EBRD Insolvency Assessment on Reorganisation Procedures

European Bank
for Reconstruction and Development

Poland

START

Contents

Message from the EBRD President, Odile Renaud-Basso

I am delighted to share with you this very comprehensive report on business reorganisation tools across all the regions where the EBRD operates. The timing of this report is highly relevant. Many businesses have struggled financially over the last two years and current economic trends suggest that, even with additional emergency financial assistance, businesses will continue to face difficulties for some time to come.

I hope that the business reorganisation trends and practices identified in this report can have a positive and lasting impact on law reform and policymaking across the Bank's regions and help the economies where the EBRD invests emerge from the economic crisis generated by the pandemic and rebuild with resilience. Emergency financial assistance packages that have been provided by national governments and international organisations, including the EBRD, the European Union, the European Investment Bank, the International Monetary Fund and the World Bank Group, among others, all need to be supported by longer-term structural reforms that foster inclusive and sustainable economic growth and strong legal and institutional frameworks. These reforms should include measures to assist in the turnaround of businesses by encouraging early financial restructurings and the possibility of rescuing businesses.

The stigma associated with financial failure needs to be replaced with a recognition that all businesses, even the most successful, can experience instances of financial uncertainty during their lifecycle. There is nothing intrinsically negative about transiting a reorganisation procedure. Processes included in the insolvency law should be seen as a second chance and an opportunity to adapt and transform those parts of the business that are not functioning well. Modern insolvency frameworks should be built on the principles of facilitating the reorganisation of viable businesses and encouraging early action to prevent unnecessary situations in which a business ultimately faces insolvent liquidation. Preventing – rather than reacting – should be the rule. However, for this to occur, legislators need to provide the right incentives for effective, efficient and fast debtor-in-possession business reorganisation procedures. This will ultimately benefit not only businesses, but also financial institutions, the banking sector, and the economy as a whole since efficient reorganisation tools help to prevent potential non-performing loans and to tackle problems early in the debt cycle.

At the EBRD, we value well-functioning, transparent insolvency systems and see insolvency and financial restructuring as a necessary part of a healthy economy that innovates and attracts external investment. The legal and regulatory policy advice provided by lawyers under our Legal Transition Programme, who have overseen this excellent report, is a vital part of the EBRD's toolbox to support governments and our private sector partners.

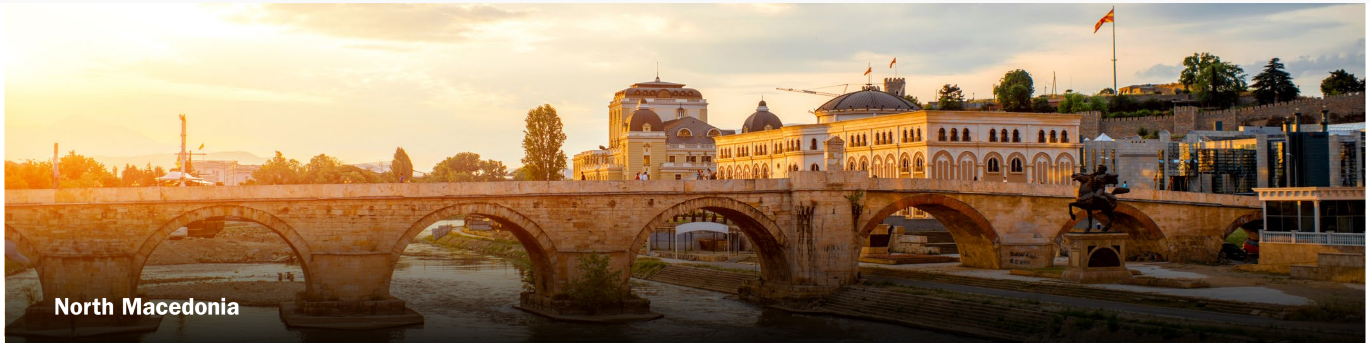
Albania

Foreword from the EBRD General Counsel, Mike Strauss

We decided to launch this assessment on business reorganisation in direct response to the Covid-19 crisis. Our goal was to gather whatever information we could to identify the needs of EBRD economies of operations in this critical area and to set out best practices to support a better business and investment climate in the medium and longer term. We have done this here in our Assessment Report and in our recently revised **EBRD Core Principles of an Effective Insolvency System** and **EBRD Insolvency Office Holder Principles**.

Having a solid legislative basis is essential for any economy. It is the foundation of market confidence. In the area of insolvency, laws and institutions can be the difference between business survival and growth and business liquidation and failure. In too many countries, insolvency systems destroy value instead of preserving or even creating it, and they perpetuate an old stigma associated with business liquidation. This needs to change.

Having reliable and publicly transparent data is essential for the development of sound policies. Insolvency is no exception and we see important gaps in our regions in terms of information on business reorganisation. Data is too often elusive, both in terms of quantity and quality. Only a few jurisdictions provide real-time data about insolvency cases, making proper assessments about the performance of the procedures a complicated task. Increasing digitalisation in the court sphere provides



North Macedonia

an opportunity to improve data on insolvency, as well as the transparency and understanding of insolvency systems. We hope that this Assessment Report will provide a useful and reliable source of information and will act as a reference point to help authorities and legislators to pursue necessary reforms.

This report also comes at a perfect time considering the recent changes introduced by the EU Restructuring Directive, which promotes early preventive action and business rescue. The directive paves the way for more specialised courts and insolvency practitioners. EU countries, including no less than 11 economies where the EBRD invests, are moving quickly to implement the changes required by the directive. We expect to see some positive effects also in non-EU economies in the EBRD regions as these economies seek to retain their competitiveness and pursue legislative changes aligned to the Restructuring Directive. In particular, preventive restructuring will be the main trend in insolvency in the years to come, with the emphasis on differentiating debtors facing temporary but surmountable financial difficulties from situations where the debtor no longer has a viable business. The simplification of SME-focused procedures will also be an important trend, with benefits for smaller business in reductions in both time and cost.

However, reforms are needed not only to modernise the substantive parts of insolvency legislation, but also to deal with procedural and institutional aspects. Having properly trained judges and insolvency practitioners is key for a reliable insolvency framework. Specialisation of courts and insolvency practitioners should be a priority for all economies in the near future. Digitalisation of procedures will also contribute to greater expediency, transparency and efficiency.

The Covid-19 crisis has placed significant demands on national authorities and has often prompted emergency legislation, which will now need to be superseded by more long-term solutions. At the EBRD, our Legal Transition Programme is ready to provide the policy support EBRD jurisdictions need to navigate this period of reform. Legislators should seize the opportunity to modernise their laws and improve their investment climates.

Michael C. Strauss

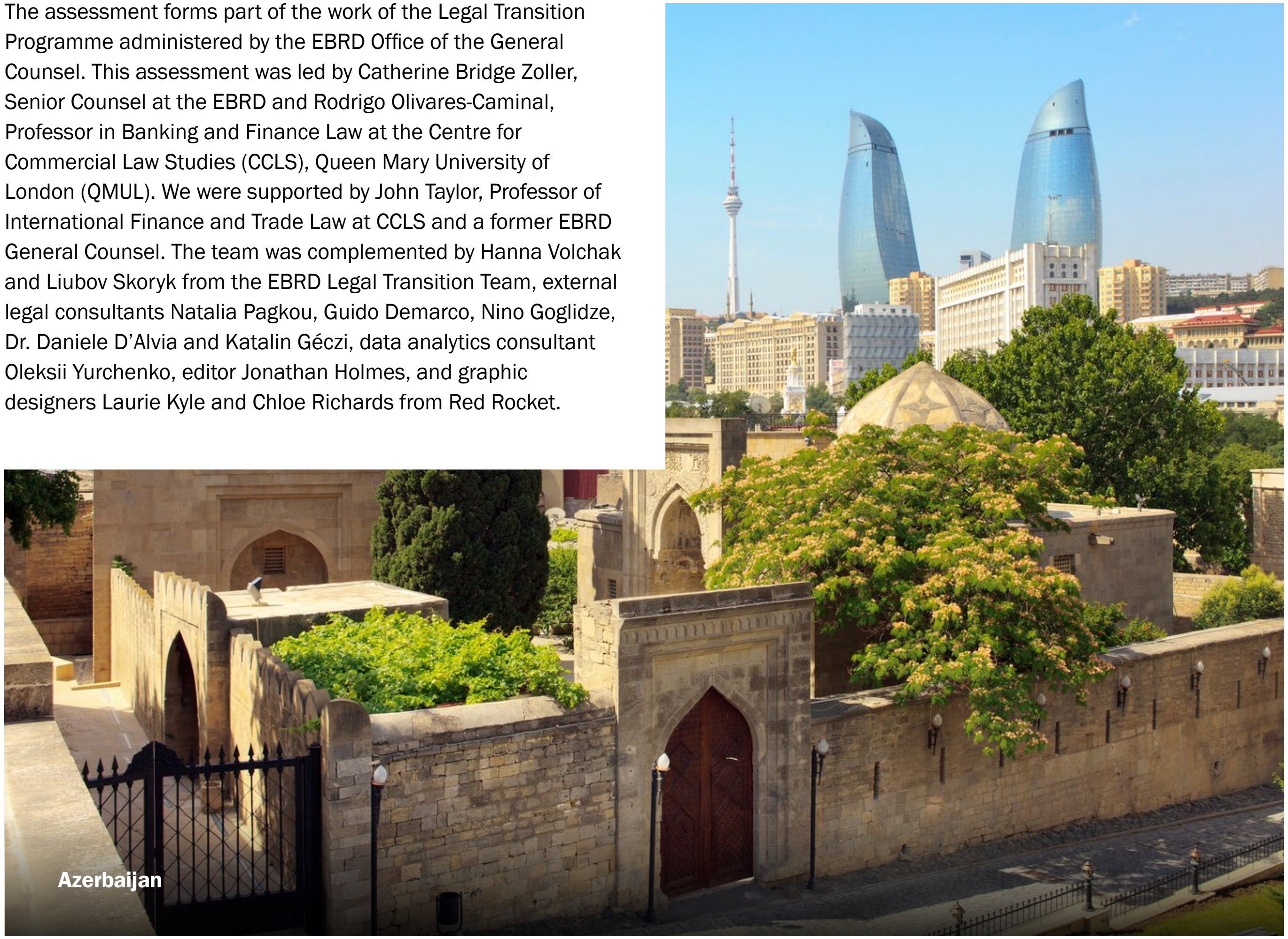
Acknowledgments

The EBRD would like to thank all those who participated in the assessment and responded to the questionnaire, including legal professionals, representatives of financial institution, and members of the judiciary and academia. The time and commitment offered by all participants greatly contributed to the overall value of this report. A full list of questionnaire respondents is available in the **Annex Questionnaire Respondents**.

The EBRD would like to extend particular thanks to law firms and individuals listed in the **Annex Partner Law Firms** to this report who provided invaluable input and commentary on the jurisdictional profiles for the EBRD economies and the analysis contained in the cross-jurisdictional tables annexed to this report.

We would also like to thank our partners, the International Law Development Office, UNCITRAL, INSOL Europe and INSOL International, who supported the assessment, and the European Commission for its cooperation. We benefited greatly from the support of national authorities and insolvency experts in Egypt, Mongolia, Poland, Serbia and Ukraine, where we conducted virtual country missions earlier this year to analyse the results of the assessment in greater depth. Our thanks also go to the EBRD supported investment councils in Albania, Armenia, Georgia, Kosovo, Kyrgyz Republic, Moldova, Montenegro, Tajikistan, Tunisia, Ukraine and Uzbekistan (for which funding is provided by the UK Good Governance Fund in Armenia, Georgia, Montenegro and Moldova).

The assessment forms part of the work of the Legal Transition Programme administered by the EBRD Office of the General Counsel. This assessment was led by Catherine Bridge Zoller, Senior Counsel at the EBRD and Rodrigo Olivares-Caminal, Professor in Banking and Finance Law at the Centre for Commercial Law Studies (CCLS), Queen Mary University of London (QMUL). We were supported by John Taylor, Professor of International Finance and Trade Law at CCLS and a former EBRD General Counsel. The team was complemented by Hanna Volchak and Liubov Skoryk from the EBRD Legal Transition Team, external legal consultants Natalia Pagkou, Guido Demarco, Nino Goglidze, Dr. Daniele D’Alvia and Katalin Géczi, data analytics consultant Oleksii Yurchenko, editor Jonathan Holmes, and graphic designers Laurie Kyle and Chloe Richards from Red Rocket.



Azerbaijan

Glossary

These definitions used in the Assessment Report should be interpreted according to context.

Absolute priority rule is the principle that the claims of a dissenting class of creditors must be paid in full before any lower ranking or junior class of creditors receive or retain any property in satisfaction of their claims.

Affected parties, as defined by the EU Restructuring Directive, means creditors, including, where applicable under national law, workers, or classes of creditors and, where applicable under national law, equity holders, whose claims or interests, respectively, are directly affected by a restructuring plan.

Alternative dispute resolution mechanisms are alternative ways of resolving disputes between the parties that do not involve the use of courts. These include **arbitration** and **mediation**.

Arbitration is a consensual method of dispute resolution, in which the disputing parties choose a neutral third party (arbitrator) or parties (an arbitration panel) to make a final decision resolving the dispute, which is generally binding on the disputing parties.

