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Mygind, Niels

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## **The development of corporate governance in the Baltic countries**

**Niels Mygind**

nm.cees@cbs.dk

*Center for East European Studies*  
**Department of International Economics and Management**

**Copenhagen Business School**

Porcelænshaven 24

Dk-2000 Frederiksberg, Denmark

Tel + 45 3815 2515 Fax + 45 3815 2500

# **The development of corporate governance in the Baltic countries**

Professor Niels Mygind, Center for East European Studies, Copenhagen Business School

first draft – send comments to: nm.cees@cbs.dk

## **Abstract**

The Baltic countries have been through a period of 15 years with fast changes in ownership and corporate governance structures. The privatization processes have been quite different in the three countries, but in the dynamics after privatization we see an increasing level of similarity in the adjustment of the ownership structure. We have followed the changes quite closely over the years both in quantitative research and in case studies. We focus on the most important institutions for corporate governance in legislation and enforcement, bankruptcy, company law, minority shareholder protection as well as the development of the banking system and stock exchanges. The paper analyses the main trends in the development and show how all the three Baltic economies are heading toward a typical Continental European system of corporate governance based on quite concentrated blockholder ownership.

## **Introduction – three governance problems and different corporate governance models**

Corporate governance can be defined in the short form as “the system by which businesses are directed and controlled” (Cadbury report 1992). According to the OECD (1999) it includes: “a set of relationships between a company’s management, its board, its shareholders and other stakeholders” and it “provides the structure through which the objectives of the company are set and the means of obtaining those objectives and monitoring performances are determined”. By focusing on the different stakeholders<sup>1</sup> I have used the following definition: “The system determining the distribution on stake-holders of both the formal and the appropriated rights to control and financial returns of the enterprise”. *Mygind (2001)*: This definition is part of the analytical stakeholder approach which also emphasizes the importance of the identity of the controlling stakeholder

The separation of managers’ control and ownership is the background for the classical agency problem<sup>2</sup>: (). The manager (as agent) following his own interest in contradiction with the interests of the owners (the principal). The minority/majority problem is when the shareholder with the controlling votes makes the company follow activities which gives the controlling owner a disproportionate part of the returns and in this way rights are appropriated from the minority owners. Finally, the problem in relation to the broad group of different stakeholders can be more vaguely

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<sup>1</sup> Groups with a specific interest in the company e.g. employees, suppliers, customers, creditors, local society....

<sup>2</sup> Berle and Means, 1933. Jensen and Meckling, 1976. Fama and Jensen 1983.

defined as finding the balance between the interests of these different stakeholders. This is more precisely discussed in Mygind (2006.)

There is often a trade off when solving the three governance problems and there cannot be defined one single model which best takes care of the three problems. The different models for corporate governance used in different countries show a high degree of variation. They differ in the weights given to the solution of the three problems and in the distribution of rights between the different stakeholders. The variations relate to the difference in market situation, the surrounding institutions – legislation, state regulation, functioning of the judiciary system, the development of banking and capital markets as well as the more specific structure of corporate governance – rules for disclosure, accountability of the manager and company board, board structure and especially the concentration of ownership and the identity of the dominating owners. Specific combinations of all these variables mean that each country has its specific corporate governance model. To simplify we will distinguish between three main groups: The Anglo-American market based model; the German bank based model and the Latin (South European) family blockholder model.

In all the three models the competition on the product market is quite developed setting the framework for the scope of decisions for the managers. It has been a key part of the transition process to build up the product market with high competitive pressure. We will go deeper into the transition process in the following sections with focus on privatization and the development of institutions - areas with important differences between the three corporate governance models.

An important difference (La Porta et al 1999) is the role of legislation where the *Anglo-American* tradition of case based common law means more detailed regulation and higher protection of the investors in relation to managers and protection of minority owners in relation to majority owners. The legislation gives a strong backing for small investors and is an important base for the strong development of a quite diversified ownership structure with many small shareholders in most large corporations. This is also the basis for strong and highly liquid capital markets. In the early 20<sup>th</sup> Century US introduced restrictions for banks in relation to ownership of companies both as a reaction against the powerful financial based thrusts in the start of the Century and as response to the domino effects of bankruptcies after the crisis starting in 1929. Therefore, we do not see banks playing the role as strong owners in the Anglo-American-model.

This is in contrast to Germany where banks played a key role in the industrialization process in late 19<sup>th</sup> early 20<sup>th</sup> Centuries. With large shareholdings and through their role as custodians for smaller shareholders the banks controls a high share of the shareholder votes and in this way they control many of the large corporations in Germany. In the Latin model like in Italy the banks are not so strong and the controlling owner is not a bank, but simply a large blockholder – often the

founder family. Continental Europe has the legal tradition of civil law where the control of the manager and the protection of minority owners are not as strong and detailed as in US.

In the Anglo-American market based model the owner-manager governance problem is solved both through detailed legislation and through pressure from the capital market and the connected market for managers. If the manager is not following the interests of the shareholders the share price on the capital market will fall relatively to other companies in the same field. The low price signals to the shareholders to unite and go for a change in management at the general meeting of shareholders. Small shareholders may instead use their exit option and sell their shares hereby increasing the downward pressure of prices. This leaves the company open for a hostile takeover of a raider buying enough shares for getting control, firing the manager and restructuring the company. In this way the capital markets functions as the turning point for the owners' control of managers supported by a legal system which secures that the minority owners get their proportionate share.

In the blockholder system of continental Europe the controlling owner simply controls management directly through strong positions in the company board. Here, there is a trade off in relation to the minority shareholders. Their interests may be threatened by the controlling owner giving rise to the majority-minority problem. Bank based dominant control may to a higher extent play the role as defending the interest of the pure shareholder while a blockholder with specific stakeholder interests e.g. as a supplier may to a higher degree make transfer pricing etc and in this way use the dominant position to exploit the minor shareholders (Mygind 2006).

The third governance problem in relation to different stakeholders is balanced in different ways in the three models. In the Anglo-American model different stakeholder groups may use the market to put pressure on the companies. E.g. political consumer groups stop buying certain goods produced by child-labor. This may force companies to change their practices like we have seen many large multinational companies introducing strong Corporate Social Responsibility policies in the later years. The stock exchanges have introduced specific lists for social responsible investments fulfilling certain conditions for labor rights, environment etc.

In other countries, state regulation and/or strong union pressure prescribes a certain behavior of the companies. The German model includes codetermination where employees are strongly represented in the company boards of large corporations.

The transition from plan to market includes both a change in governance on the political level and on the enterprise level. The political transition have been done quite fast in most countries while the economic transition have been a long and difficult process where the more refined institutions connected to a fully developed system for corporate governance are still under development. Therefore,

it is relevant to ask the question: Which model of corporate governance is developing in the Baltic countries?

