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# THE INSOLVENCY REGIME IN KAZAKHSTAN

## **Assessment and Recommendations**

Kazakhstan Doing Business Reform Project  
Almaty, Kazakhstan  
JUNE 26, 2009

# Presentation outline

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- Background
  - Assessment of the insolvency regime
  - Next Steps
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# Background

Kazakhstan is experiencing rising non-performing loans and financial distress in the corporate sector

To address the situation, the Government of Kazakhstan is

- Helping ailing banks
- Undertaking bank restructuring and
- Reviewing the insolvency framework

This report identifies issues and challenges in the insolvency framework in Kazakhstan and makes recommendations for the short and medium term

# Background: DB Closing a Business indicators

Duration (years)

3.3

Cost (% of estate)

18

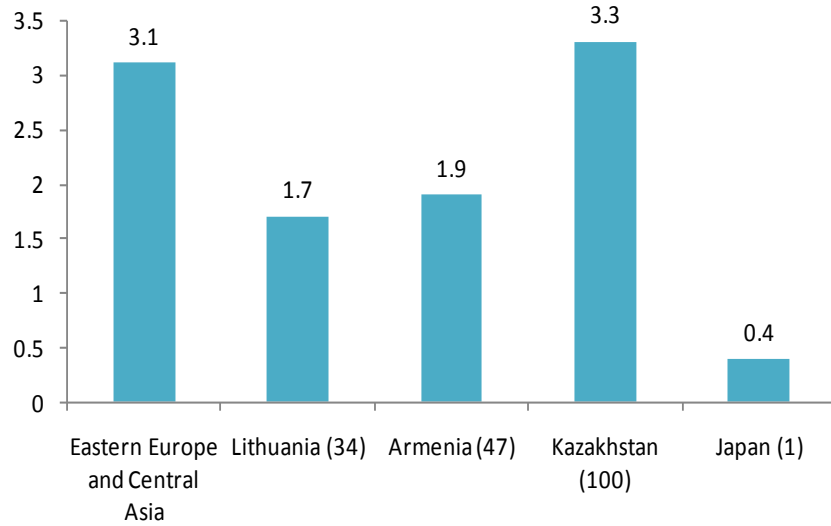
Recovery rate (cents on  
the dollar)

25.3

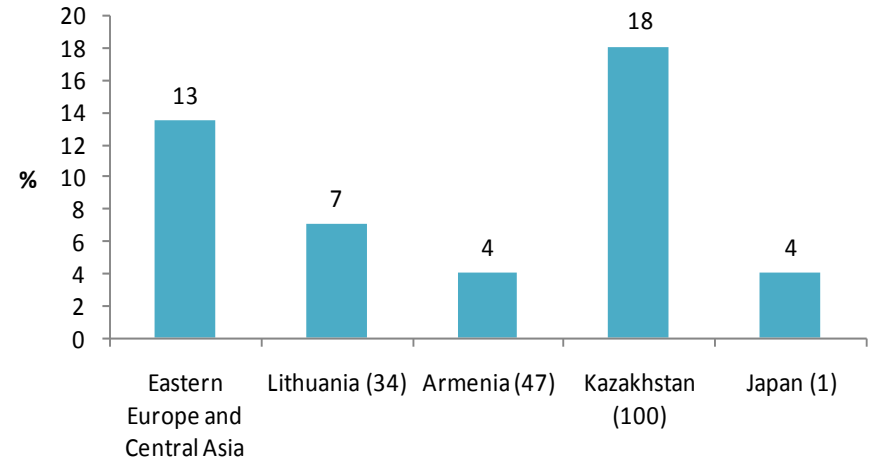
**- Ranking in 2008: 100/181 countries -**