Arm's length refers to a transaction where all parties, even if connected, such as group companies, act without personal influence or control on terms that could reasonably be obtained from an independent third party on the market.

Assessment Benchmarks are each of the Effectiveness, Efficiency or Flexibility criteria against which the performance of each economy's insolvency system is rated and compared, as defined in the assessment methodology.

Assessment methodology is the set of principles used by the EBRD to carry out the Business Reorganisation Assessment and annexed to the Assessment Report.

Assessment questionnaire is the questionnaire used to gather stakeholder feedback on business reorganisation procedures for the Business Reorganisation Assessment from September to November 2020.

Assessment Report means the cross-jurisdictional commentary on the performance of the insolvency systems of 38 EBRD economies of operations in an assessment carried out by the EBRD on business reorganisation.

Avoidance actions are judicial actions or remedies that can be brought in a liquidation proceeding against corporations and individuals who have received a payment or other preferential interest from an insolvent debtor.

Bankruptcy is used interchangeably with insolvency and is the inability for a business to pay its debts, usually demonstrated either through the cash flow test (failure to pay obligations as they fall due) or the balance sheet test (i.e. liabilities exceed the value of assets). Some jurisdictions only allow businesses to use one (or some) of the available reorganisation procedures if they are either insolvent or not yet insolvent or at risk of insolvency.

Best interests test is a requirement that the reorganisation plan must be better than other alternatives available to creditors; typically what they could obtain if the business is liquidated. This test is also known as the 'no creditor worse off' test.

Connected parties are persons or entities which are directly or indirectly related to the debtor, such as companies of the same group or affiliated companies.

Cram down (within a class) or **intra-class cram down** is when the decision of the majority of creditors in a group or class can be imposed on a minority of dissenting creditors voting against the reorganisation plan within that particular group or class, usually subject to a number of statutory protections for non-consenting creditors.

Creditors' meetings generally consist of a meeting of the debtor's creditors convened pursuant to an insolvency procedure, subject to any formalities prescribed by insolvency law.

Cross-border insolvency is where the insolvency laws of more than one state are involved in an insolvency process, such as in circumstances where the insolvent debtor has assets in more than one state.

Cross-class cram down is when the decision of a majority of creditors in one or more groups or classes can be imposed on other classes of creditors where one or more classes of creditors have voted against the reorganisation plan, usually subject to a number of statutory protections for non-consenting creditors. This is different from **intra-class cram down**.

Debt to equity swaps are exchanges between creditors and debtors of debt claims for an equity interest.

Debtor in possession is where the debtor's existing management retain control of the debtor's operations and are not displaced due to commencement of an insolvency procedure.

Discharge is where liabilities of a party, whether financial or non-financial, are extinguished in full.


Belarus

Double majority threshold is a requirement that exists in certain jurisdictions to guarantee a proper representation of creditors voting on a reorganisation plan; that is, a majority in number of creditors (numerosity) and a majority in relation to the value of the total outstanding claims against the debtor (economic value).

EBRD economies of operations refers to the 39 economies where EBRD invests or manages a portfolio. Since the launch of the assessment in September 2020, EBRD is no longer investing in Cyprus but manages a portfolio, and as of 24 March 2021, the Czech Republic has become again an economy of operations of the EBRD for a limited period of up to five years.

Economy Profiles mean the jurisdictional profiles that were prepared in connection with the EBRD Business Reorganisation Assessment for each of the 38 participating economies..

Effectiveness (of a reorganisation framework) is an Assessment Benchmark and is the extent to which insolvency laws contain the necessary tools to facilitate a successful reorganisation.

Efficiency (of a reorganisation framework) is an Assessment Benchmark and is the extent to which the framework is efficient from a procedural and economic point of view and balances the interests of all stakeholders. Procedural efficiency means the extent to which a reorganisation is procedurally simple, involving fewer requirements and stages, shorter timeframes, lower legal costs, etc., while economic efficiency means the extent to which the law maximises value and/or return to creditors.

Entrepreneur means an individual exercising a trade or business who is not incorporated; in other words, where the business is not a legal person.

Feasibility (of a reorganisation plan) is the ability of the debtor to meet its obligations under the proposed plan.

Flexibility (of a reorganisation framework) is an Assessment Benchmark and is the degree to which the framework supports corporate rescue and is able to meet the needs of different participants.

General insolvency proceedings are insolvency proceedings that act as a gateway to either **reorganisation procedures** or insolvent **liquidation procedures**.

Hybrid procedures are reorganisation procedures where most of the negotiations take place out-of-court. Then, once the required majority of creditors have agreed a reorganisation plan, it is submitted to the court or administrative authority for approval and typically becomes binding on dissenting creditors. Such procedures facilitate reorganisation and restore solvency with minimal court intervention.

Insolvency is used interchangeably with **bankruptcy**.

Insolvency practitioners or **insolvency office holders** are central figures in most insolvency law systems and are professionals, frequently licensed, who are charged with responsibilities as diverse as management of the debtor's business and preparation of reorganisation plans to the verification of creditors' claims and distributions of proceeds. In some countries, legal entities can perform the role of insolvency practitioners.

Insolvency procedures are formal legislative processes that vary by jurisdiction but are usually commenced upon the court's approval of a petition for entry into insolvency proceedings. Insolvency procedures often impose restrictions on the activities of the debtor and its management and on the ability of creditors to recover debts, and are generally characterised as either **reorganisation** procedures or **liquidation** procedures.

Ipso facto clauses – see **third-party termination clauses**.

Legal person is a business or organisation that is treated by law as distinct from its owners or operators, for example, an incorporated company.

Liquidation or **insolvent liquidation** is a formal insolvency procedure pursuant to which an insolvency practitioner (the liquidator) is appointed to manage the affairs and assets of a debtor in order to realise the assets and distribute the proceeds among creditors, in a set order of priority.

Mediation is a process where a neutral third party (mediator) attempts to facilitate a voluntary resolution of the dispute by the parties.

Moratorium refers to a period, prescribed by law or agreed between the parties, during which a debtor business is protected from enforcement and/or debt collection actions initiated by its creditors.

MSMEs are **SMEs** also including micro enterprises. See **small and medium-sized enterprises**.

New financing is any financing provided by an existing or a new creditor to enable the debtor to continue operating its business during the reorganisation procedure, or to preserve or enhance the value of the assets of the estate or to implement the reorganisation plan.

No creditor worse off principle – see **best interests test** above.

Non-performing loans (NPLs) are loans in which the borrower is in default for more than a specified period. This is typically 90 days but varies by jurisdiction from 30 to 180 days.

Par condicio creditorum principle refers to the equal treatment (or non-discrimination) of creditors. If the law allows for the creation of security interests or certain preferences, this will not necessarily affect the equality of creditors.

Pari passu refers to the principle of equal ranking of creditors.

Preferred creditors are those creditors that have been given a priority in ranking or preference by means of the insolvency law, other legislation (such as in the case of employees' wages or uncollected taxes), or any other legally accepted means, but not as result of being secured creditors.

Preferred debts are those debts that have been given a priority in ranking or preference by means of the insolvency law or other legislation (such as employees' claims, uncollected taxes or claims on public authorities), or any other legally accepted means, but not as result of being secured creditors.

Pre-packaged procedures or **pre-packs** are procedures in which a reorganisation plan is either pre-negotiated or pre-voted by the creditors and the plan is then submitted to the court for **ratification**.

Ratification is the ex-post approval by the court of a reorganisation plan pre-approved by the majority of creditors, subject to satisfaction of any statutory requirements described in the applicable insolvency law.

Relative priority means, in accordance with the EU Restructuring Directive, that any dissenting class of creditors should be treated as favourably as any other class of the same rank and more favourably than any lower ranking or junior class.

Reorganisation is used interchangeably with **restructuring** and is a process aimed at addressing a debtor's financial difficulties with a view to preventing insolvency and ensuring the viability of the business. A reorganisation procedure often involves the appointment of an insolvency practitioner and includes any formal legislative procedures for restoring financial stability, including any early, preventive or pre-packaged procedure.

Reorganisation plans are agreements devised to restore the debtor's solvency through the **reorganisation** of its financial liabilities, usually agreed by majority creditors and/or approved by the courts.

Restructuring Directive or EU Restructuring Directive means Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency, and discharge of debt.

Restructuring options are options that are available to conduct a restructuring or reorganisation including: reduction of the face value of creditors' claims; debt-for-equity swaps; extension of maturities; reduction of applicable interest; deferral of payments; and so on.

Sanation is a concept found in the insolvency systems of a number of former Soviet Union jurisdictions. Broadly, it means that the owner of the debtor, a creditor or any other person may provide financial assistance to the debtor or perform any other number of measures in order to mobilise reserves of the debtor and enhance the debtor's financial and economic situation.

Secured creditors are creditors whose claims are secured by any type of security interest, for example, personal (an obligation that can be enforced against a person, such as a guarantee), real (a proprietary interest attached to the assets regardless of the person to whom the assets belong) or any other quasi-security interest (other ways of enhancing creditors' protection without creating an actual security interest).

Simplified reorganisation procedures are less cumbersome procedures, typically for **SMEs**, with fewer requirements or stages and/or a shorter timeframe than the reorganisation procedures available for larger companies.

Small and medium-sized enterprises (SMEs) are businesses with small numbers of employees, low annual turnover and/or low value of assets. The exact definition depends on the jurisdiction.

Standstill means a contractual agreement between a debtor and its creditors whereby in return for certain undertakings from the debtor and its management, the creditors agree to refrain from taking enforcement and/or collection action for a limited period of time in order to provide 'breathing space' to the debtor's business.

Standstill agreement means an agreement documenting a standstill (see above).

State-owned enterprises (SOEs) are corporate entities which are recognised by national law as enterprises but in which the state has an ownership interest, or statutory corporations/public enterprises where their activities are economic in nature.

Subordinated creditors are creditors whose claims are deemed to be lower in ranking to other creditors by contract or by legislation.

Super priority is a level of payment precedence granted in favour of certain creditors above existing secured creditors, usually in return for new or interim financing made available following the commencement of insolvency proceedings. It exists to facilitate new financing to assist in returning the business to solvency.

Third parties are individuals or legal entities other than the debtor. In some cases they may be **connected parties**.


Bosnia and Herzegovina

Third-party termination clauses (also known as ipso facto clauses) are contractual provisions that allow a party to a contract to terminate its outstanding arrangements or obligations on the grounds that the other party has either become insolvent, filed for insolvency, or entered into an insolvency procedure.

Universality is a principle implying that there is only one competent court to decide on the insolvency of the company (unity), and that the insolvency law of the country in which the insolvency has been initiated is effective in all other countries where the company has assets or branches (universality). All assets and liabilities of the parent entity and its foreign branches are wound up as one legal entity (extra-territorial effect to the adjudication of insolvency).

Workouts (also known as financial restructurings or voluntary restructurings) are completely out-of-court reorganisation arrangements, using simple contract law as the tool to conduct the reorganisation of the debtor's business. They are voluntary and may be carried out on a bilateral or multilateral basis involving more than one creditor.

Executive Summary

The recent Covid-19 crisis has highlighted the importance of insolvency and reorganisation frameworks to support businesses in financial difficulties. The EBRD carried out a Business Reorganisation Assessment of national insolvency frameworks to provide the EBRD, its economies of operations and investors with an up-to-date overview of business reorganisation tools and to propose areas where further development of national legislation is needed. Insolvency policies have historically been predominantly decided at the national level; therefore, each EBRD jurisdiction has unique idiosyncratic aspects resulting from its political history, economic development, business structure and social priorities.

Within the European Union (EU), however, insolvency laws are changing as Directive (EU) 2019/1023 aims to harmonise insolvency laws to promote early preventive restructuring. The directive also introduces more general requirements for judges and insolvency practitioners operating in the field of insolvency to have the requisite skills and expertise. As a result of transposition of the directive, there could be a significant gap between the support offered to businesses and entrepreneurs under insolvency laws of EBRD jurisdictions that are EU Member States and non-EU EBRD economies of operations, unless non-EU economies also reform their insolvency systems to align these with the directive. While insolvency laws provide for reorganisation procedures to promote corporate rescue of financially distressed businesses, economically unviable companies should be unwound within the liquidation procedures. Generally, the insolvency laws of any economy should be tailored to that economy's legal and business framework and promote the efficient, speedy and early treatment of financial distress. Legislators should invest in insolvency law reform to benefit the economy as a whole: by rescuing economically viable businesses and preserving jobs, liquidating non-viable ones and, also, by providing for reliable and predictable data on outcomes or returns in cases of insolvency and financial distress to enable investors to assess the legal risk in advance.

The assessment was conducted through a questionnaire sent to stakeholders in the EBRD regions, covering 38 economies of operations and the analysis of law on the books of 40 jurisdictions, as well as domestic practice. The assessment was further complemented by the review of the availability of data and transparency of insolvency-related information in each jurisdiction. The Assessment Report analyses the responses received to the questionnaire, together with the obtained insolvency-related data, and assesses the results against the three benchmarks that were developed for the purposes of the assessment: Flexibility, Efficiency and Effectiveness. These benchmarks are also values which should underpin any insolvency system. The Assessment Report further includes detailed tables for the overview of certain important aspects of the reorganisation laws of each participating economy which have informed our cross-jurisdictional analysis, as well as individual economy profiles that provide a comprehensive

Poland

Mongolia

overview of the legal framework for business reorganisation in each of the jurisdictions and flowcharts detailing the main stages of the procedure. All these findings are presented in this Assessment Report and its complementary Annexes. The main findings are presented below:

All EBRD economies of operations allow for a court-supervised reorganisation to take place. In each of the 40 jurisdictions, the Assessment Team could identify at least one specific (court-supervised) procedure within the insolvency laws. These court-supervised procedures provide for some form of reorganisation aiming at addressing the financial difficulties of the debtor, restoring its viability, and avoiding the liquidation of the debtor (if possible). Most of the jurisdictions include two or more reorganisation procedures that serve different purposes and follow separate rules. In a small number of economies, the assessment found a larger number of statutory reorganisation processes and range of options for rehabilitation. However, having multiple options is not optimal where it results in unnecessary complexity.