### **Transition and changing institutions.**

To understand the development of corporate governance in the Baltic countries it is necessary to have a closer look at the special conditions caused by the transition from command to market economies. The command economy was a specific model of enterprise governance where the control rights were centralized in the plan bureaucracy, but where the managers still had some scope of action giving rise to agency problems and strong problems related to incentives and flexibility. To introduce the new market system with decentralized decision making and new incentives it was necessary to build up a new set of institutions. Although the political change and the building up of the new democratic political system could be done rather fast it turned out that the building up of new institutions for a market economy including functioning corporate governance has been a long process of which some elements are still developing. The institutions in focus for this analysis is first the privatization process transferring ownership from the state to new private stakeholders and building up a new set of rules defined in legislation on company law, regulation of capital markets and banks, bankruptcy legislation etc. Often the legislation is quite advanced, but the implementation through the state bureaucracy and the enforcement through the judiciary system lacks behind. The actual development of the new capital markets with banking system, stock exchange, and other financial institutions must also be in focus for the analysis.

The structure of production at the start of transition was adjusted to the command model and it was necessary to adjust to the new market system with new products, new production methods, new markets etc. Therefore, the process of building up the new institutional system happened in interaction with strong restructuring of production where most enterprises in the first years of transition were in deep crisis because their old products could not be sold at a profit and their resources, skills, capital, contacts etc. for the necessary restructuring were limited.

These initial conditions with weak institutions meant that insiders had some advantages relative to outside owners, but the fast development of institutions and markets and the strong need for restructuring changed the possibilities for different stakeholders to be effective owners of the enterprises. This meant that the initial type of ownership determined by privatization often changed quite fast. We have a compressed ownership cycle and a fast development of the corporate governance model (Jones and Mygind 2005). Let us look closer at the Baltic experience.

## Privatization

Differences in starting conditions and in political development meant that different paths were chosen for changing the ownership structure from a planned system to a market system based on private ownership (see table 1)<sup>3</sup>. Before independence, employee takeovers implied that control was taken away from central authorities in Moscow to the Baltic Republics. When this goal was accomplished in Estonia and Latvia in 1991 the next goal was both to strengthen the position of the titular population in relation to the large Russian-speaking minority. In Estonia the nationalist-oriented policies meant that the period supporting broad employee takeovers of enterprises was very short and except for a few experiments only covered the early privatization of small and medium sized enterprises. This was also the case in Latvia, but here a large group of small and medium sized enterprises initially leased by their employees were later formally taken over by employees. Therefore, we also have some privatizations to employees later in the process in Latvia. In Lithuania, with a negligible Russian-speaking minority, workers in general had a stronger political role. Employee-takeovers were implemented in medium and large enterprises in the early years of transition with the “Program of Initial Privatization”, LIPSP.

In Lithuania there was strong resistance against selling out property to foreign investors. Lithuanians feared Russian takeovers and the policy was for a long period quite restrictive towards FDI. Estonia, on the other hand, implemented very liberal rules for foreign capital, opening up the economy to the inflow of especially Finnish and Swedish capital. With a few years delay Latvia followed the Estonian path for large privatization.

**Table 1. Overview over privatization**

	<b>Private % GDP</b>	<b>Large priv.</b>	<b>Small Priv.</b>	<b>Main method</b>	<b>Secondary method</b>	<b>Peak years</b>
<b>Estonia</b>	80	4 .	4+	direct sale	voucher	1994-95
<b>Latvia</b>	70	4 -	4+	direct sale	voucher	1996-97
<b>Lithuania</b>	75	4 .	4+	insider/voucher	direct sale	1992-94

Based on Mygind 2000, and EBRD 2005, scores for privatization range from 1 = none to 4+ = full.

In the former Soviet Union, the first movements in the direction of private enterprises began during the second half of the 1980es in the form of new cooperatives, individual firms, leasing and joint ventures (Bim, Jones and Weisskopf, 1993). Similar developments took place in the Baltics, especially in Estonia, which functioned as a laboratory for market reforms in the USSR. “Small state enterprises” with semi-private spin offs from state owned enterprises were part of this devel-

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<sup>3</sup> For a deeper analysis see Mygind 1997 and 2000.

opment. Also in Latvia, rapid development of new-cooperatives made an early start of private entrepreneurship. Most of these firms had a strong element of employee ownership although often they were de facto controlled by managers.

All three countries had large voucher schemes involving most residents. In Estonia and Latvia the bulk of vouchers were related to the privatization of land and housing while in Lithuania 65 per cent of the vouchers were used in enterprise privatization in the LIPSP program - in Estonia only 28 per cent and in Latvia 42 per cent (Mygind 2000). In Estonia and Latvia most of these vouchers went to broad public offerings of minority holdings after the sale of the majority to a core investor. Investors could also finance a big share of the down payment by vouchers in the tender privatizations. Although the LIPSP privatization in Lithuania resulted in a more diversified ownership structure than the tender privatizations in Estonia and Latvia, in most cases a core group of owners, most often insiders, acquired a majority of shares often mainly for vouchers.

Because of the limited role of vouchers in enterprise privatization in Estonia and Latvia investment funds were not important. In Lithuania 300-400 investment funds were started in relation to the LIPSP program. While many funds were used as a mechanism enabling a group of insiders to take control of their companies, some of them developed into more orthodox investment funds representing a high number of investors and with a diversified portfolio in a large number of companies. However, there were severe governance problems, giving the shareholders too little influence on the administrators, resulting in asset stripping of many funds. When the regulation was tightened in 1997, most of the investment funds were dissolved.

The timing of privatization of small enterprises was quite similar for the three countries. The majority of small enterprises were privatized 2-3 years after the start of transition. However, for the medium and large enterprises there were marked differences. With the LIPSP program, Lithuania was at its peak of privatization in 1993 and larger enterprises were privatized by the end of 1994. However, in most companies some shares remained state owned, and in some very large companies only around 10 per cent of the shares were privatized. In total only around 50 per cent of the capital was privatized in the companies involved. In Estonia privatization had its greatest momentum by 1994 and most large enterprises were privatized by the end of 1995. In Latvia privatization gained momentum in 1995-96 to peak in 1997, and large privatization was nearly accomplished by the end of 1998. Looking at the largest enterprises in utilities and infrastructure, Estonia was fastest followed by Latvia. While being fastest in the first round, Lithuania was slowest in the last round of privatization although it regained momentum in 1998.

Foreign investors played only a minor role in the privatization of small enterprises. The advantages for insiders crowded out the possibilities for outsiders, especially foreign investors. In



Lithuania foreigners had a weak position not only in small privatization, but also in the LIPSP privatization. Foreigners got opportunities to start up new firms somewhat faster in Estonia than in the other Baltic countries. Estonia was the first country to promote foreign investment in relation to large privatization. In the tender process, foreign investors had a strong position because of their access to capital, management skills, and international business networks. From 1993 foreigners took over many of the largest enterprises under privatization. By the end of 1998 foreigners had taken over approximately one third of enterprise assets included in large privatization. Latvia started the same process in the autumn of 1994 and the foreign share of purchase was 38 per cent for the years 1994-1998. In Lithuania the LIPSP privatization gave very little room for foreigners, and only 4 enterprises were taken over by foreign investors in “the privatization for hard currency” of 46 enterprises in the period up to 1995. After LIPSP the pace of privatization stagnated and not until 1998 did foreign capital start to play an important role in privatization in Lithuania (Mygind 2000).