# Background: Closing a Business Comparative

## Years to Close a Business



## Cost to Close a Business % of estate value



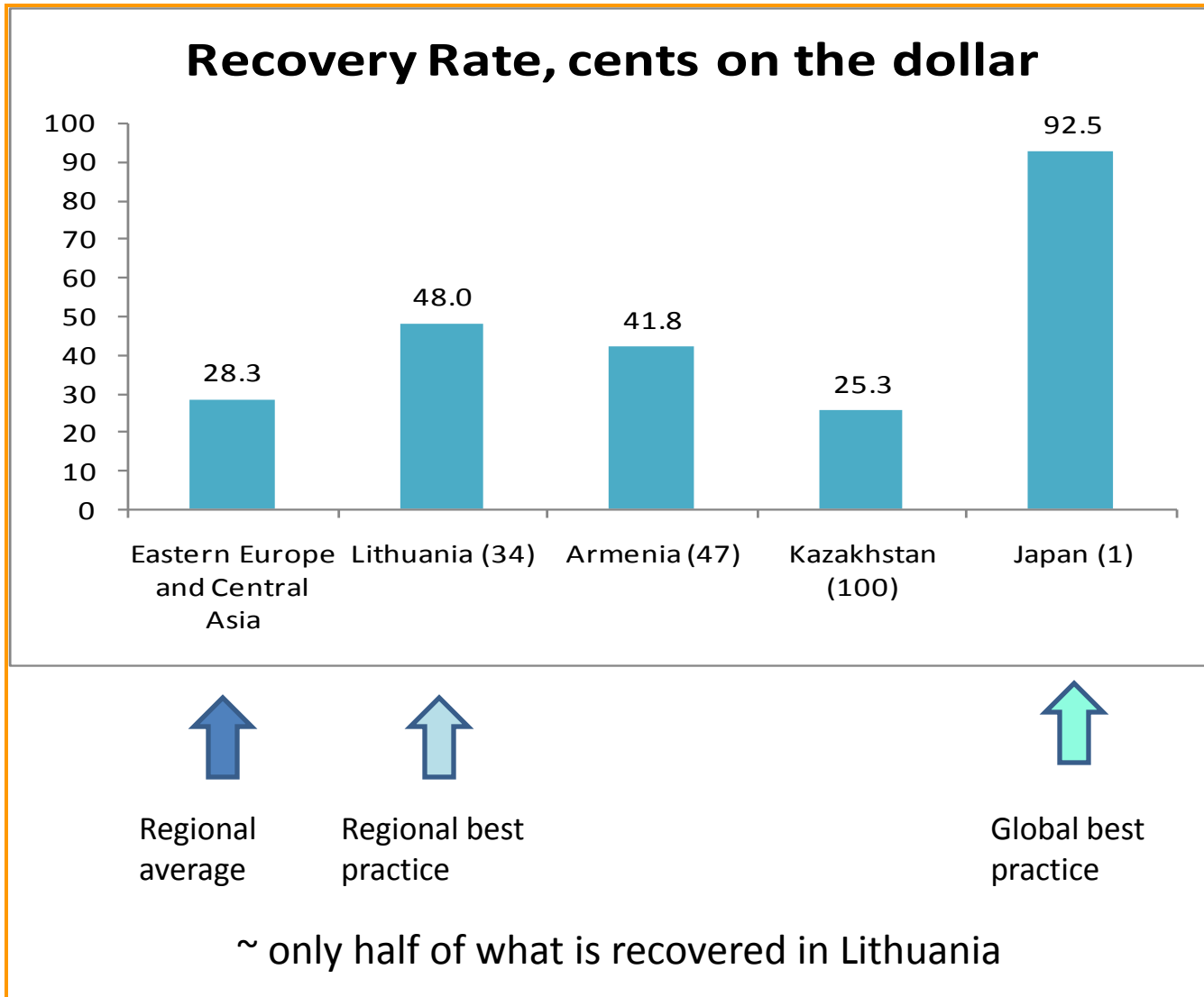
↑ Regional average    ↑ Regional best practice    ↑ Global best practice

~ 8 times longer...

↑ Regional average    ↑ Regional best practice    ↑ Global best practice

~ 4 times more expensive...

# Background: Insolvency Comparative



# Use of insolvency proceedings

#	Indicators	2006	2007	2008	Total
1	Number of liquidations	1989	1903	2145	6037
2	Initiated by Tax Authority	1801	1708	1934	5443
3	Initiated by creditors	102	108	117	327
4	Initiated by debtors	86	87	94	267
5	Average duration of procedure (months)	5-6	5-6	5-6	
6	Average rate of recovery for creditors (percent of estate value)	46.5	41.2	51.1	

Indicators	2006	2007	2008	Total
Number of rehabilitations	7	21	15	43
Initiated by debtor	7	19	14	40
Initiated by Tax Authority	0	2	1	3
Average duration of rehabilitation procedures, years	3	2.9	2.8	2.9
Average rate of recovery for creditors, % of estate value	98.5	100	100	100

# Assessment of the insolvency law and regime

## Liquidation Proceedings

### Selected key issues in liquidation

#### Users

##### ■ Secured creditors

- In Kazakhstan, secured creditors have not traditionally had incentives to start liquidation proceedings against defaulting debtors

##### ■ Tax authorities

- Tax authorities in Kazakhstan are the principal users of the liquidation system; 90% of liquidation cases in 2008 were filed by tax authorities

##### ■ Unsecured creditors

- Unsecured creditors (e.g., trade creditors) usually do not initiate insolvency proceedings against defaulting debtors as they lack the size and individual incentives for joint action

##### ■ Debtors

- Debtors in Kazakhstan are hesitant to voluntarily file for insolvency proceedings on a timely basis, especially when there is still time to rehabilitate the business

# Assessment of the insolvency law and regime

## General weaknesses in the insolvency law

### Selected key issues

- Lack of clarity and absence of important provisions

#### Comments

- The extent of application of the moratorium on debtor's assets is not clear
- In a debtor-in-possession rehabilitation procedure, the circumstances under which management can be removed are not clear
- With the exception of the examinership process, the law does not oblige debtors to cooperate and provide information in rehabilitation or liquidation procedures
- The Law has no provisions on cross-border insolvency