Besides the court-supervised procedures, consensual out-of-court reorganisations (private workouts), as well as hybrid procedures are options in EBRD economies of operations. In half (19) of the 38 economies of operations covered by the assessment, the insolvency framework includes a hybrid procedure (that is, where a reorganisation plan is prepared and agreed outside the court and subsequently submitted for the court's confirmation). Despite this, responses to the assessment questionnaire indicate that the use of private workouts is not common in the majority of the EBRD regions, and many jurisdictions lack an established practice of out-of-court restructurings. This can be addressed by introducing statutory frameworks that support and facilitate consensual restructurings outside of a formal court insolvency procedure. This would further facilitate the early detection and prevention of financial distress by applying a more cost-efficient, fast and flexible out-of-court procedure. Hybrid procedures, on the other hand, can easily be enabled in economies where this is missing by upgrading the existing insolvency laws and providing for this additional possibility (either as a short chapter to an existing reorganisation procedure with the option of a pre-packed reorganisation plan or a complementary law within the existing framework). The development and increased use of hybrid procedures will produce a positive spill-over effect, improving judicial reorganisation procedures, and would facilitate private workouts and a culture of multi-creditor restructuring.

In all EBRD economies of operations, there is at least one reorganisation procedure that provides for a moratorium or stay on creditors' enforcement actions. A moratorium on creditors' enforcement actions gives the debtor the necessary 'breathing space' from creditors to contemplate restructuring options and execute them as appropriate. The jurisdictions vary regarding the length, scope of application and strength of such moratorium, including whether it extends to secured creditors or not, but in all the EBRD economies there is at least one reorganisation procedure that contemplates this feature. Legislative efforts could be directed at introducing a wider-ranging moratorium that applies to all types of creditors, including secured creditors, of a rather short duration and with the possibility to be lifted by the court where appropriate. The rationale behind this is stabilising the debtor's business for a limited period to allow the debtor to develop a plan but without losing sight of the need to protect creditors' rights.

Some reorganisation procedures are further equipped with statutory protection and/or statutory priority in repayment of new money provided during the proceedings or as part of a plan. However, our detailed review of the national legislation identified quite a few gaps regarding new financing, particularly its protection from avoidance actions brought by liquidators in subsequent liquidation procedures against third parties who have received a payment or other preferential interest from an insolvent debtor. Economies that do not provide for any protection mechanisms or do not incentivise new lending by granting a statutory priority in repayment should seek to improve their reorganisation framework in this regard. Flexible options could be pursued that allow priority of new financing over existing unsecured debts, preferred debts and in some circumstances secured debts.

The assessment revealed weaknesses in the law and practice of the reorganisation plan confirmation processes. Besides a few exceptions in the EBRD regions, the reorganisation plan is approved by creditors, which are grouped in separate classes for voting purposes. For procedures where creditors vote in one group on the proposed plan, legal reform should introduce the requirement to place creditors in separate classes according to the similarity of their legal and economic interests. Reorganisation procedures that require unanimity of creditors' approval or grant veto rights to secured or preferred creditors should be reformed to allow majority approval requirements and diminish any veto rights to enable effective reorganisation procedures. It should also be mentioned that in the majority of EBRD jurisdictions, claims of secured as well as preferred creditors can be compromised in some way or another as part of the reorganisation plan. In addition, jurisdictions vary regarding the required approval thresholds for creditors as well as the assessment that the court makes within the confirmation procedure. In almost half (17) economies covered by the assessment, there is the possibility of so-called 'cross-class cram down' that makes the reorganisation plan binding on entire classes of dissenting creditors if one or more classes approve the plan provided certain conditions are met. This is a key feature in fostering a successful reorganisation as it overcomes a blocking objection of an entire class of creditors. However, cross-class cram down is a powerful and complex tool and should be accompanied with appropriate protection for creditors' interests. Its application is usually linked to specialised judicial expertise and may require capacity building in the judicial sector and for other stakeholders. Within the EU, the cross-class cram down will become part of new restructuring laws following the implementation of the EU Restructuring Directive. The adoption of reorganisation plans and the role of the courts within this process should be at the centre of any insolvency law reform and should aim to provide effective tools that balance out the interests of the debtor as well as of creditors. Each economy will need to carefully consider the needs of its market participants in this process, considering its own idiosyncratic features.


Turkmenistan

Some of the EBRD economies of operations include SME-specific procedures or special provisions that facilitate the application of insolvency related procedures for smaller businesses. Among the different types of reorganisation procedures, the latest legislative trend is to design SME-specific procedures, including SME reorganisation procedures. These mechanisms have shorter timelines and fewer formal requirements and, therefore, allow for time- and cost-efficient reorganisation of SME debtors. Within the EBRD regions, only Kosovo has a fully-fledged reorganisation procedure specifically tailored at SMEs, whereas Hungary also offers SMEs a new simplified preventive restructuring procedure, including simplified preparation of the restructuring plan and lower thresholds for the approval of the restructuring plan. A few other economies, such as North Macedonia and Slovenia, include less burdensome requirements for smaller companies without setting out a separate and specific procedure. This certainly is an area where further legislative action is needed, particularly given the severe impact of the Covid-19 crisis on SMEs. It is important to stress that the notion of small and medium-sized enterprises varies across jurisdictions. Therefore, this can be a flexible concept that also encompasses micro as well as nano enterprises, depending on the needs of each economy. Although mainly advanced economies are already adopting reforms to reflect this trend, the concept of SME-reorganisation should not be strange to emerging economies either, as economies such as Argentina or Kosovo already have simplified regimes in place. The high number of SMEs and their recognised importance for employment in all economies further evidence the need to focus on these enterprises.

The evaluation of the practical application of statutory business reorganisation tools in many economies covered by the assessment reveals that additional work is needed. As indicated by assessment questionnaire respondents, in many jurisdictions the reorganisation procedures are not commonly used. Moreover, when the reorganisation processes and their tools were assessed against the Efficiency benchmark, the results were, on average, low. According to stakeholder perceptions, the main weaknesses were identified in: the lengthiness of the reorganisation procedures, lasting between six to twelve months in the majority of jurisdictions and more than twelve months in seven jurisdictions; and a generalised lack of procedural and economic efficiency in national reorganisation procedures. Most of the assessment respondents thought that procedures were not conducted in accordance with high ethical and professional standards, or could not take a clear position in this regard, which already denotes a problem. Negative stigma attached to reorganisation and the misuse of the procedures to delay an inevitable liquidation were further stressed by a majority of the respondents, indicating that even in cases where the law on the books is well-developed, it is often not well-applied in practice. Based on the opinion of the respondents, expediency, high professional and ethical standards, efficiency, and value maximisation (in descending order) are the four most lacking insolvency principles in the EBRD regions. These findings also stress the important role of the court and the insolvency office holders in reorganisation procedures and the imperative need to enhance their expertise. Following the EU Restructuring Directive, a recent legislative trend is to reduce the involvement of the court and insolvency office holders and design lighter-touch pre-insolvency restructuring regimes. Consequently, capacity building, raising of awareness, dispelling the negative stigma by heralding the process as a second opportunity, as well as boosting trust in the insolvency system, needs significant work across EBRD regions.

The availability and transparency of insolvency-related data is an issue in many EBRD jurisdictions, although there are clear indicators that more is being done. Transparency is a common good and access to valuable insolvency data not only assists the entire insolvency system but also the resolution of non-performing loans and distressed situations. Only six economies obtained the maximum possible score for the assessment's Data Transparency Factor while, regrettably, 11 out of 40 jurisdictions assessed scored zero points, evidencing that there is no reporting of insolvency data at all and no clear central authority responsible for insolvency data. Furthermore, the assessment identified a lack of specific data on reorganisation and/or hybrid procedures, as well as generally a low number of reorganisation cases as compared to liquidations. Among those economies that do collect and disclose insolvency data, a uniform approach to data-gathering and detailed break-down of the information is often missing. An overall way forward should also be to consider the digitalisation and use of electronic communication in insolvency procedures and in the court case management systems (including hearings and other procedural steps). However, it is worth mentioning that several initiatives are under way in the EBRD economies aiming at increasing the amount, quality and frequency in which data becomes available.

In addition to the Business Reorganisation Assessment questionnaire, the Assessment Team ran a separate short survey on non-performing loans (NPLs). The accumulation of NPLs is a growing phenomenon affecting many economies. The sudden stop of flow of funds in businesses which was caused by the Covid-19 pandemic will negatively affect banks' loan portfolios and cause higher levels of NPLs. Resolution of NPLs is not only about enforcement and liquidation, as in some cases owners and investors in NPLs will want to pursue a reorganisation strategy. However, only in two economies (Kosovo and Morocco) did respondents agree that the reorganisation tools that are available in their jurisdictions efficiently facilitate the resolution of NPLs. Improvements to business reorganisation frameworks will strengthen NPL resolution tools, but other impediments remain. According to NPL Survey respondents, main impediments were: weakness in the enforcement regime for debt collection; lack of a secondary market for NPLs; and an inadequate environment for multi-creditor out-of-court restructuring. These findings confirm some of the weaknesses identified in the assessment and highlight the important role that insolvency and debt enforcement regimes play in rescuing businesses and their relevance for NPL resolution, benefiting the corporate and banking sector equally.


Uzbekistan

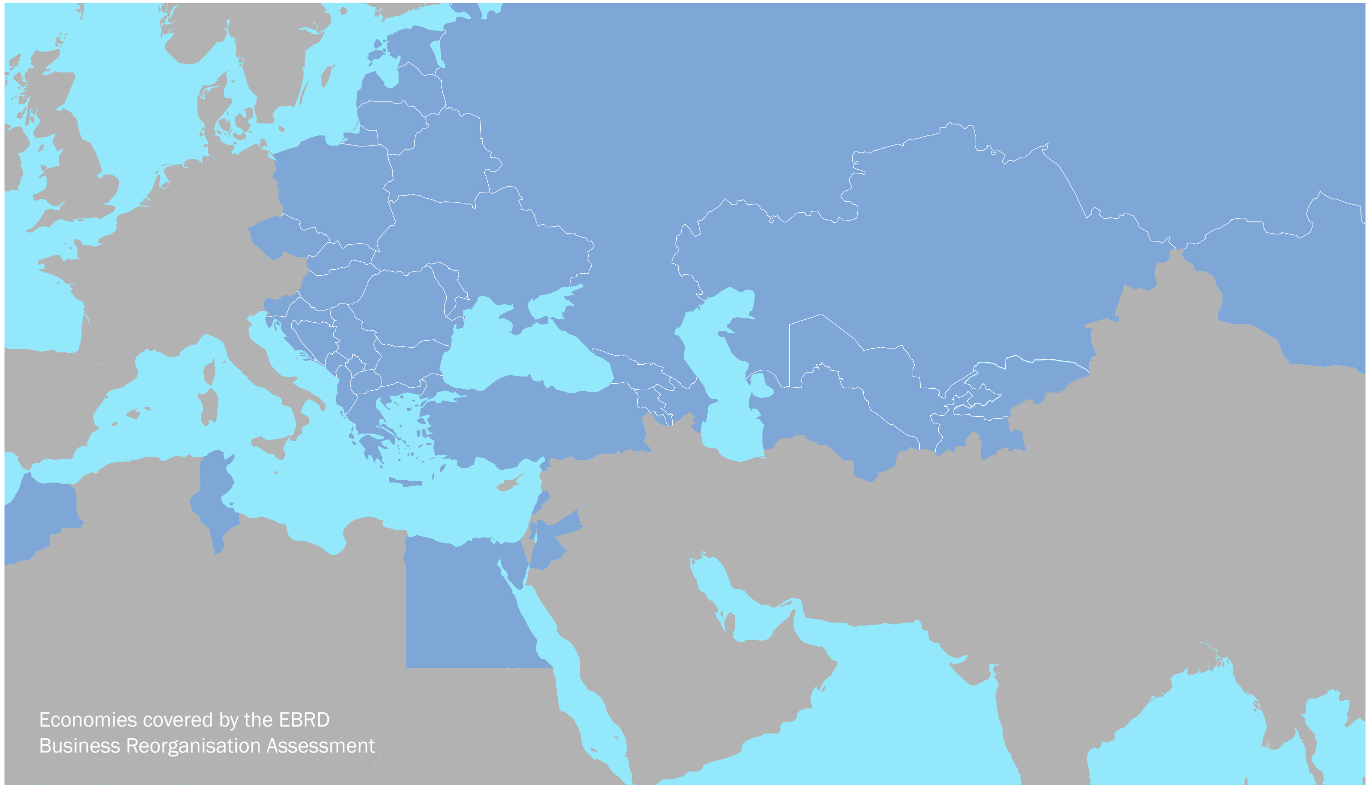
Introduction

This report presents the results of the first comprehensive research into the availability of business reorganisation tools and stakeholders' perceptions on business reorganisation in the regions where the EBRD invests.