**Table 2 Overview of institutions related to corporate governance**

	<b>Estonia</b>			<b>Latvia</b>			<b>Lithuania</b>		
<b><u>Bankruptcy system</u></b>	Strict legislation 92, tough enforcement			Strict legislation 96, tighter enforcement			Strict legislation 97, tighter enforcement		
<b>Insolvency law EBRD 2004</b>	medium compliance			low compliance			very low compliance		
<b><u>Governance EBRD score*</u></b>	<b>1995</b>	<b>2000</b>	<b>2005</b>	<b>1995</b>	<b>2000</b>	<b>2005</b>	<b>1995</b>	<b>2000</b>	<b>2005</b>
<b>EBRD governance-score</b>	3	3	4-	2	3-	3	2	3-	3
<b>competition-regulation</b>	2	3-	3-	2	2+	3-	2	3-	3
<b>governance law EBRD 2004</b>	medium compliance			high compliance			high compliance		
<b><u>Bank market</u></b>	<b>1995</b>	<b>2000</b>	<b>2005</b>	<b>1995</b>	<b>2000</b>	<b>2005</b>	<b>1995</b>	<b>2000</b>	<b>2005</b>
<b>number of banks (foreign)</b>	19(5)	7(4)	13(10)	42(11)	22(6)	23(10)	15 (0)	13 (6)	12 (6)
<b>state owned bank assets %</b>	9.7	0.0	0.0	9.9	2.9	4.3	61.8	38.9	0.0
<b>foreign own.bank assets %</b>		97.4	99.4		74.4	57.9		54.7	91.7
<b>loans to private % of GDP</b>	14.0	23.3	58.9	7.5	17.9	67.4	15.2	10.0	34.0
<b>bad loans % of total loans</b>	2.4	1.3	0.2	19.0	4.5	0.7	17.3	10.8	0.7
<b>bank regulation</b>	strict already 1992			strict from 1994			strict from 1995		
<b>EBRD-score: banking</b>	3	4-	4	3	3	4-	3	3	4-
<b><u>Stock market</u></b>	<b>Start</b>			<b>Start</b>			<b>Start</b>		
	May 1996			July 1995			September 1993		
	<b>1996</b>	<b>2000</b>	<b>2005</b>	<b>1996</b>	<b>2000</b>	<b>2005</b>	<b>1996</b>	<b>2000</b>	<b>2005</b>
<b>Listed firms</b>	16	17	15	34	17	12	460	54	43
<b>capitalization % of GDP</b>	21.0	31.5	25.3	3.0	7.3	16.8	11.4	13.8	31.8
<b>turnover % of capitalization</b>	13.0	18.9	51.1	8.0	48.6	4.6	4.0	48.5	10.1
<b>EBRD-score: non-banking</b>	2	3	3+	2	2+	3	2	3	3

EBRD Transition Report 2006, scores 1=none, 4+=full. Capital market data: central banks and stock exchanges.

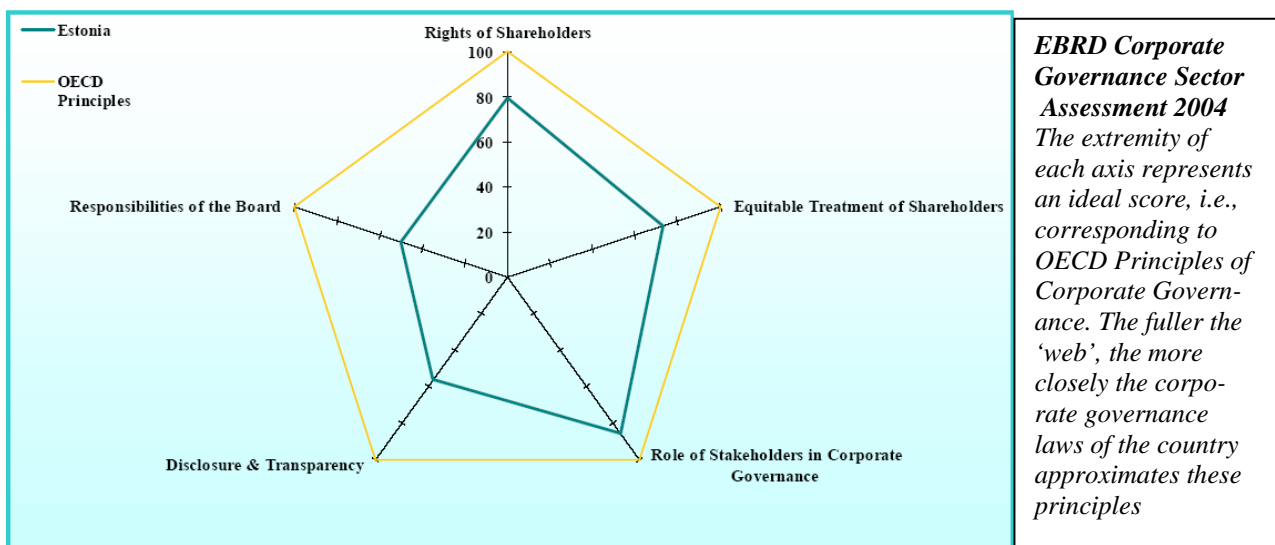
## Overview over institutional development

Table 2 gives an overview of developments in the Baltics of the main institutions for the functioning and development of the governance structures at the enterprise level. Although the Baltic countries started their transition two years later than the leading countries in Central Europe (Po-

land, Czech Republic and Hungary) they are now on the same level. The legislation on bankruptcy procedures was quite advanced already in 1992 in Estonia. The law was strictly enforced and by 1995 more than 1000 bankruptcies had already been implemented. Therefore, takeovers of liquidated assets had an important role in the ownership dynamics in Estonia. In Latvia and Lithuania bankruptcy laws were also passed in 1992, but implementation was relatively weak. The legislation was strengthened in Latvia in 1996 and in Lithuania in 1997 and the implementation has been further tightened in 2003 in Latvia and Lithuania. However, still according to EBRD (Legal indicator Survey 2004, EBRD 2004, annex 1.1) the law is deficient in several fields. Latvia scores “low compliance” and Lithuania “very low compliance” when compared with international standards. The Insolvency Law does not provide sufficient clarity in the definition of ‘insolvency’ to prevent potential abuses by creditors. In addition, the law grants insufficient supervisory powers to courts in restructuring processes. The Insolvency Law is particularly deficient in addressing other issues of reorganization including too high complexity of procedures. Estonia scores “medium compliance” in the assessment. In EBRD’s assessment of effectiveness of how the law works in practice there is still much room for improvements in all three countries. Still Estonia belongs to the best performing countries in the actual enforcement of insolvency cases well ahead of both Latvia and Lithuania.

For Estonia the faster and tougher implementation of bankruptcy rules are also reflected in the slightly higher EBRD score for governance and enterprise restructuring in table 2. Estonia has been leading in company legislation and enforcement of this legislation. However, recent EBRD surveys on legislation and enforcement of rules indicates that Estonia is getting behind its two Baltic neighbors in areas related to corporate governance (EBRD 2005, annex 1.2).