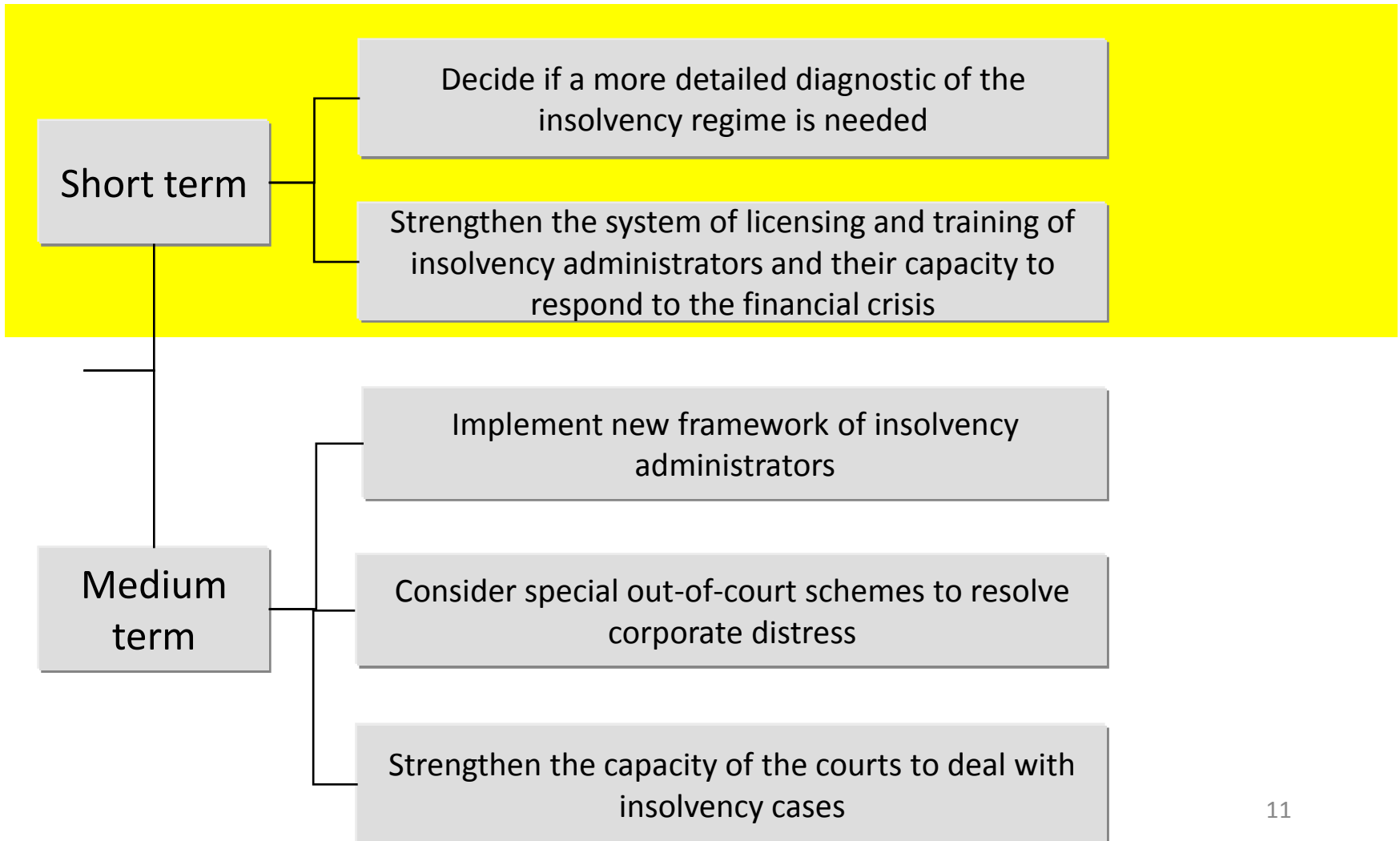
# Assessment of the insolvency law and regime

## General weaknesses in the insolvency law

### Selected key issues

	Comments
■ Inadequate protection of creditors	<ul style="list-style-type: none"><li>• Secured creditors have a low level of priority in the law</li><li>• The law does not determine the priority of secured creditors vis-à-vis each other</li><li>• Upon the initiation of insolvency proceedings, creditors are not adequately informed</li><li>• The Law does not provide for post-commencement financing</li></ul>
■ Provisions causing potential delay	<ul style="list-style-type: none"><li>• Allowing transactions which go back 3 years prior to the initiation of insolvency proceedings to be considered void could create undue delay</li></ul>
■ Institutional weaknesses	<ul style="list-style-type: none"><li>• Banks and insolvency administrators expressed concern over the quality of training that insolvency administrators receive</li></ul>

# Next steps



Thank you!