The research led by the EBRD covers 38 emerging economies and 40 jurisdictions[1]. It includes a main report with cross-jurisdictional analysis of the performance of emerging economies and it explores recent insolvency trends and practices in more developed markets such as France, Germany, England and Wales, and the United States. Other specific jurisdictions are included for reference purposes.

Business reorganisation is complex and legislators in emerging and developed economies alike have faced challenges in creating the supportive legal and institutional infrastructure needed to help businesses to restructure.

The assessment was carried out from September 2020 to November 2021 across all economies during the coronavirus pandemic and at a time when most insolvency systems around the world were under pressure. As a result, many insolvency systems have undergone some reforms during the project and the assessment has been conducted against an ever-changing landscape[2].



[1] All are economies where the EBRD invests, except for Cyprus, which ceased to be an EBRD economy of operations in 2021. The assessment does not cover the Czech Republic, where the EBRD's Board of Directors approved the Bank's re-engagement and re-activation of investments in March 2021. Bosnia and Herzegovina constitutes two separate jurisdictions: the Federation and the Republika Srpska. West Bank and Gaza was analysed as one economy for the purpose of the assessment questionnaire; however, it represents two separate legal jurisdictions.

[2] Assessment scores are based on the automatic scoring system of the assessment questionnaire, which was available from 7 September to 7 November 2020 (with an extension for Lebanon to accumulate sufficient responses) and therefore reflect the legislation and practice during this period. The Data Transparency Factor bonus is based on the position as of October 2021.

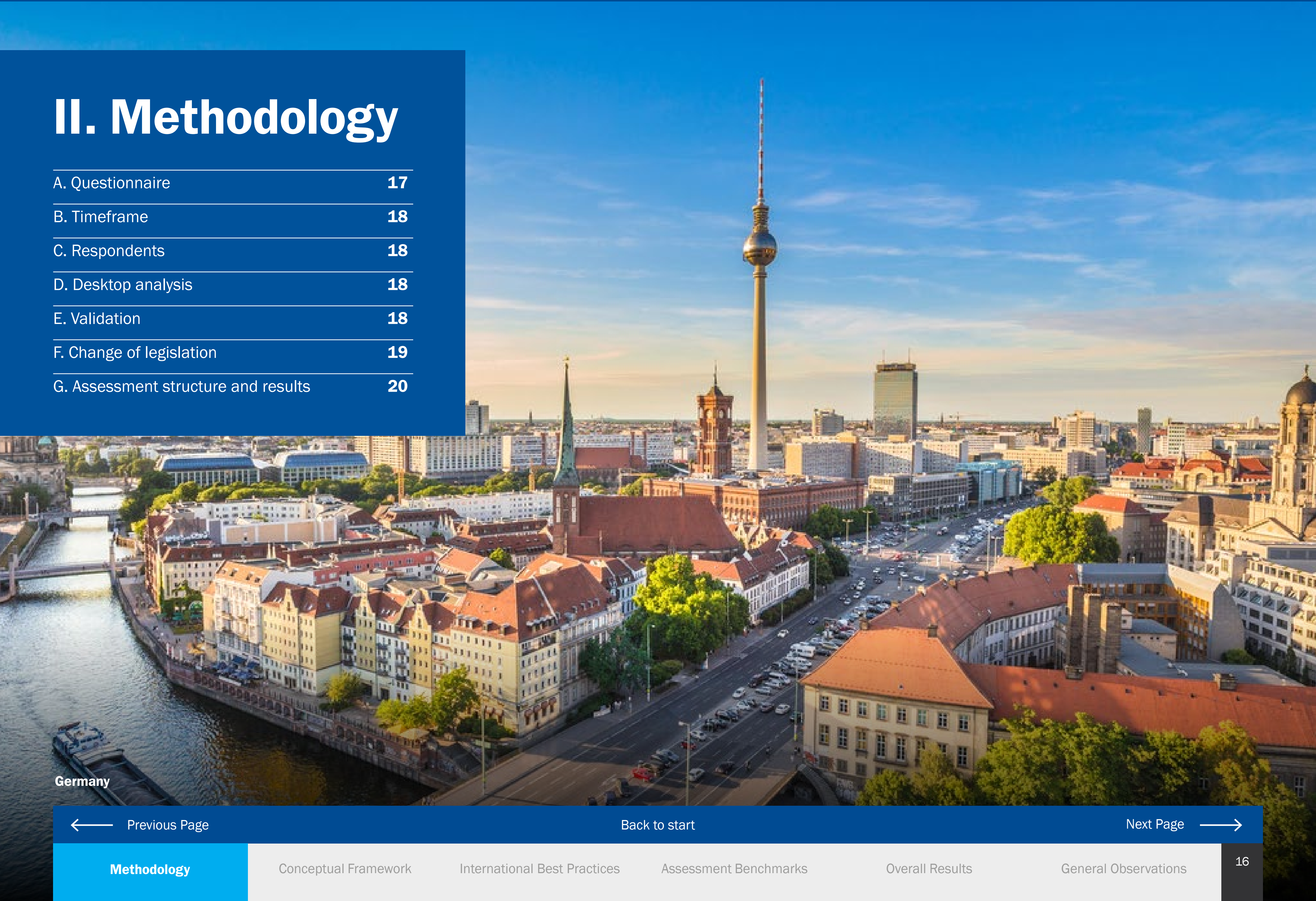
Bulgaria

The main EBRD Assessment Report is supported by individual economy reports for all 40 jurisdictions that each provide a snapshot for businesses, banks and investors of the reorganisation framework in a particular jurisdiction. These reports, available **here**, also present relevant insolvent data, where published, and a visual overview of the main stages of the business reorganisation procedures.

This Assessment Report evaluates the available business reorganisation tools against the flexibility, effectiveness and efficiency of economies' national insolvency systems and, ultimately, the opportunities that they provide for businesses to restructure. Furthermore, it spotlights the issue of data transparency. Having transparency on what insolvency procedures are used and how they are used is fundamental for better governance and faster and more informed policymaking.

This report will provide all readers with the current state of play in economies where the EBRD invests. It will also help policymakers and national governments to identify where more can be done to support business and investment in their economies.

II. Methodology



Germany

Methodology

The following section presents a high-level overview of the EBRD's methodological approach to the Business Reorganisation Assessment and the scoring and validation of the assessment results. For a detailed description and explanation of the applied methodology, refer to **Annex Business Reorganisation Assessment Methodology**.

A. Questionnaire

The assessment was conducted by means of a **Business Reorganisation Assessment questionnaire** addressed to legal professionals working in law firms and banks together with other insolvency experts (the respondents). The respondents were approached based on EBRD headquarters and resident office contacts along with Investment Council contacts in each of the 38 economies where we operate[1]. The questionnaire was also made publicly available through a specialised website developed for that purpose.

A separate short survey on non-performing loans (NPLs) was run in parallel with the Business Reorganisation Assessment questionnaire. The survey consisted of six perception-based questions addressed to leading accounting firms, legal professionals and banks. This assessment methodology applies to the Business Reorganisation Assessment questionnaire only.

The Assessment questionnaire contains in total 81 questions, representing a mixture of scoring questions and non-scoring data-gathering questions (see the **Annex Business Reorganisation Assessment Methodology** for a copy of the questionnaire and the scores assigned per question). The questionnaire covers 'reorganisation': the process aimed at resolving the financial difficulties of a debtor with a view to preventing insolvency and ensuring the viability of the debtor business. This process is typically supported by a legislative procedure and may take place both in and out of court. Banks and financial institutions were excluded from the questionnaire as they typically follow a separate regime. The questionnaire was available in three languages: English, French and Russian. It is divided into five key sections, which largely follow the sequential steps that businesses take when faced with financial distress and when they embark on a reorganisation exercise. The final section of the questionnaire focuses on other general aspects of domestic insolvency laws that are important for the overall improvement of the reorganisation and insolvency environment.

1. General Approach to Corporate Reorganisation
2. Planning and Initial Stage of the Reorganisation
3. The Reorganisation Plan
4. The Reorganisation Approval Phase
5. Other Relevant Aspects

For scoring purposes, the questions were divided into:

(1) **Weighted/scoring questions** ('core' questions) that inform about the quality of reorganisation procedures and carry marks towards the total scoring. These questions were labelled as 'core' because they reflect principles identified in the international best practices, key policy papers and the EBRD Core Insolvency Principles.

(2) **Non-weighted questions** ('non-core' questions) that were used for data gathering purposes. These aimed at collecting information that can be used to inform the data obtained from the scoring questions to reinforce the understanding of the applicable framework and to produce additional reports and gain a better understanding of the domestic legal system and an important overall sense of idiosyncratic or practical aspects. The data gathering questions are only considered for informative purposes and analysis in the report and have no impact on the overall scoring.

[1] Investment Councils sponsored by the EBRD are in Albania, Armenia, Georgia, Kosovo, Kyrgyz Republic, Moldova, Montenegro, Tajikistan, Tunisia, Ukraine and Uzbekistan. See **https://www.ebrd.com/what-we-do/sectors-and-topics/investment-councils.html** for further details.


Cyprus

B. Timeframe

The Assessment questionnaire was open for completion from 7 September until 7 November 2020, with certain exceptions[2]. It was available in English, French and Russian. In total, 500 respondents completed the questionnaire across 57 jurisdictions, including the 40 jurisdictions (38 economies) that are part of the EBRD regions[3]. 16 questionnaires were collected in French and 43 in Russian. The remainder of the questionnaires were collected in English. Respondents in 18 jurisdictions[4] outside of the EBRD regions completed the assessment questionnaire for benchmarking purposes, out of which 11 countries were EU member states and not EBRD economies of operations. This means, overall, 457 respondents completed the questionnaire in the EBRD regions. The factual data gathered was subsequently validated through a review of the relevant legislation for each economy from December 2020 until May 2021.

C. Respondents

The questionnaire was publicly available and open to all potential respondents. However, to allow for multi-jurisdictional comparison across respondent groups, the questionnaire provided for the following categories of respondents:

- Legal professionals.
- Judges, other court officers, and academics.
- Accountants, actuaries and valuers.
- Lending and other financial institutions.
- Other (to be specified).

D. Desktop analysis

Questionnaire respondents were invited to leave blank any questions which they did not want to answer. Overall, there was a minimum completion threshold of 26 answers out of a maximum possible of 94 answers to 81 questions (the Minimum Completion Threshold) meaning that where we received questionnaires with less than 26 answers, we disregarded the responses in such questionnaires to prevent distortion of the results for any particular jurisdictions. In total, 14 questionnaires (representing 3% of the 457 questionnaires for the EBRD regions) were disregarded as they did not fulfil the Minimum Completion Threshold. The Minimum Completion Threshold resulted in 442 questionnaires being available for data processing and evaluation.

In addition, there was a Minimum Response Threshold of three respondents from separate organisations per jurisdiction (the Minimum Response Threshold). The Minimum Response Threshold was achieved in all economies across the EBRD regions.

E. Validation

The 442 questionnaires that were available for data analysis were furthermore subject to validation. A total of 34 questions out of a total of 81 in the questionnaire were factual questions and therefore subject to a validation process. Factual questions were questions that ask about specific facts or the legislative position (the “laws on the books”)[5].

[2] In Lebanon, we needed to extend the deadline to achieve the Minimum Response Threshold (as defined in the **Annex Business Reorganisation Assessment Methodology**).

[3] Since launch of the assessment in September 2020, Cyprus is no longer an economy of operations, and as of 24 March 2021, the Czech Republic has become again an economy of operations of the EBRD for a limited period of up to five years.

[4] Argentina, Austria, Belgium, Brazil, China, Czech Republic, England and Wales, France, Germany, India, Italy, Luxembourg, Netherlands, Portugal, South Africa, Spain, Sweden and the USA.

[5] Regarding question 5 in section 1 and questions 20 and 21 in section 2 of the questionnaire, see section 3.2 of the **Annex Business Reorganisation Assessment Methodology**.

Some ‘yes or no’ factual questions produced diverging responses to a certain extent across all economies. Some respondents either misunderstood the question or marked the ‘wrong’ answer (as corroborated through the validation process). Wrong answers were due possibly to the technical nature of certain questions and the availability of the questionnaire only in English, French and Russian. Another important factor for certain economies was the relatively uncommon practice of business reorganisation compared with traditional liquidation or winding-up.

To ensure that the assessment results reflected the correct position under the domestic laws, factual responses were double-checked against the law and with follow-up questions to local law firms where there was a significant divergence of opinion among respondents. All factual questions are highlighted in yellow in the questionnaire included in an appendix to the **Annex Business Reorganisation Assessment Methodology**. The verification process applied only to questions that did not produce a 75% agreement among respondents, meaning neither the ’yes’ nor the ‘no’ answers received 75% or more agreement. The questions with diverging responses were identified in each jurisdiction and subsequently validated. The validation of responses was undertaken by the Assessment Team through a combination of desktop research reviewing underlying legislation, and confirmation of the factual position in the pertinent jurisdiction with at least two leading law firms. The process produced a definitive ‘yes’ or ‘no’ answer for the respective questions, resulting in the corresponding score for the economy.

