further, targeted reforms could be undertaken.

Finally, I would like to add that, for a publication that grapples with sometimes novel, and frequently difficult, questions to which there are no universally acknowledged answers, it was expected that differing views can reasonably be held. Indeed, the stated hope of the EBRD Report was to “provoke discussion” among those in the Bank’s region who make and influence legal reform policy, so all constructive criticism is valued. There is no doubt that the current global crisis will bring a number of important lessons concerning mortgage markets on which we should all reflect.

Yours sincerely,

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General Counsel

cc: Gerard Sanders, Deputy General Counsel  
Michel Nussbaumer, Chief Counsel, Legal Transition Team  
Frédérique Dahan, Senior Counsel, Legal Transition Team