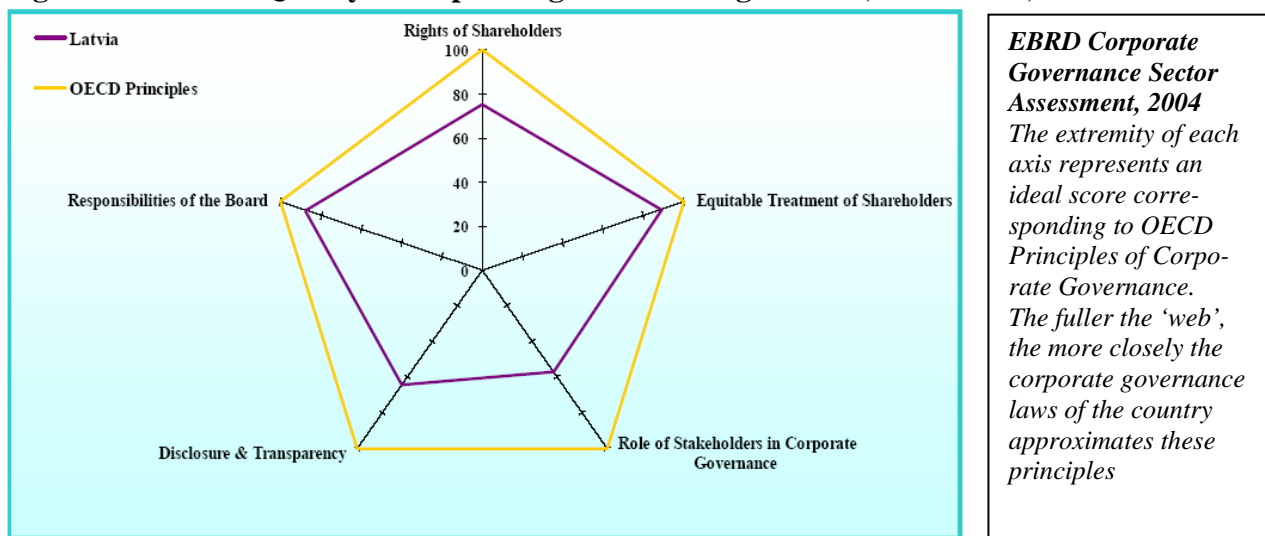
**Figure 1 - Estonia - Quality of corporate governance legislation (EBRD 2004)**



The EBRD's 2004 Corporate Governance Sector Assessment, which assessed corporate governance related “laws on the books” rated Estonia as having achieved “medium compliance” when compared to the OECD Principles of Corporate Governance. Shortcomings were found in the “responsibilities of the board” and “disclosure and transparency” sections, see figure 1. In Estonia the Commercial Code, issued in 1995 is the primary legislation concerning corporate governance. However, on 12 October 2005, the Estonian Parliament passed a major amendment to the Commercial Code aimed at removing several flaws encountered in implementing the Code and at lifting excessively formal corporate requirements. Some parts of the Commercial Code have been clarified in the light of practice. Regulations concerning the rights and duties of companies’ management bodies have also been improved. The amendments entered into force on 1 January 2006. With these recent changes Estonia will probably have a higher rating in the next EBRD assessment on the quality of legislation. For the institutional framework it should also be mentioned that Tallinn Stock Exchange recently adopted a Corporate Governance Code. On 1 January 2006 these “Corporate Governance Recommendations” entered into force and are intended to enhance corporate governance and transparency among listed companies. The Recommendations are enforced by regulations of the Tallinn Stock Exchange and are based on the “comply or explain” principle.

In 2005, the EBRD launched a survey for testing the effectiveness of corporate governance - how the law works in practice (EBRD 2006-Est). A case investigated the position of a minority shareholder seeking to access corporate information in order to understand if a related-party transaction was indeed entered into by the company and on how it was possible to obtain compensation in case damage was suffered. The effectiveness of legislation was measured according to four principal variables: complexity, speed, enforceability and institutional environment. The survey revealed that actions available to minority shareholders with less than 25% shareholding are limited and in general not very effective. Minority shareholders can call a general meeting to request information from management, but they cannot adopt any decisions unless their action is backed by other shareholders representing the majority at the meeting. Also when considering redress, actions available to minority shareholders are limited, although much more effective. In this respect, procedures are deemed clear and enforceability is generally not considered a particular issue by EBRD, although it might depend on the solvency of the debtor. In Estonia obtaining an executable judgment can take more than 24 months if the dispute goes before the Supreme Court and it is considered easy for the defendant to delay the proceedings. However, Estonia’s institutional environment is considered sound as courts are deemed impartial and generally experienced and competent in corporate law cases, corporate information is reliable and statutory auditors are deemed fairly independent from the controlling shareholder.

**Figure 2 - Latvia - Quality of corporate governance legislation (EBRD 2004)**

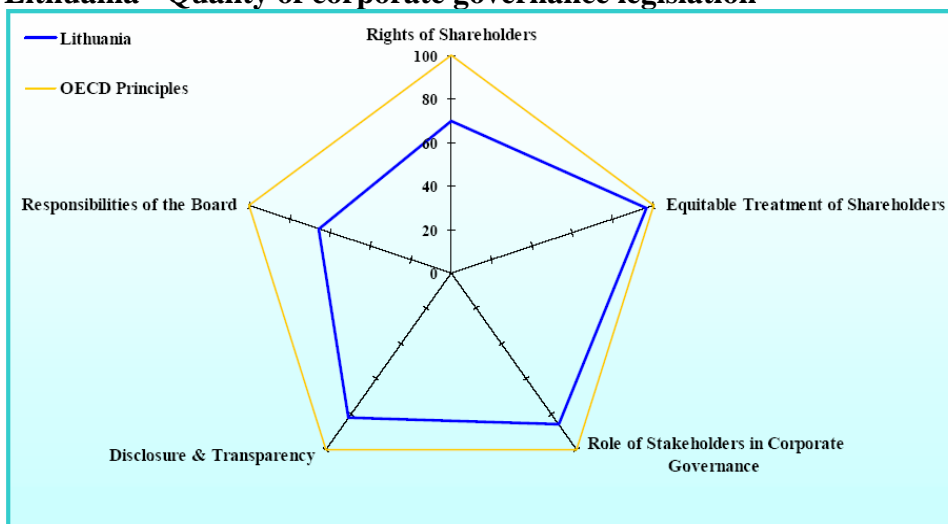


In Latvia the primary legislation governing corporate governance related issues includes the Commercial Law from 2000 with later amendments and the Financial Instruments Market Law. According to EBRD's 2004 Corporate Governance Sector Assessment, "laws on the books" in Latvia was rated as having achieved "high compliance", when compared to the OECD Principles of Corporate Governance. Latvia scores high on minority investor protection (equitable treatment of shareholders) while some stakeholder issues scores somewhat lower, see figure 2. However, the 2005 EBRD survey for testing the effectiveness of the practice of corporate governance showed some deficiencies in all variables: institutional environment, enforceability, complexity and speed. Actions available to minority shareholders are generally clearly provided for by the legislation, but case law offering guidance to legal provisions is not always available. The time needed to conclude the proceedings is usually limited (around 8 months for disclosure and 1 year for redress) although it may be quite easy for the defendant to delay the procedure. Finally, enforceability of judgements might be problematic and courts and prosecutors are not deemed well experienced and competent in corporate cases. Therefore, EBRD concludes that despite the fact that Latvia has in place good laws concerning corporate governance issues, continuing efforts still need to be made to improve the effective implementation and enforcement of existing legislation. It should also be mentioned that the Riga Stock Exchange has followed the trend and in December 1995 they issued their Principles of Corporate Governance (1995). Listed companies will be required to issue a compliance statement in relation to this corporate governance code starting from 2007 (Wymeersch, 2006).