Following the validation, the team added another filter: a minimum accuracy threshold based on the results of the validation process described above. In cases where the number of incorrect factual responses to the questionnaire was 12 or more (approximately 35% of the factual questions that were validated: the Minimum Accuracy Threshold), we disregarded the affected questionnaire. In total, 21 questionnaires were disregarded, resulting in 421 questionnaires being available for final data processing and evaluation by the project team.

F. Change of legislation

Regarding economies that adopted new or amended insolvency legislation insolvency legislation[6] between 1 September (the opening date of the questionnaire) and 7 November 2020 (the closing date of the questionnaire), the ranking of the respective economy was based on the responses received within that period. These responses in turn were based on the then existing law and practice. Therefore, the Assessment Report and the economy rankings reflect the law that was in then in effect and domestic practice as of the cut-off date of the questionnaire (the ‘old’ law). New legislation adopted after the closure of the consultation period for the questionnaire up until end of October 2021 has been included within the individual economy reports.

[6] For example, the Federation of Bosnia and Herzegovina, Georgia, Greece, and Hungary.

G. Assessment structure and results

The assessment scores and ranks 38 economies where the EBRD invests[7] according to the effectiveness and extensiveness of their business reorganisation procedures.

There are two different scoring systems:

(1) scoring in accordance with the sections of the questionnaire (the Overall Assessment Result Scoring System); and

(2) scoring in accordance with the three assessment benchmarks (the Assessment Benchmark Scoring System).

The Overall Assessment Result Scoring System determines the overall assessment points per jurisdiction, subject to a bonus score which is awarded to economies that publish clear and comprehensive data on insolvency proceedings, including reorganisation proceedings (the Data Transparency Factor). The maximum number of points achievable under the questionnaire is 100, consisting of a maximum of 20 points for each of the five sections. This is, furthermore, subject to a Data Transparency Factor, which is valued at 10 points. The aim of the Data Transparency Factor is to ensure that rankings consider the publication of insolvency data, which is essential for the enhancement of the transparency of an economy's insolvency framework. For a detailed explanation of the approach to the Data Transparency Factor, see the **Annex Business Reorganisation Assessment Methodology** and the **Annex Data Transparency Factor**. Therefore, in theory each economy could be awarded up to 110 points for its business reorganisation framework.

Estonia

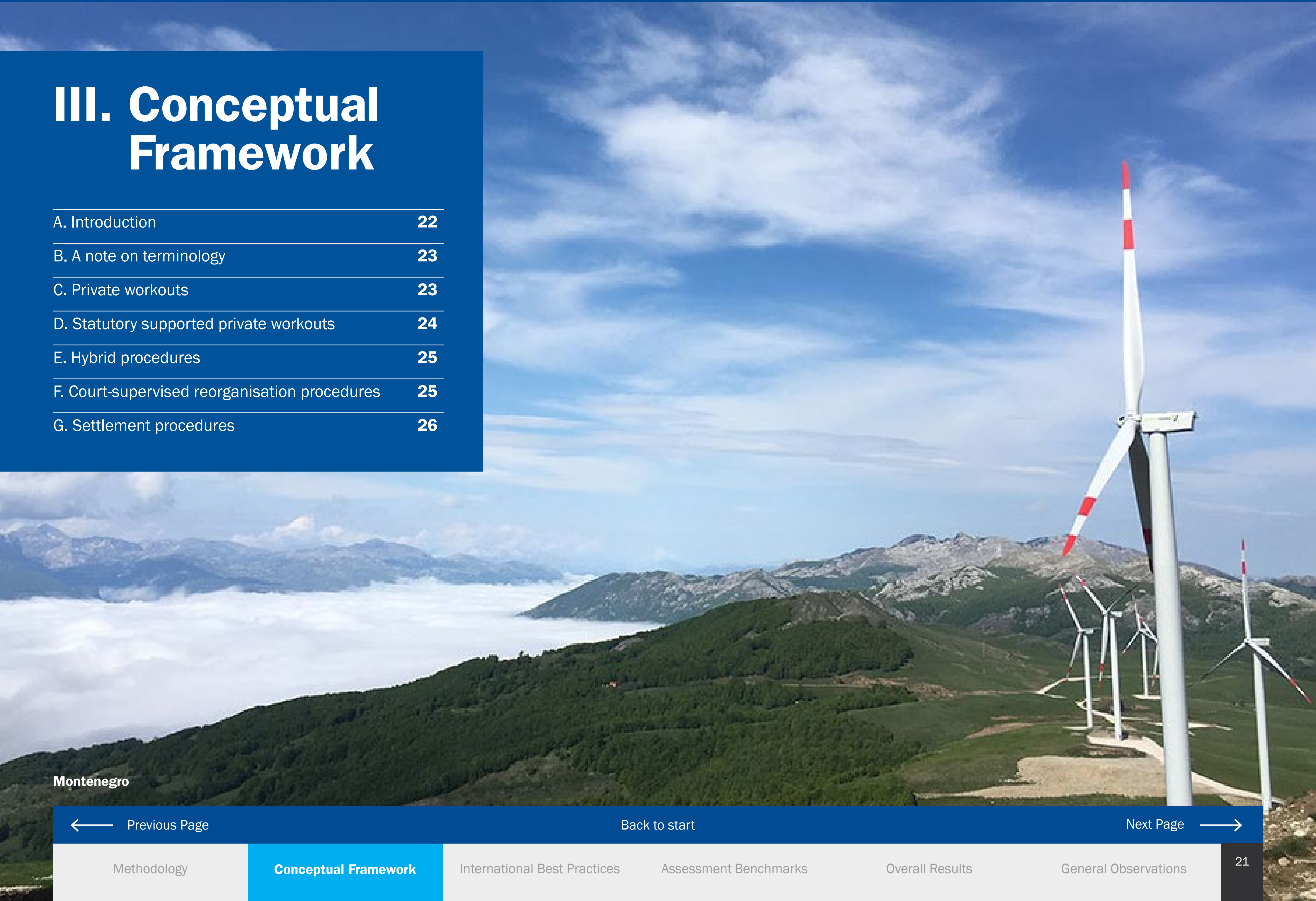
Moreover, to articulate the key principles in international best practices, policy papers and the EBRD Core Insolvency Principles that were reflected in the scoring questions, we developed benchmarks and indicators (see **Annex Benchmarks and Indicators**). The benchmarks and indicators provided conceptual guidance for the analysis of the responses and ultimately for the Assessment Report. We adopted a simple approach in which three benchmarks – Flexibility, Efficiency and Effectiveness – were explored in different questions contained in the questionnaire. For a further explanation of the benchmarks, refer to **Section V Assessment Benchmarks** of this report. Within the Assessment Benchmark Scoring System, the benchmarks were weighed separately from the Overall Assessment Results to incorporate scores from questions relevant for a particular benchmark, such as Efficiency. The maximum score possible under each benchmark was treated as 100% and was unaffected by the Data Transparency Factor[8].

Section VI presents the assessment results. It provides an overview of the overall results per economy and then the analysis of the results for each of the five sections of the questionnaire. The following sub-sections discuss the results for each assessment benchmark in each economy.

[7] The Assessment includes Cyprus, which was an economy of operations at the time the assessment launched, but not the Czech Republic, which became an economy of operations in 2021.

[8] Although different benchmarks refer to different numbers of Insolvency Core Principles, all the benchmarks are treated as having equal importance. This is because: Insolvency Core Principles are not reorganisation-specific; the benchmarks were developed considering the data gathered and not vice versa; and it is typical for EBRD legal assessments to show how much economies score per benchmark out of the possible 100%, flagging the gaps and allocating an equal weight to each benchmark.

III. Conceptual Framework



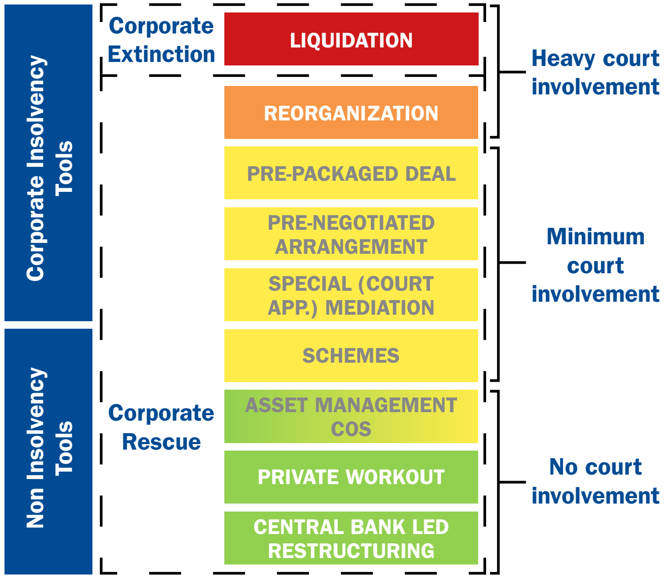
Montenegro

Conceptual Framework

A. Introduction

It is not unusual for businesses to face financial difficulties at some point during their lifecycle. The priority when dealing with the financial distress has long been the facilitation of corporate rescue and business continuation. This trend encompasses strengthening of out-of-court restructuring solutions and hybrid approaches as well as supporting pre-insolvency procedures aiming to restore the financial soundness and avert the failure of the company. The reorganisation or restructuring frameworks can take many different forms and are adaptable to each country's financial and real sector specific needs. In some instances, if companies are systemically important or 'too big to fail', special laws have been adopted to facilitate their rescue; for example, the financial difficulties of Agrokor led to emergency legislation in Croatia known as the 'Lex Agrokor' and in Slovenia the 'Lex Mercator' to protect Agrokor's Slovenian subsidiary, Mercator. More recently, the Covid-19 health crisis triggered a sudden interruption of the world economy and ensuing recessions that required the implementation of furlough schemes. This in turn triggered several amendments, the temporary suspension of certain features, and special additions to insolvency laws, giving rise to a new concept of emergency insolvency legislation.

As each country will develop its own restructuring tools and procedures suitable to address their needs and complement their current framework, it is sometimes difficult to classify them in specific typologies and the dividing lines between the processes may not be clear[1]. Therefore, for illustration purposes, these options are summarised in the diagram below, which provides a comprehensive overview of the most salient reorganisation methods highlighting their source, aim and degree of court involvement. This list is by no means exhaustive.



Note: Rodrigo Olivares Caminal, Expedited Corporate Debt Restructuring: Conceptual Framework and Practical Issues, in Expedited Corporate Debt Restructuring in the EU, R. Olivares-Caminal (Eds.), Oxford University Press, 2015.

The role of well-designed insolvency frameworks in facilitating the extension of credit and private sector development is widely recognised[2]. In many cases, countries might choose to have more than one of these procedures within their legal framework, to provide stakeholders with a variety of tools to address financial distress. As recently noted by the World Bank, "having reorganisation procedures reduces failure rates among small and medium-size enterprises and prevents the liquidation of insolvent but viable businesses"[3]. The EU Restructuring Directive, for example, specifies that the "preventive restructuring frameworks should also prevent the build-up of non-performing loans", as the action will be taken before the business defaults on its loans, and further outlines that a significant percentage of businesses and jobs could be saved if preventive frameworks existed in all the Member States in which businesses' places of establishment, assets or creditors are situated[4]. A European Banking Authority study suggests that: the legal system that forms the basis of the enforcement is a significant factor explaining the recovery rates and time to recovery of NPLs; and the existence of certain characteristics related to both the legal framework and the judicial capacity are important to improve the recovery outcomes[5].

[1] World Bank Group, "Out-of-Court Debt Restructuring" (2012), available: **openknowledge.worldbank.org/bitstream/handle/10986/2230/662320PUB0EPI00turing09780821389836.pdf**.

[2] See, for example, the foreword to the 2015 World Bank 'Principles for Effective Insolvency and Creditor/Debtor Regimes' published in 2016, available: **openknowledge.worldbank.org/bitstream/handle/10986/35506/Principles-for-Effective-Insolvency-and-Creditor-and-Debtor-Regimes.pdf**.

[3] See the World Bank Doing Business Report 2020, Removing Obstacles to Entrepreneurship, the Resolving Insolvency indicator, p. 53, available at: **www.openknowledge.worldbank.org/bitstream/handle/10986/32436/9781464814402.pdf**.

[4] See Restructuring Directive, recital 3.

[5] EBA, Report on the benchmarking of national loan enforcement frameworks response to the European Commission's call for advice on benchmarking of national loan enforcement frameworks (including insolvency frameworks) from a bank creditor perspective, EBA/Rep/2020/29, November 2020, available at **www.eba.europa.eu/eba-publishes-report-benchmarking-national-insolvency-frameworks-across-eu**. See also Study: Analysis of the individual and collective loan enforcement laws in the EU Member States by Dr Felix Steffek, November 2019 available at **https://ec.europa.eu/info/publications/191203-study-loan-enforcement-laws_en**.

Studies have clearly shown that effective reforms of creditor rights are associated with lower costs of credit, increased access to credit, improved creditor recovery and strengthened job preservation[6].

B. A note on terminology

The terms 'insolvency' and 'bankruptcy' are commonly used interchangeably in many jurisdictions, and they refer to a condition where the debtor business is unable to service its debts, whereas the exact definition and the manner of establishing the insolvency varies across the jurisdictions. In some economies, insolvency or bankruptcy is a procedure that leads to the liquidation of the assets and the distribution of the proceeds among creditors based on their ranking of priorities, culminating, in the case of a legal person, with the cancellation of the corporate registration.

The main difficulty lies in the fact that in some jurisdictions, bankruptcy makes reference to the liquidation process as explained above, such as Kazakhstan, where bankruptcy refers to the liquidation process, and in others, such as Hungary, it refers to reorganisation. Even the insolvency test can be very different across jurisdictions. Moreover, a minority of countries require the debtor to be insolvent to access a reorganisation procedure. Therefore, for purposes of the assessment, the term 'insolvency' has been chosen to refer to the financial condition where a state of insolvency as defined by the national law has been reached. This choice of terminology represents the best compromise when looking at 38 economies.

Reorganisation is the process aimed at addressing the debtor's financial difficulties with a view to preventing insolvency and ensuring the viability of the business. It mainly involves the restructuring of the debtor's business, including, among other things, changing the composition, conditions or structure of the debtor's assets and liabilities or any other part of its capital structure. A restructuring encompasses major corporate changes aiming at achieving a greater degree of efficiency, including, among other things, downsizing, recapitalisations, and spin-offs. Not all these changes necessarily respond to a financial condition. Although 'reorganisation' and 'restructuring' are usually used as synonyms, and for purposes of the assessment we prefer to use 'reorganisation'. Also, 'rescheduling' or 'reprofiling' are other terms usually associated with a reorganisation, but they are narrower in scope since they usually refer to an extension of maturity.

Liquidation or insolvent liquidation is a formal insolvency process in which an insolvency practitioner (the liquidator) is appointed to put the affairs and assets of a business in order. Liquidation aims at realising the assets of the company, distributing the proceeds of such assets among creditors according to a pre-established order of priorities and dissolving the business. The dissolution is the final step in the liquidation process and concludes with the cancellation of the registration of the company, in the case of a legal entity, so its legal existence comes to an end.

C. Private workouts

Private workouts are informal, out-of-court restructurings where an agreement between the debtor and all or some of its creditors is reached without the involvement of the court. This process aims to reorganise the assets and liabilities of the debtor, improve its financial condition as well as prevent its insolvency.

As the parties negotiate the terms of the restructuring privately and are not bound by any set of rules, any agreement reached is subject to the creditors' approval.

As the United Nations Commission on International Trade Law (UNCITRAL) has observed in its Legislative Guide on Insolvency Law[7], "these negotiations are aimed at securing contractual arrangements both between the lenders themselves and the lenders and the debtor for the restructuring of the debtor, with or without rearrangement of the financing."

The out-of-court restructuring is in essence a consensual restructuring agreement that binds only the parties who have agreed with the terms of the document. This leads to the advantage that the procedure remains informal. It is discrete in nature and therefore prevents the negative stigma that is usually associated with formal insolvency proceedings. However, it should also be noted that the creditors who do not consent to the contractual arrangement maintain their rights to collect on their debts and may de facto block a viable restructuring. This can be problematic because these out-of-court private workouts miss another tool, usually available through formal court-supervised procedures, which is the benefit of a moratorium, which is a period where the debtor can negotiate with creditors a possible resolution without the threat of ongoing litigation or enforcement actions.

[6] See John Armour, Antonia Menezes, Mahesh Uttamchandani, and Kristen Van Zwieten, How Creditor Rights Affect Debt Finance in Frederique Dahan (eds.), Research Handbook on Secured Financing in Commercial Transactions, Edward Elgar, 2015.

[7] See UNCITRAL, Legislative Guide on Insolvency Law (New York 2005) p. 21.

Private workouts are also characterised by the fact that there are no statutory established rules, procedural aspects or time periods that need to be followed. Therefore, the procedure takes as much (or as little) time as is required to reach an agreement with creditors. However, it should be noted that jurisdictions differ with respect to the approach to workouts. For example, in the UK, the private workout rescue process is referred as the 'London Approach' to workouts. The 'London Approach' is based on the following principles: if a corporation is in trouble, banks should maintain the credit facilities in place and not press for insolvency; banks work together to reach a solution; decisions about the debtor's future are made only on the basis of comprehensive information shared among all banks and parties; and seniority of claims is recognised but there is an element of shared burden.

In this context, the INSOL Principles of the International Association of Restructuring, Insolvency and Bankruptcy Professionals (the INSOL Principles) were published in 2000, revised in 2016 and provide a set of best practices for private rescue arrangements[8] which can be seen as a modern version of the London approach. The INSOL Principles encourage financial creditors to take a collective, coordinated and cooperative approach to debtors in difficulty and, most importantly, facilitate the rescue of the latter. They are regarded as a set of best practices for all multi-creditor workouts. The First Principle states that "where a debtor is found to be in financial difficulties, all relevant creditors should be prepared to cooperate with each other to give sufficient (though limited) time (a 'Standstill Period') to the debtor for information about the debtor to be obtained and evaluated and for proposals for resolving the debtor's financial difficulties to be formulated and assessed, unless such a course is inappropriate in a particular case"[9]. The INSOL Principles provide guidance based on extensive experience on the matter, so that the debtor and the creditors can move the process to a speedy resolution and in a relatively structured manner based on a friendly environment built on cooperation, information sharing and where the parties should refrain from individual benefits[10].

Furthermore, the agreement does not need to comply with statutory requirements, such as the 'best interest of creditors' or the feasibility test (which is sometimes the case in formal reorganisation procedures, such as under Chapter 11 in the US) to become effective and is only subject to the formalities of a valid contract.

D. Statutory supported private workouts

Several jurisdictions have enacted frameworks applying to out-of-court consensual restructurings with the main aim of supporting workouts and incentivising debtors and creditors to reach a contractually based agreement outside of the insolvency courts. Statutory supported private workouts have the advantage that they are conducted without judicial intervention and can be confidential.

However, in certain jurisdiction the participation of state bodies (such as the Chamber of Commerce in Serbia) may be required to guarantee a fair procedure or to enable the parties to benefit from certain statutory incentives. The Serbian Chamber of Commerce takes, for example, the role of the institutional mediator. Another example is the Ukrainian Secretariat – a body responsible for the supervision of the voluntary financial restructuring with the main duty of ensuring that parties comply with the formal requirements and that the creditors and other parties involved in the workout are properly notified. The Ukrainian Secretariat does not participate in restructuring negotiations or in resolving disputes between parties. For the latter, the framework provides for an arbitration committee. Establishing a framework for the private workouts also gives the possibility of providing certain regulatory or tax benefits for consensual restructurings that may not be available were the process conducted as a 'pure' private agreement without the statutory framework. The practice in Serbia and Ukraine shows that this type of private workout has mainly been used to reorganise liabilities owed to financial institutions.

[8] See INSOL International, **Statement of Principles for a Global Approach to Multi-Creditor Workouts**, London, 2016.

[9] See above.

[10] See above.

E. Hybrid procedures

Business reorganisation may also be conducted using so-called hybrid procedures that combine the features of both private workouts and formal reorganisation procedures. The main characteristic of a hybrid approach is that the restructuring arrangement is negotiated privately with creditors and is then submitted to the court for its confirmation. The court's intervention supports the agreement reached and makes it binding on all participating creditors, including dissenting creditors. This is the main advantage of hybrid mechanisms as it provides greater certainty and gives the parties the necessary confidence in the validity of the agreement.

In most jurisdictions, the hybrid procedures are referred to as 'pre-packed deals' and 'pre-negotiated arrangements', whereas in both types of arrangement, the reorganisation plan is pre-agreed with creditors. As a result, the company files for the formal insolvency procedure with a 'pre-negotiated' and in most cases also 'pre-voted' reorganisation plan which can be immediately presented to the court for its confirmation and therefore reduces the time for a court-supervised reorganisation. If the plan has already been voted it is usually referred as 'pre-packaged'. The court's approval is obtained within a short period of time and has the advantage that it can be binding on all creditors, allowing to cram down the dissenting creditors. However, the court will usually assess whether the plan complies with the statutory requirements such as the required majorities, the 'best interest of creditors test', the absolute priority rule and other rules safeguarding creditors' interests.

The strength of hybrid mechanisms is that although the company needs to enter a formal reorganisation procedure which typically damages the reputation of the debtor, it is for a very limited period of time. Therefore, in practice, this procedure is short-lived, and the filing usually is done once a pre-agreement has already been reached. However, it should be noted that the court's review of the agreement may lead to challenges of certain aspects of the plan or even to a complete rejection of the proposal, although this tends to be uncommon and a rare exception.

F. Court-supervised reorganisation procedures (early entry; late entry)

The insolvency laws usually provide for a formal reorganisation procedure which aims to rescue the business as a going concern by reorganising its assets and liabilities or by allowing for the sale of the business. A court-supervised reorganisation procedure, like the private workouts and hybrid approaches, is concluded with the confirmation and implementation of a reorganisation plan. These types of reorganisation procedures are conducted under the court's oversight, follow the pre-established statutory rules, and usually involve the appointment of an insolvency practitioner. The court-supervised reorganisation may contemplate that the insolvency practitioner takes over the control of the debtor's assets and business and runs the undertaking. As opposed to that, the recent trend is to enable the debtor to remain in control and continue running the business affairs and trading (debtor in possession). In this case, many jurisdictions provide for the involvement of an insolvency practitioner not only to supervise the debtor's conduct but also to facilitate the necessary negotiations with the creditors.

Furthermore, the court-supervised reorganisation procedures may be distinguished according to the entry requirements. Some jurisdictions allow the debtor to only file for the procedure once the state of insolvency as defined by the law has been reached. Often, this threshold is either cash flow insolvency, where the debtor cannot meet its payment obligations when they fall due, or balance sheet insolvency, where the liabilities of the debtor exceed the value of its assets. It should be noted that once the company is insolvent, it might already be too late to attempt its rescue and convince the creditors that solvency can be restored. For this reason, some jurisdictions have allowed an early entry into the procedure. This approach is sometimes referred to as the pre-insolvency procedure and contemplates the filing when the business is experiencing financial difficulties but is not yet insolvent.

If the procedure is successful, the debtor will be able to reach an agreement with its creditors. The court usually reviews whether the agreement fulfils the provisions of the law and whether the required majorities among creditors have been reached. In many jurisdictions, the court also assesses whether the plan is in the best interest of creditors (typically, it puts the creditors in a better position than they would have been in case of liquidation), and whether the plan is feasible. The court's approval makes the plan binding on all participating or affected creditors and has the power to cram down dissenting creditors.

The disadvantage of this procedure is the fact that it usually takes longer than the out-of-court or hybrid approaches as the court will follow pre-established rules and set time intervals at different stages of the procedure. Furthermore, formal insolvency proceedings are characterised by a negative stigma that can have a severe impact on the debtor's reputation.

G. Settlement procedures

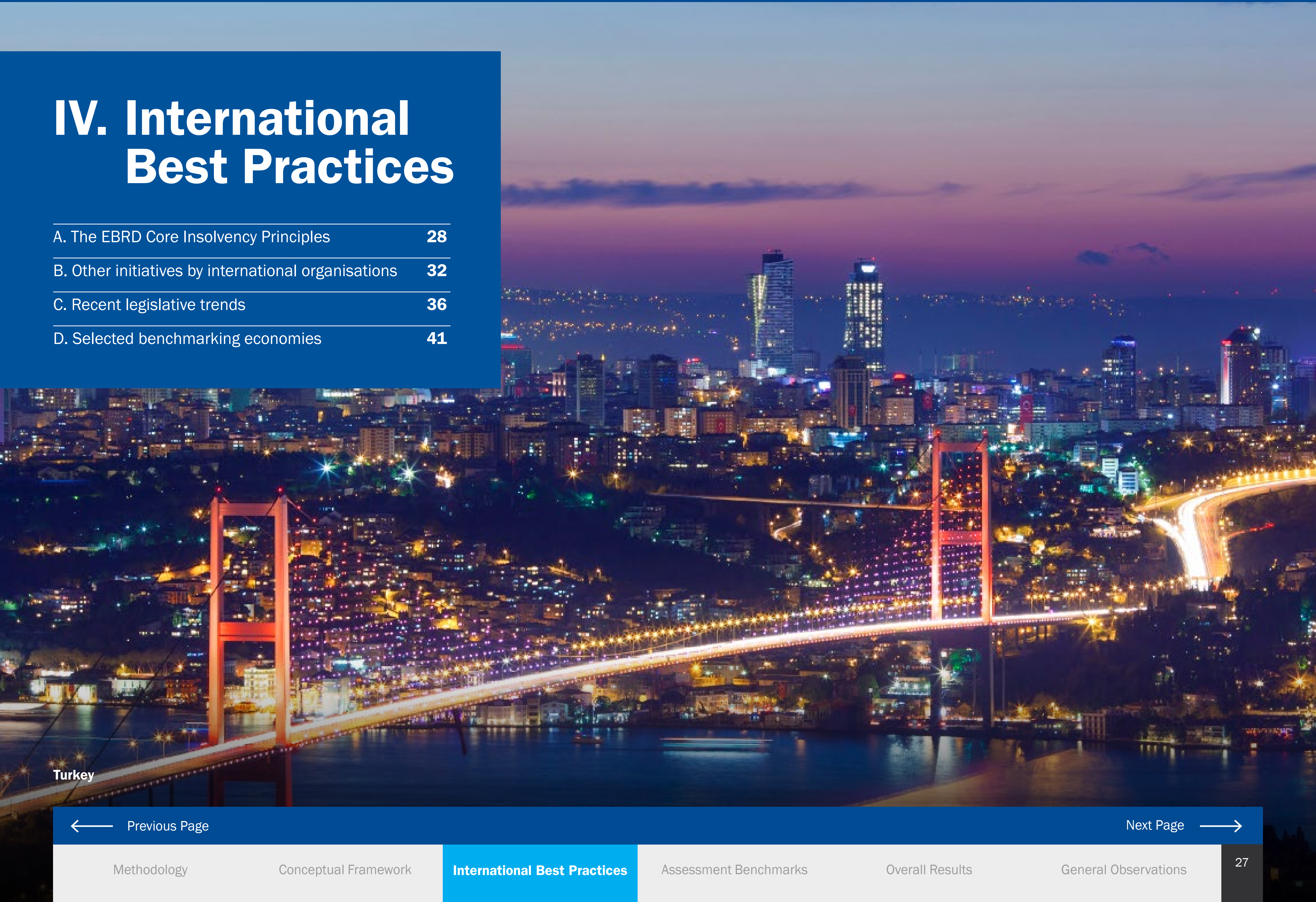
Some jurisdictions, particularly those of the former Soviet Union, include in their insolvency legislation a special tool referred to as the settlement agreement. The settlement agreement is not a separate insolvency and/or reorganisation procedure, it rather constitutes the possibility for the debtor and creditors to terminate the ongoing formal insolvency procedure by reaching an amicable solution. Therefore, the settlement agreement can only be entered into if the formal insolvency before the court has already been commenced and the participating parties are willing to prematurely put an end to it.