In Lithuania the Law on Companies is the most important legislative document dealing with corporate governance. In April 2004 the Vilnius Stock Exchange approved a Corporate Gov-

ernance Code and the LSC endorsed it. The Code includes a set of requirements that listed companies are invited to observe on a purely voluntary basis. A new version of the Code was approved in August 2006. It incorporates a new "comply or explain" approach.

### Lithuania - Quality of corporate governance legislation



**EBRD Corporate Governance Sector Assessment, 2004**

*The extremity of each axis represents an ideal score corresponding to OECD Principles of Corporate Governance. The fuller the 'web', the more closely the corporate governance laws of the country approximates these principles*

In EBRD's 2004 Corporate Governance Sector Assessment Lithuania's "laws on the books" were rated as having achieved "high compliance", when compared to the OECD Principles of Corporate Governance. As shown in the chart above only minor shortcomings were found in the "responsibilities of the board" and "rights of shareholders" sections. Among those, the assessment evidenced that the law is silent on board's functions as ensuring the integrity of the corporation's accounting and financial reporting systems and does not require the board to include a sufficient number of non-executive and independent directors. This is recommended, however, in the Corporate Governance Code.

The EBRD survey for testing the effectiveness of corporate governance in relation to minority protection revealed that legislation in Lithuania is quite effective and only minor problems have been evidenced. Related-party transactions are however not well detailed in the legislation and this might render the procedures complex and the burden of proof heavy. The time needed to conclude the proceedings is usually under 6 months when seeking disclosure although in case of appeal the time needed to obtain an executable judgment can exceed two years. Enforceability of judgments is not considered to be a problem. Turning to the institutional environment, the survey indicates that company information is generally reliable, which enhances the possibility to obtain disclosure. When considering redress, the survey reported a lack of experience of the lower courts in corporate law cases.

## **The development of the financial institutions**

Early in the transition process state-owned banks were split into a two-tier system with a Central Bank and a number of commercial banks to be privatized later in the process. This privatization was performed fastest in Estonia peaking in 1995, in Latvia in 1996, and in Lithuania in 2001. A large number of new private banks were established in the early years of transition to service some of the large enterprises. Many of these banks had a weak capital base, but the development of the financial sector shows a strong consolidation with a falling number of banks and a development of banking activities from simple money transfers to deepening the main activity of channeling savings from the population to lending to companies. Latvia has the highest number of banks of which still some relatively small niche-banks servicing CIS-markets (EBRD 2006).

Most transitional countries have been through severe financial crises. In Estonia, already in 1992-93 the financial system was strengthened after a major financial crisis. In Latvia the regulation were made more strict around 1995 disclosing serious weaknesses in the largest commercial bank. This bank was closed down, Latvian savers had huge losses and the banking crisis gave a push to the whole Latvian economy. In Lithuania three of the largest banks were in crisis in 1995/96.

In all three countries the largest banks were taken over by foreign, mainly Scandinavian, banks in the end of the 1990'es and in the start of the new millennium. In later years we have seen a steep fall in the share of non-performing loans and a steep increase in loans to the private sector - both loans to private persons, mainly for mortgage and car loans, and to enterprises. The boom in investments in construction of residential buildings and in fixed assets in enterprises is to a high degree driven by falling real interest rates and the stronger role of banking. As seen in table 2 Estonia has been leading this development, but Latvia and a bit later Lithuania are strongly catching up.

From our surveys, discussed below, we find that banks are not playing a strong role as owners and are seldom represented in the boards of the enterprises. Although the legislation does not make important barriers for bank ownership it seems that the German bank-dominated model is not what is developing in the Baltic countries.

## **Non-banking financial markets**

Tallinn Stock Exchange opened in May 1996. Before that time some trading of shares had taken place in the over-the-counter market. The privatization through public offerings of minority shares facilitated the development of the exchange, but there was no strong relation between the privatization process and the development of the stock exchange. Tallinn Stock Exchange is characterized by a small number of companies, but with relatively high capitalization and turnover. Capitalization and turnover on the Riga Stock Exchange have been considerably lower than in Estonia.

However, following the acceleration of privatization of large companies and the associated public offerings of shares, the Latvian stock exchange has developed quite rapidly in recent years. The National Stock Exchange of Lithuania was established in September 1993, closely connected to the LIPSP privatization process. Although more than 600 enterprises were listed, capitalization in relation to GDP was not higher in Lithuania than in Estonia and turnover was very low with thin trading of most companies. Most of them have later been delisted. The three Baltic stock exchanges have started a common Baltic list of blue-chip stocks.

The three exchanges are now integrated into the Nordic OMX stock exchanges. This integration and the corporate governance codes issued in the latest years have further strengthened regulation and transparency. Furthermore, the legislation has been developed especially in relation to the EU accession in 2004. According to the EBRD Securities Markets Legislation Assessment conducted in 2005, Estonia was found to be in “high compliance” (almost reaching the “very high compliance”) with the Objectives and Principles of Securities Regulation published by the IOSCO. Lithuania was also found to be in “high compliance” while Latvia was found to be in “medium compliance”, but later legislation has probably now lifted Latvia to high compliance. This means that the legislation on listing of securities and disclosure are now up to EU standard in all three countries. However, it should be noted that for the overwhelming majority of Baltic enterprises, including those investigated in this article, the stock exchanges have no direct influence on their governance because they are not listed.

The development of non-banking financial institutions belongs to the last stages of transition. Insurance companies are getting more consolidated and investment funds, venture capital funds, private equity are in their early stage. Different pension schemes have been introduced and are developing in strength in the later years. According to the EBRD strategy reports (2006) there are both mandatory and voluntary privately managed pension funds in Latvia and Lithuania while in Estonia only voluntary. Private pension funds and life insurance companies are beginning to accumulate pools of household savings, but absolute volumes remain low. So though, pension funds are still in an early stage it can be forecasted that institutional investors related to these funds will have a strong role in the future like it is the case in most developed economies. The leasing sector is thriving in all three countries.

### **Ownership identity and concentration - the compressed ownership cycle**

In developed market economies the typical governance cycle is, manager → outside investor participation → outside investor takeover (Jones and Mygind 2005). This cycle develops in parallel with a tendency for a change from concentrated to more diversified ownership. Specific governance

cycles are also determined by developments in the country's institutional and cultural framework and by specific market developments.