Typically, the conclusion of a settlement agreement can be initiated at any stage of the ongoing insolvency procedure, including the liquidation of the debtor's assets, and may be proposed by the debtor as well as by the creditors and the insolvency practitioner. The agreement, as reached by the parties, may include several options to settle the debt, such as the deferral of a number of payment instalments, changes in the payment schedule, or the reduction in the face value or the applicable interest rate of the debt. The sole requirement for the settlement agreement to be concluded is that the creditors are satisfied with its terms and consent to its execution through voting in accordance with what the law establishes. The statutory required majorities for creditors' approval differ among the observed jurisdictions and in some cases the consent of all secured creditors is necessary (for example, Tajikistan). Furthermore, a settlement agreement needs to be confirmed by the court supervising the insolvency procedure to become effective and to bind any dissenting minorities. Together with the adoption of the agreement, the court passes a judgement on the termination of the insolvency procedure.

Russia

The advantage of the settlement agreement is clearly the flexibility regarding the timing of its conclusion as it can even avert liquidation and serve as a reorganisation option aiming at rescuing the company. Furthermore, the settlement agreement can provide an amicable solution even during the already commenced insolvency procedure – at a stage where in other jurisdictions there usually is no coming back. It will typically also expedite the proceedings by agreeing on a swift end and avoiding the formalities, time frames and other aspects characteristic of the formal procedure. However, the settlement agreement carries the risk of circumventing the statutory rules for creditor protection that are usually in place for reorganisation plans, and canvassed data suggests that in the economies where it is available it is scarcely used. This may be due to the fact that the settlement agreement is available as an exit option in respect of an ongoing insolvency procedure and is therefore only possible at a comparatively late stage in the insolvency process. In some former Soviet Union jurisdictions, debtors must first undergo an observation period prior to commencement of a reorganisation procedure. The observation period enables the court and the creditors to decide whether there are reasons to believe that the debtor's solvency can be restored. However it can be relatively lengthy; for example, in Russia, it can take up to seven months.

IV. International Best Practices



Turkey

International Best Practices

International best practices for all types of business reorganisation procedures may be drawn from different policy papers, initiatives by international organisations, recent legislative developments as well as from jurisdictions presenting advanced insolvency legislations that reflect the latest developments in corporate rescue. This section analyses the primary sources for benchmarking in business reorganisation frameworks, dividing these into: (1) **EBRD Core Insolvency Principles**; (2) other initiatives by international organisations; (3) recent legislative trends; and (4) selected benchmarking economies. These initiatives represent the current trends in insolvency and reorganisation laws and are analysed in more detail in the following sub-sections.

Jordan

A. The EBRD Core Insolvency Principles

The **EBRD Core Principles for an Effective Insolvency System**[1] (the Principles) were revised in 2020 in English and translated into Russian and aim to provide legislators and national authorities in the Banks's economies of operations with high-level guidance on key objectives and international best practices with respect to business insolvency. Although the Principles are not reorganisation-specific and encompass the main characteristics of an insolvency regime, they establish several recommendations with regard to an effective system for reorganisation of a distressed business.

The Principles reflect the latest developments and trends in insolvency laws, particularly the increasing focus on the importance of statutory restructuring tools, consensual out-of-court restructuring solutions and early 'pre-insolvency' action to support business continuity. By doing so, the Principles aim to contribute to the further development and harmonisation of countries' insolvency legislations by clearly articulating the general objectives of any commercial insolvency law reform, which may be adapted to the specific national context.

The EBRD Core Insolvency Principles that are relevant for reorganisation procedures are listed below and are followed by a description of their main characteristics.

[1] The EBRD Core Principles for an Effective Insolvency System, September 2020, available at: **www.ebrd.com/legal-reform/ebrd-insolvency-coreprinciples.pdf**.

1 | "A country's insolvency law should meet the needs of its major market participants, including micro, small and medium-sized enterprises."

Commentary: According to the Principle 1, the law should have the procedural flexibility to meet the needs of different market participants. Particularly important is to establish a simplified insolvency process, including a reorganisation procedure, with fewer formalities, shorter deadlines and lower costs for smaller businesses.

2 | "Insolvency procedures should be designed and implemented to preserve and maximise the total value ultimately available to creditors, while taking account as far as possible of the interests of the debtor and its employees."

Commentary: Principle 2 refers in the first place to the procedural efficiency and states that an effective insolvency system should provide a transparent, certain and predictable legal regime to deal with debtors that are already insolvent and debtors that are likely to become insolvent. It should, at all times, promote the efficient, speedy and early treatment of financial distress with a view to minimising financial loss and reducing the disruption to the debtor, its creditors and the economy as a whole. The insolvency law needs to strike a fair balance between the competing interests of the debtor and its creditors and may give special consideration to the interests of employees and tax authorities.

3 | "An effective insolvency law should provide for both liquidation and reorganisation, while also allowing for a conversion between the two types of procedures."

Commentary: Regarding reorganisation procedures, Principle 3 establishes that these should facilitate the rehabilitation and financial and operative restructuring of financially distressed, but viable, companies. Various forms of restructuring should be recognised by the insolvency law and may include changing the composition of the debtor's assets and liabilities, the sale of all or part of the business, as well as operational changes and different forms of creditor satisfaction, including debt for equity swaps. A reorganisation procedure is critical to avoid the liquidation of economically viable companies, to prevent unnecessary job losses and to preserve the going concern value of distressed businesses. Any conversion between liquidation and reorganisation proceedings should be subject to conditions and carefully reviewed.

4 | "A country's legal system should support the consensual financial restructuring of businesses outside of a formal insolvency law procedure."

Commentary: Principle 4 highlights the importance and advantages of completely out-of-court restructurings (such as private workouts) based on private agreement which offer a flexible, speedy and discreet treatment of the financial distress. In addition, a hybrid 'pre-packaged restructuring' approach should be recognised, where a reorganisation plan is developed privately out-of-court with majority creditor support and is subsequently confirmed by the court.

5 | "Debtors and creditors should both have the right in certain circumstances to initiate reorganisation and liquidation procedures."

Commentary: According to Principle 5, debtors should have access to both reorganisation and liquidation, whereas creditors should be able to file for liquidation where the debtor has become insolvent. Creditors may also be given the right to initiate a reorganisation procedure when the debtor is experiencing temporary liquidity problems; however, in a debtor-in-possession procedure, this is likely to require the consent or cooperation of the debtor. Principle 5 also states that a reorganisation procedure should be available at an earlier stage when the business is still viable, without the requirement for technical insolvency. However, a reorganisation procedure should not be used to delay an inevitable liquidation.

6 | "Generally, the insolvency law should enable the suspension of individual enforcement actions by creditors in order to preserve the debtor's estate and ensure the equal treatment of creditors in a liquidation or reorganisation procedure."

Commentary: Principle 6 highlights that once a reorganisation proceeding has commenced a moratorium or stay grants the business the protection it needs to negotiate a reorganisation plan with its creditors. Nonetheless, the law should provide for the fair and effective management of any secured assets by the insolvency office holder during such a stay. Furthermore, consideration should be given to whether to exclude certain categories of financial collateral arrangements from any stay or set-off restrictions to preserve the stability of the financial markets.

7 | "The insolvency system should ensure equal treatment among creditors with similar economic and legal interests in the debtor's estate and should protect secured creditors from an erosion in the value of their security."

Commentary: The insolvency law should respect the agreements reached between creditors and the debtor before the occurrence of insolvency, subject to clear rules relating to the ranking of creditor claims. It should also seek to preserve the position of secured creditors, with a view to minimising the cost of obtaining secured credit. In this regard, it should limit, insofar as possible, a deterioration in the value of the security, which may result from lengthy proceedings and high costs of management or sale by the insolvency office holder.

8 | "The insolvency system should provide for the independent review of actions undertaken by the debtor and its management in the period immediately prior to an insolvency procedure."

9 | "The insolvency law should contain a reorganisation procedure where the debtor is able to remain in control of its assets and business."

Commentary: According to Principle 9, the debtor-in-possession incentivises an increased use of reorganisation procedures by debtors, since it removes the threat of loss of control and ownership of the business. It also incentivises management of the debtor to act earlier for the benefit of their business and creditors. Any removal of the debtor from the possession of the company may be restricted to instances of detrimental conduct by the debtor, such as fraud, dishonesty and incompetence. An insolvency office holder may provide some supervision of the debtor in possession, as well as specialist assistance to the debtor to prepare and negotiate a reorganisation plan with its creditors. During a reorganisation procedure, certain important or material decisions about the debtor's business may require the approval of the insolvency office holder or the court. For smaller businesses, it may be appropriate, subject to appropriate judicial safeguards, to reduce the level of insolvency office holder supervision and also to limit the fees chargeable by the insolvency office holder.

10 | "A reorganisation procedure should be capable of encompassing all types of creditor claims, including secured and preferential creditor claims."

Commentary: Secured creditors should be included in a reorganisation procedure, as their exclusion would require the debtor to rely on individual secured creditors' consents and forbearance, which could potentially undermine any majority creditor-led reorganisation plan. Furthermore, the reorganisation plan should be capable of compromising tax claims, by restricting the circumstances in which the tax authorities are able to exercise a right of veto on the restructuring. As a matter of flexibility and pragmatism, an early or preventive reorganisation procedure initiated by the debtor should enable the debtor to propose a reorganisation plan to certain creditors only, leaving other creditors unaffected. The concept of 'affected parties' would require corresponding exceptions for unaffected parties with respect to enforcement and voting rights.

Furthermore, Principle 10 establishes that grouping of creditors for voting purposes, as well as respective majority thresholds for the adoption of a reorganisation plan, should be part of any reorganisation regime and set out clearly in the insolvency law. In general, secured and unsecured creditors should vote in separate groups, given their different interests and priority ranking. Where possible and to the extent they are affected, shareholders' support should be sought. A country's legal system may disapply existing shareholder pre-emption rights for any proposed capital measures under the reorganisation plan, particularly where the shareholders do not retain any value in the debtor business.

11 | "An effective insolvency system should, where possible, facilitate the continuation of the debtor's day-to-day operations during a reorganisation procedure by protecting new financing and limiting termination of contracts by contractual counterparties."

Commentary: As day-to-day operation of the business and its rescue will often require the provision of new financing, any financing provided in good faith and on commercial arm's length terms should be protected from any avoidance actions in a subsequent liquidation procedure. Additionally, express provisions should be introduced that recognise the priority of new financing before existing unsecured creditors, allow new lenders to take security over any existing unencumbered assets, and agree a higher priority contractual ranking with other existing creditors. Principle 11 also establishes that certain contracts relating to utilities, communication and essential goods should be protected from termination solely because of application for, or commencement of, a reorganisation procedure. Furthermore, the application of clauses purporting to terminate any nonessential contracts because of commencement of a reorganisation procedure, should be restricted.

Kosovo

12 | "An effective insolvency system should ensure that the courts concerned with insolvency proceedings have the necessary expertise to deal with proceedings in an efficient and expeditious manner."

Commentary: Principle 12 assumes that the requisite degree of expertise will increase stakeholder confidence in insolvency proceedings and is particularly important for the assessment of reorganisation plans. Where possible, only specialised members of judicial authorities should be appointed to oversee insolvency cases.

13 | "The insolvency law and any secondary legal provisions should establish clear rules on the qualifications, obligations, liabilities, supervision and remuneration of insolvency office holders."

Commentary: According to Principle 13, a special system for the appointment of an insolvency office holder should be set out, which balances the interests of all stakeholders involved, depending on the objective of the insolvency procedure and whether this involves a liquidation or reorganisation of the debtor business. The appointment system should take into account the qualifications and previous professional experience of an insolvency office holder with respect to a particular insolvency case and should facilitate the selection of the best professional. The insolvency office holder should report regularly on the conduct of the case and should be accountable to the debtor, to the general body of creditors and to the court.

14 | "A modern, forward thinking business insolvency system should adopt digital tools to increase the transparency, efficiency and cost-effectiveness of insolvency procedures."