Because of the fundamental changes in institutions transitional economies with emerging and changing markets create specific transitional conditions for enterprises and their life-cycles. Privatization, pressures for restructuring and weak, but developing institutions define the conditions for the evolution of ownership structures. Therefore, specific transitional governance cycles can be predicted. Most medium and large enterprises have gone through a process of privatization. The specific method used for the change from state to private ownership determined the initial ownership structure of the privatized enterprises.

The weak institutions in the start of transition meant that the owner-manager governance problem was prevailing and outside ownership was relatively rare. This was combined with advantages for insiders in the early privatization process. As mentioned earlier, Estonia and Latvia had a bias towards employee ownership in relation to small and medium firms, while in Lithuania the LIPSP privatization also enabled the introduction of employee ownership in quite large and capital-intensive enterprises (Mygind 2000).

Based on ownership surveys for several years in the three Baltic countries Jones and Mygind (2005) have investigated both the ownership structure just after privatization or start as a new enterprise and the later changes in ownership. In this way it has been possible to identify the specific ownership cycles developing in the Baltic countries. The analysis of the initial ownership structure shows that privatization and the specific conditions in early transition lead to a specific private ownership structure. Employee owned enterprises made up a large share of privatized enterprises in all three countries and they were especially related to early privatizations in both Estonia and Lithuania. For Latvia employee owned firms were also frequent during later privatization when many companies that were initially leased by employees were fully privatized. Employee ownership was rare among new start ups – the exception being the new cooperatives started up in the late 1980s or early 1990s. Ownership concentration was lowest in employee owned enterprises, higher in firms owned by domestic external owners or managers, and highest in firms that were foreign owned.

The dynamic analysis of ownership changes by Jones and Mygind (2005) shows that employee ownership was the least stable type of ownership and that the most frequent takeovers were undertaken by managers. The next step in the governance cycle for transition economies was from managerial ownership to outside ownership. Most often this involved a shift to external domestic ownership, but there were also cases of direct shifts to foreign ownership. Changes back to employee-dominated ownership were extraordinary. External domestic ownership shifted quite fre-



quently to foreign ownership. In this way the analysis strongly supports a transitional governance cycle of: *employee* → *manager* → *external domestic* → *foreign*, sometimes with shortcuts.

Some of the results are shown in the transition matrices in table 3. For Estonia it shows that while 99 out of 576 enterprises were majority employee owned at the first observation after start/privatization only 28 were still majority employee owned in 2002. This gives a rate of change of 71.9% much higher than is observed for the other ownership groups. The table also shows that 35 went to managers, 22 to domestic owners, 8 to former employees and 6 to foreign owners. The same tendency is observed for both Latvia and Lithuania although the change-rates are lower because a shorter period is studied.

Data not reported here shows that in general the ownership change is accompanied with an increase in concentration on the largest single owner<sup>4</sup> (Jones and Mygind 2005). In some cases privatization lead to diversified outside domestic ownership. In such cases the cycle often started with a move from relatively diversified domestic ownership to more concentrated management ownership following the cycle: diversified domestic → manager → outside concentrated ownership. The tendency toward higher concentration also applies to enterprises with stable ownership, but it was especially strong for enterprises that changed their dominant ownership group. This was particularly the case for shifts away from employee ownership, but it was also quite strong for movements from domestic outsider to foreign ownership and also for shifts from foreign to domestic outsider ownership. The reason behind this strong tendency towards higher concentration is that privatization led to an ownership structure that was too diversified in relation to the slow development of the institutional framework. The low development of the banking sector during early transition meant that reinvestment of profits and extra equity capital from existing or new core owners was the main source for investment for the necessary restructuring. Small diversified shareholders and institutional portfolio investors were rare and they were involved in only a handful of listed companies.

Privatization to foreigners was allowed first in Estonia, thus foreign ownership as a starting point of the governance cycle was more frequent in Estonia than elsewhere. Later in Latvia and even later in Lithuania, enterprises were sold to a core investor, often foreign. This ownership structure is the last stage in transitional economies and thus relatively stable. This does not exclude the possibility for long run changes to other foreign investors or to new strong domestic investors. The speed of the adjustment process for ownership-types and the accompanying concentration processes were closely connected to the development of the surrounding governance institutions. Change was slow when, for example, property rights were uncertain, bankruptcy legislation was weakly enforced, and the financial system was too weak to play an important role in the financing of invest-

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<sup>4</sup> While the ownership data goes back to the mid 1990s the concentration data, however, only covers the period from 1997 in Latvia and from 2000 in Estonia

ments for enterprise restructuring. When institutional reform was successfully implemented the development over the governance cycles speeded up, and countries with the fastest transition had most companies reaching the final stages of the specific transitional cycle (Jones and Mygind, 2005).

**Table 3a Estonia - ownership transition matrix: privatization/start – 2002** Jones and Mygind 2005

\last year first year	foreign	Domestic	manager	employee	former employee	total	Change
Foreign	114	10	9	0	0	133	14,3%
Domestic	11	132	37	0	0	180	26,7%
Manager	8	22	107	3	0	140	23,6%
Employee	6	22	35	28	8	99	71,7%
Former emp.	0	4	3	2	15	24	37,5%
<b>Total</b>	<b>139</b>	<b>190</b>	<b>191</b>	<b>33</b>	<b>23</b>	<b>576</b>	

**Table 3b Latvia - ownership transition matrix: 1997-1999**

\1999 1997	foreign	Domestic	manager	employee	former employee	Total	Change
Foreign	110	8	5	0	0	123	10,6%
domestic	8	161	13	4	2	188	14,4%
manager	2	12	326	2	0	342	4,7%
employee	2	6	15	135	9	167	19,2%
Former empl	0	16	0	6	73	95	23,2%
	<b>122</b>	<b>203</b>	<b>359</b>	<b>147</b>	<b>84</b>	<b>915</b>	

**Table 3c Lithuania - ownership transition matrix: privatization/start – 2000**

\2000 priv/start	foreign	Domestic	Manager	employee	former employee	total	Change
Foreign	31	3	2	0	0	36	13.9%
domestic	2	70	6	1	3	82	14.6%
manager	3	5	69	6	0	83	16.9%
employee	6	10	33	41	3	93	55.9%
former emp	1	11	4	2	18	36	50.0%
<b>Total</b>	<b>43</b>	<b>99</b>	<b>114</b>	<b>50</b>	<b>24</b>	<b>330</b>	

Former employee ownership defined as domestic dominant with concentration < 20%. In the analysis of ownership dynamics we separate ownership by former employee from the group of domestic outsider dominated enterprises. We assume that low concentration or high diversification of external domestic owners can be understood as a situation where employee owners have left the company, but have kept their shares. A substantial part of the changes away from employee ownership can be explained by this process. This is supported by Kalmi 2002 and Estonian cases (Kalmi and Mygind, 2003).

Estonia's fast development of the financial sector, early tough bankruptcy legislation and in general the fastest institutional development encouraged a faster speed of change in the ownership cycle, than in the other countries. This is both because the optimal ownership structure converged to the western model at an earlier date and because the institutional development made easier the necessary adjustments. Managers had better access to capital for takeovers from the more developed

banking system. Fast restructuring meant that employment was cut quite fast in the early stages of transition in Estonia. When employee owners left the company they often kept their shares and for employee owned companies this meant a change in ownership from employees to former employees. Finally, a fast transition process and development of the institutional system improved the business climate and attracted foreign investors facilitating a faster change of ownership structures in the direction of foreign ownership. Although there were quite important differences between the three Baltic countries in the privatization processes and the development of different governance institutions Jones and Mygind (2005) find that the similarities are more important. The corporate governance cycles followed the same patterns and were accompanied by a strong tendency for higher concentration. The main difference occurred in the speed of the adjustments. The change away from employee ownership was fastest in Estonia, and here also the level of concentration is significantly higher than for Latvia and Lithuania.

To investigate the relation between ownership and control and to go deeper into compensation and restructuring we made manager surveys in all the three countries. In Estonia the survey was done in 1996-97 and included responses from 220 enterprises. In Latvia a similar survey was done in the spring of 1997 comprising 167 enterprises. In Lithuania the questionnaire was performed in the spring of 2000 and the result was 405 responses. We chose a stratified random sample of companies with relatively high weight on larger companies. The questionnaires were sent to top-managers, but most interviews were done on location and some by phone. The surveys were performed by the statistical departments and the response rate was around 30% in Lithuania and around 60% in Estonia and Latvia. Some of the results are presented in table 4.

Is there correspondence between type of ownership and board representation? This is a core question concerning the relation between ownership and control. Especially, in the Latvian and Lithuanian sample managers followed by other employees have strong positions in the company boards<sup>5</sup> (Mygind 2002abc). In Estonia the representation of managers and other employees are considerably lower although still the strongest groups on average. In all three countries, especially in Estonia, foreign owners have a strong position versus the insiders. We find correspondence between ownership and representation in the boards in insider owned and foreign owned enterprises while especially in external domestic enterprises and in the remaining enterprises with majority state ownership the owners are only weakly represented in the boards. This situation indicates that there may be a strong owner manager governance problem in these enterprises.

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<sup>5</sup> The results may be slightly biased because in some cases companies may have given answers for the management boards and not as indicated the company board (supervisory council).

**Table 4a Composition of company board on ownership – Estonia 1997** (Mygind 2002-Est)

\ ownership 1997 average % of seats to representatives from:	state	fo- reign	do- mes- tic	mana- ger	em- ploy- ee	no ma- jority	total	priva- tized	new	coop
state/municipal	8	6	2	4	5	0	4	3	3	5
Foreign	20	53	2	2	0	14	13	9	29	
domestic external owner	23	10	35	14	11	33	21	18	18	31
Managers	30	25	33	47	44	36	36	41	26	26
other employees	19	6	28	33	40	17	26	29	24	37
Total	100	100	100	100	100	100	100	100	100	100
total N with seats > 1	6	33	57	40	21	5	162	62	64	31
average number of seats	3	3	3	3	4	2	3	4	3	4
N seats =0 or no answer	0	0	4	3	1	1	9	1	8	1

**Table 4b Composition of company board on ownership – Latvia 1996** (Mygind 2002-Lv)

\ ownership 1996 average % of seats to representatives from:	state	for- eign	dom.	mana- ger	em- ploy- ee	no ma- jority	total	priva- tized	new
state/municipal	33	0	5	3	2	12	5	4	4
Foreign	0	46	2	6	0	6	6	2	12
domestic external owner	5	14	24	16	4	22	16	15	18
Managers	63	31	51	64	53	44	53	53	52
other employees	0	9	18	11	40	16	20	26	14
Total	100	100	100	100	100	100	100	100	100
total N with seats > 1	4	9	30	32	31	10	116	66	46
average number of seats	5	5	7	5	7	5	6	6	5
N seats = 0 or no answer	16	4	5	6	1	4	46	5	25

**Table 4c Composition of company board on ownership – Lithuania 1999** (Mygind 2002-Lt)

\ ownership 1999 average % of seats to representatives from:	state	fo- reign	do- mestic	mana- Ger	em- ployee	no ma- jority	total	priva- tized	new
state/municipal	11	2	2	1	4	1	5	2	1
Foreign	0	30	1	0	0	0	7	1	18
domestic external owner	0	0	30	6	4	9	9	11	16
Managers	51	61	52	62	39	54	53	52	49
other employees	38	7	15	31	52	36	26	34	26
Total	100	100	100	100	100	100	100	100	100
total N with seats > 1	43	16	74	50	26	66	275	200	28
average number of seats	4.9	4.4	4.3	4.3	5.1	4.8	4.6	4.5	4.3
no board or no answer	21	18	24	46	7	14	130	47	59
Total N	64	34	98	96	33	80	405	254	87

In all three countries the strong management representation in the boards is to a high degree mirrored in the perceived strong influence of the managers on all decision areas. The only exception is selection of managers where the owners have relatively high influence – higher or on the same level as managers. This corresponds with the answers on: Who appointed the managers? The company boards and the shareholders directly have appointed the large majority of the managers. The owners also have some say on long term plans, but here only foreign owners have similar influence as managers. Again it seems that the foreign owners are strongest in solving the owner-manager problem. The surveys in all three countries show that foreign owners are clearly the strongest external group. Since the managers have very high influence even without ownership, the position as majority owner only increases their influence marginally.

Banks have very little influence in Lithuanian companies. This is also connected to the limited role of bank loans for Lithuanian enterprises. Questions concerning bank influence were not included in the Estonian and Latvian surveys, but we assume that here the situation is quite similar to the Lithuanian case.

Managers dominate decision making also in employee owned companies. The group of employee is in general perceived to have quite low influence on all issues. Except for a slight increase in relation to manager selection in Latvia and Lithuania employee ownership does not change the low influence of the employees. In general employees have most influence on safety and health, but again, ownership does not improve their position in these operational issues. Therefore, employee ownership with dominant management control seems to be quite widespread and for employee owned firms there is a strong owner-manager governance problem.

Union membership is in general very low in all three countries. Unions play no role for employee influence and they are not represented in new enterprises. Share-ownership is the main channel for employee influence in most of the employee owned enterprises and in a high number of management owned and no-majority enterprises. This is related to relatively high employee minority shares in these companies.

Quite few from the old guard had survived as managers when the survey was done in the end of the 1990es. This shows that the selection of managers was important in relation to the manager-owner governance problem. There is quite small variation in the year the current manager was appointed. In state, employee and no majority enterprises around 20% of the Lithuanian managers dated back to the 1980'es. In this respect more of the old guard has survived in Lithuania than in Estonia and Latvia where less than 10% of the managers had their positions back from the 1980'es. In Lithuania and Estonia employee and manager owned enterprises had on average the longest

manager tenure, followed by foreign and no majority, while in Latvia managers were shifted more frequently in employee owned companies.

Another instrument the owners can use to solve the owner-manager governance problem is performance related compensation to align the managers' interests with the owners. When the survey was done performance related pay was widespread in the Lithuanian sample – much more than in Estonian and Latvia. There was profit-related pay in 60% and sales related pay in 27% of the Lithuanian enterprises in 1999. The corresponding numbers for Estonia in 1997 was 13% and 9% and for Latvia 19% of the firms had profit-related and 13% sales related pay for their managers in 1996. However, the frequency was increasing over time for all three countries so some of the gaps between the countries have probably been narrowed in the later years. There was no significant variation between the owner-groups, in any of the three countries.

### **Changing importance of the three governance problems over the transition process.**

The development of the corporate governance systems means that the three governance problems have had varying importance. The early high frequency of employee ownership in small and medium enterprises in Estonia and Latvia and a broader group of enterprises in Lithuania was an indicator for emphasis on employee-related stakeholder issues. The political position of the employees in early transition, especially in Lithuania, gave them a strong position in early privatization. However, their limited resources for being strong owners in relation to management and the continuing practice of paternalistic management meant that the owner-manager problem was strongly present – the employee owners had de facto not much control.

Still, employees were strongly represented in the boards in our surveys covering the end of the 1990es, especially, in companies with employee majority ownership. This meant some influence for employees when appointing the managers, but in other areas ownership did not enhance the influence of the employees. It is worth noting that external domestic owners had even lower influence, probably, due to the relatively dispersed ownership in this group. The strong counterpart for the managers was found in foreign owned enterprises. Thus, the main solution of the owner-manager problem was either ownership by the managers or more concentrated ownership often through foreign investors. This is the background for the increased concentration of ownership in all three Baltic countries – and in other countries in Eastern Europe as well (Mygind et al 2006).

The main governance problem in the current stage with quite concentrated ownership is the conflict between majority and minority shareholders. The weak position of minority shareholders is indicated by the continuing increase in concentration on the largest single owner. However, the most recent legislation and the corporate governance codes introduced in the later years in all the

three Baltic countries have strengthened the protection of minority shareholders. Still, the effectiveness of the legislation – the enforcement - could be developed further. Accompanied by more institutional investors from the growing pension funds, insurance companies etc. we may in the coming years see a development with more minority investors.

In the coming years we expect more widespread concern for the stakeholder governance problem. Some of the large foreign investors have already brought some concern for Corporate Social Responsibility issues, but it has still not much weight in the typical Baltic company. However, there is increasing demand for social responsible investments and most experience show that companies giving high priority to CSR also show strong performance in relation to shareholder value.

The strong ownership position of the employees in the start of transition declined quite fast over the transition process. In the later years, employee ownership is still decreasing, and according to a recent study (Lowitzsch 2006) there is now no special legislation to promote employee financial participation in any of the Baltic countries. Thus, the Baltic economies are lacking behind the development in EU and US in this field. Some legislation concerning employee representation in European companies related to the EU membership is the only initiative in this area in the latest years. With the exception of some large foreign owned companies it seems that even in knowledge intensive companies where employee ownership is widespread in other countries we find very little evidence of employee financial participation. However, with the continuation of the fast development and upgrading of the Baltic economies it can be expected that the involvement of this stakeholder group of employees will get renewed interest.

## **Conclusion**

Within the last 15 years the three Baltic countries have been through deep changes in political and economic institutions. The balance between different stakeholders in relation to the enterprises has changed and new stakeholder groups have been formed in the process. Corporate governance system has gone through different stages both in the individual enterprises and in the general model for the given country. So what governance model is now developing in the Baltic countries?

The privatization process was the starting point for the governance cycle for most medium and large enterprises. There were important differences between the Baltic countries with strong support for insider takeovers only in the very early years in Estonia and Latvia while Lithuania made employee takeovers the dominant model for the bulk of enterprises in the privatization up to the mid 1990es. However, the privatization models converged over time. Foreign investors got a strong role quite early in Estonia. This trend was followed a few years later in Latvia and direct sale to blockholders, often foreign investors, has also been the dominant strategy in Lithuania since the

end of the 1990es. In this way the three countries have to a high degree followed the same path, but with some variations in speed with Estonia in front and Latvian and Lithuania catching up.

This is also the case seen in relation to the most important institutions for corporate governance. Estonia was fastest to implement tough bankruptcy legislation and also fast in relation to a more advanced company law. Estonia followed more liberal regimes for business with a quite low degree of regulation. In the area of securing the rights of shareholders and minority right protection this meant that Estonia at some point was passed by Latvia and Lithuania. A 2004 EBRD-survey based on legal experts and practitioners show that minority protection had several flaws in Estonia, but recent legislation related to EU-accession in all three countries resulted in important improvements. Still, in the actual implementation minority protection is far from the Anglo-American level.

The banking system developed fast in Estonia. Early strict legislation on banking in Estonia was related to a bank crisis in 1992-93. At this stage the crisis did not result in such strong negative consequences as it happened for Latvia and Lithuania in 1995-96. Foreign, specially Scandinavian, banks took over most of the banking assets and in the later years we have seen a very high growth in loans to the private sector pushing the current boom in construction and investments. Although the role of banks in the economies is increasing they do not play a strong role as owners and representatives in company boards. Therefore, we do not find signs of the development of a German bank-based corporate governance system.

The stock market developed first in Lithuania in connection with the early privatization process, but although many enterprises were listed the general institutional framework did not support the role of a strong market for ownership control and later most of these companies were delisted. Estonia started the stock exchange quite late in 1996, only few companies were listed, but capitalization and turnover was quite high for a transitional economy. In the later years the stock exchanges in all three countries have been integrated into the Nordic OMX system. Still only a few of the leading companies are listed and the bulk of the enterprises are outside the stock exchange. The weak development of the stock market gives little support for the Anglo American market based system in the Baltics.

The privatization models and the development in institutions have set a framework for the typical transitional governance cycle: *employee* → *manager* → *external domestic* → *foreign blockholder*. Because of the speed of institutional change this happened a little bit earlier in Estonia, but the tendency has been observed in all three countries. Now only very few employee owned companies are left. We still see many manager-owned, especially, in new companies, but large blockholder, especially among foreign companies, have also a strong position. This development has happened in



parallel with a strong concentration of ownership. Thus, blockholder ownership is the dominant ownership structure for the overwhelming part of the enterprises.

Corporate governance has been much more advanced through the transitional process. In the early years the owner-manager problem was very serious in most companies. When the authority of the planners disappeared and liberalization gave room for decisions at the enterprise level managers got a very strong position. Because of the deficient institutional framework outside owners had a relatively weak position compared to insiders. Together with the privatization models this was the reason behind the strong weight on insider ownership in the early stage of transition. Because of the continuation of the old paternalistic management style also employees were in a weak position and often the governance problem was between employee owners and management. When managers took over, and sometimes after outside takeovers, the governance problem between majority and minority owners developed. The continued concentration of ownership can be taken as an indicator that it is still too early for a development in the direction of more diversified ownership as in the Anglo-American model. Stakeholder issues like employee participation and Corporate Social responsibility have been introduced often through foreign investors, but such issues still have a low profile in the three countries.

In this way there have been an interesting cycle seen in relation to the prevalence and importance of the different governance problem. We can say that the stakeholder problem was somewhat addressed by the weight on employee ownership in the early stage of privatization. However, the managers' appropriation of rights from the employees changed the focus to the manager-owner problem. This is still an important governance problem, but now in relation to outside owners. It has mainly been solved through concentration of ownership, leaving the floor open for the majority-minority problem. The stakeholder problem may have a more dominant position in the future.

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