Commentary: Principle 14 highlights that the insolvency system should provide for electronic insolvency registers that maintain publicly available information about insolvency procedures, subject to rules on data protection and privacy. It should also promote online case management systems and, as a minimum, permit the filing of claims and submission of documents to the court by parties to the proceedings and insolvency office holders using electronic means of communication.

15 | "Given the transnational nature of modern businesses, an effective insolvency system should facilitate the smooth conduct and resolution of cross-border insolvencies."

Commentary: According to Principle 15 the insolvency system should incorporate the UNCITRAL Model Law on Cross-Border Insolvency to facilitate the resolution of cross-border insolvencies and restructurings. In the European Union, the UNCITRAL Model Law on Cross-Border Insolvency may be adopted in addition to **Regulation (EU) 2015/848** on insolvency proceedings, which applies directly to cross-border insolvency procedures where the debtor has a centre of main interests in the European Union. These documents may be supplemented by adoption of UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments and UNCITRAL Model Law on Enterprise Group Insolvency.

B. Other initiatives by international organisations

1. The UNCITRAL Legislative Guide

UNCITRAL is a subsidiary body of the General Assembly of the United Nations, which was established in 1966 with the general mandate to further the progressive harmonisation and unification of international trade law.

UNCITRAL has prepared a Legislative Guide on Insolvency Law[2] (the Legislative Guide), which seeks to present a broad and general description of the objectives and fundamental characteristics that every insolvency regime should have. In doing this, it establishes the criteria to be followed in insolvency proceedings, in the interrelationships between debtors and creditors, and the cross-border reorganisation and insolvency of businesses. In order to meet its objectives, the Legislative Guide on Insolvency Law presents several recommendations contributing to the creation of an effective and efficient legal framework to regulate the situation of debtors in financial difficulties. It reflects modern developments and trends in the area of insolvency law.

In addition, the Legislative Guide on Insolvency Law stresses that, in order to achieve a proper development of an insolvency regime, it is necessary to provide the latter not only with an adequate legal framework, but also with appropriate infrastructure and resources to allow the process to develop efficiently.

Among the main recommendations given by the Legislative Guide on Insolvency Law, it is important to highlight the special emphasis that it places on the treatment of secured creditors within insolvency proceedings and therefore the importance that any legal framework should give to these types of creditors in order to protect them. UNCITRAL also recommends that any insolvency law should include provisions governing both the reorganisation and the liquidation of a debtor, as well as establishing that where a security right is effective and enforceable under a rule outside the insolvency law, it must also be recognised in insolvency proceedings.

Kyrgyz Republic

Similarly, any insolvency law should provide for a modern, harmonised and fair framework for effective settlement of cross-border insolvency cases. To this end, it is recommended that countries incorporate into their domestic law the UNCITRAL Model Law on Cross-Border Insolvency, in order to recognise claims and rights arising under national or foreign norms outside the insolvency law, subject to the limitations expressly foreseen in each case.

According to the recommendations of the Legislative Guide on Insolvency Law, any insolvency legal system should have the following fundamental objectives:

1. Provision of certainty in the market to promote economic stability and growth.
2. Maximisation of value of assets.
3. Striking a balance between liquidation and reorganisation.
4. Ensuring equitable treatment of similarly situated creditors.
5. Provision for timely, efficient and impartial resolution of insolvency.
6. Preservation of the insolvency estate to allow equitable distribution to creditors.
7. Ensuring a transparent and predictable insolvency law that contains incentives for gathering and dispensing information.
8. Recognition of existing creditor rights and the establishment of clear rules for the ranking of priority claims.
9. Establishment of a framework for cross-border insolvency.

[2] The UNCITRAL Legislative Guide on Insolvency Law is available at: **www.uncitral.un.org/en/texts/insolvency/legislativeguides/insolvency_law**

In order to prepare an insolvency system in accordance with the recommendations of the Legislative Guide on Insolvency Law, each regime should consider the following common features[3]:

1. Identifying the debtors that may be subject to insolvency proceedings, including those debtors who may require a special insolvency regime.
2. Determining when insolvency proceedings may be commenced and the type of proceeding that may be commenced, the party that may request commencement, and whether the commencement criteria should differ depending upon the party requesting commencement.
3. Determining the extent to which the debtor should be allowed to retain control of the business or be displaced, once insolvency proceedings commence and the appointment of an independent party (referred to in the Legislative Guide as the 'insolvency representative') to supervise and manage the debtor, as well as the distinction to be made between liquidation and reorganisation in this regard.
4. Establishing the method of identifying the assets of the debtor that will be subject to the insolvency proceedings and that constitute the insolvency estate.
5. Establishing protection of the insolvency estate against the actions of creditors, the debtor itself and the insolvency representative and, where the protective measures apply to secured creditors, the manner in which the economic value of the security interest will be protected during the insolvency proceedings.
6. Determining the manner in which the insolvency representative may deal with contracts entered into by the debtor before the commencement of proceedings and in respect of which both the debtor and its counterparty have not fully performed their respective obligations.
7. Determining the extent to which set-off or netting rights can be enforced or will be protected, notwithstanding the commencement of the insolvency proceedings.
8. Determining the manner in which the insolvency representative may use or dispose of assets of the insolvency estate.
9. Determining the extent to which the insolvency representative can avoid certain types of transaction that result in the interests of creditors being prejudiced.
10. In the case of reorganisation, facilitating preparation of the reorganisation plan and specifying the limitations, if any, that will be imposed on the content of the plan, the preparer of the plan and the conditions required for its approval and implementation.
11. Determining the rights and obligations of the debtor.
12. Determining the duties and functions of the insolvency representative.
13. Determining the functions of the creditors and creditor committee.
14. Specifying costs and expenses relating to the insolvency proceedings.
15. Establishing the treatment of claims and their ranking for the purposes of distributing the proceeds of liquidation.
16. Establishing the method of distribution of the proceeds of liquidation.
17. Specifying the circumstances of discharge or dissolution of the debtor.
18. Specifying the circumstances of the conclusion of the proceedings.

[3] See UNCITRAL Legislative Guide on Insolvency Law, Parts One and Two, para. 20, available at: **www.uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/05-80722_ebook.pdf**

To this end, UNCITRAL proposes some basic features that any insolvency law must incorporate in order to be able to develop an effective and efficient framework. These basic features are included in the UNCITRAL Legislative Guide on Insolvency Law and are presented in four parts:

Part One Designing the Key Objectives and Structure of an Effective and Efficient Insolvency Law

Part Two Core Provisions for an Effective and Efficient Insolvency Law

Part Three Treatment of Enterprise Groups on Insolvency[4]

Part Four Directors' Obligations in the Period Approaching Insolvency[5].

The First and Second Parts were published in 2004. The Third Part was added at a later stage, in 2010. The last addition is the Fourth Part, which was incorporated in 2013.

The First Part of the Legislative Guide focuses on what are the fundamental aspects that an insolvency regime must contain in order to be effective and efficient. The Second Part of the Legislative Guide focuses on the contents of the insolvency framework and on the basic elements that are deemed necessary to effectively and efficiently conduct insolvency proceedings. The Third Part analyses the differences and peculiarities of enterprise groups facing distress scenarios and how to treat their insolvency, providing specific features to address these cases. The recommendations made and the content set out in the Second Part of the Legislative Guide apply to groups of companies, unless otherwise indicated. Finally, the Fourth Part focuses on the obligations that might be imposed upon those responsible for making decisions with respect to the management of an enterprise when that enterprise faces imminent insolvency or insolvency becomes unavoidable.

For specific technical aspects on the focus area of the assessment (the effectiveness and extensiveness of reorganisation procedures) considered by the UNCITRAL Legislative Guide on Insolvency Law, see **Annex Recommendations on Voluntary Expedited Debt Restructuring**.


Lebanon

2. UNCITRAL Model Law on Cross-border Insolvency

The Model Law on Cross-border Insolvency[6] was published by the UNCITRAL in 1997 with the purpose to provide effective mechanisms for dealing with cases of cross-border insolvency.

According to the Preamble of the document, it aims to promote the objectives of:

(a) Cooperation between the courts and other competent authorities of this State and foreign States involved in cases of cross-border insolvency;

(b) Greater legal certainty for trade and investment;

(c) Fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;

(d) Protection and maximisation of the value of the debtor's assets; and

(e) Facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

The Model Law does not attempt to achieve a substantive unification of national insolvency laws, it rather respects the differences among national laws. The Model Law focuses on four key elements in order to effectively deal with financially distressed businesses that have assets or creditors in more than one state. These four elements are: access, recognition, relief and assistance. The document is accompanied by the Guide on Enactment and Interpretation in order to assist the states in implementation of the law. The Guide was most recently revised in 2013 and provides background and explanatory information on the provisions of the Model Law.

[4] UNCITRAL Legislative Guide on Insolvency Law, Part Three, available at: **www.uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/leg-guide-insol-part3-ebook-e.pdf**

[5] UNCITRAL Legislative Guide on Insolvency Law, Part Four, available at: **www.uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-11273_part_4_ebook.pdf**

[6] UNCITRAL Model Law on Cross-border Insolvency, available at: **www.uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/1997-model-law-insol-2013-guide-enactment-e.pdf**

3. Model Law on Enterprise Group Insolvencies

Another important initiative developed by the UNCITRAL relates to the insolvency of enterprise groups. The Model Law on Enterprise Group Insolvencies[7] was adopted in 2019 and aims to address cases of domestic and cross-border insolvency affecting different members of an enterprise group. It may be seen as a complementary document to the UNCITRAL Model Law on Cross-border Insolvency and part three of the UNCITRAL Legislative Guide on Insolvency Law.

The Model Law provides for the following:

a) Coordination and cooperation between courts, insolvency representatives and a group representative (where appointed), with respect to multiple insolvency proceedings concerning members of an enterprise group;

b) Development of a group insolvency solution for the whole or part of an enterprise group through a single insolvency proceeding commenced at the location where at least one group member has the centre of its main interests (COMI);

c) Voluntary participation of multiple group members in that single insolvency proceeding (a planning proceeding) for the purposes of coordinating a group insolvency solution for relevant enterprise group members and access to foreign courts for enterprise group members and representatives;

d) Appointment of a representative (a group representative) to coordinate the development of a group insolvency solution through a planning proceeding;

e) Approval of post-commencement finance arrangements in the enterprise group insolvency context and authorisation of the provision of funding under those arrangements, as required;

f) Cross-border recognition of a planning proceeding to facilitate the development of the group insolvency solution, as well as measures to support the recognition and formulation of a group insolvency solution;

g) Measures designed to minimise the commencement of non-main insolvency proceedings relating to enterprise group members participating in the planning proceeding, including measures to facilitate the treatment of claims of creditors of those enterprise group members, including foreign claims, in a main proceeding; and

h) The formulation and recognition of a group insolvency solution[8].

The Model Law on Enterprise Group Insolvencies is accompanied by a guide to its enactment in order to assist governments and law users with implementation and application of the Model Law.

4. The World Bank Principles for Effective Insolvency Creditor/Debtor Regimes

The Principles for Effective Insolvency Creditor/Debtor Regimes (the ICR Principles) developed by the World Bank are a synthesis of best international practices in the design of insolvency systems and creditor/debtor rights. They have been designed as a broad-based evaluation tool to assist countries in their efforts to assess and improve key aspects of their business law systems, critical to a healthy investment climate, and to promote economic and commercial growth.

Effective, credible and transparent creditors' rights and insolvency systems are vitally important for achieving the redistribution of productive resources in the entrepreneurial sector, investor confidence and long-term corporate reorganisation. Insolvency systems also play a key role in times of crisis in that they enable a country and its stakeholders to respond quickly and resolve business financial issues at systemic scales.

The ICR Principles were born in 2001 in response to the emerging markets crisis in the late 1990s. From their inception until their first revision in 2005, the World Bank has been in contact with a variety of international organisations, countries and cross-border operators to assess the practical experience and application of the ICR Principles, aiming at introducing improvements to better their effectiveness. Further revisions took place in 2011, in 2015 and lastly in 2021. The 2021 revision was published in response to the Covid-19 pandemic and its severe impact on global economy. The revised ICR Principles are focused on helping policymakers build and improve the insolvency and bankruptcy systems that support micro, small and medium-sized enterprises (MSMEs). They aim to make insolvency systems more accessible for MSMEs which have been hit particularly hard by the Covid-19 crisis. For this reason, the ICR Principles incorporate a new section on the Insolvency of Micro and Small Enterprises (MSEs) and on Simplified Insolvency Proceedings. Furthermore, the 2021 revision also refers to the insolvency of entrepreneurs and highlights the need for debt discharge to all good faith debtors who are natural person entrepreneurs following a liquidation proceeding.

For specific technical aspects on the focus area of the assessment (the effectiveness and extensiveness of reorganisation procedures) considered by the World Bank Principles for Effective Insolvency Creditor/Debtor Regimes, see **Annex Recommendations on Voluntary Expedited Debt Restructuring**.

[7] UNCITRAL Model Law on Enterprise Group Insolvency, available at: **www.uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-11346_mloegi.pdf**

[8] UNCITRAL Model Law on Enterprise Group Insolvency with Guide to Enactment, p. 19, available at: **www.uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-11346_mloegi.pdf**

C. Recent legislative trends

1. The EU Restructuring Directive

On 20 June 2019, the European Parliament and the Council issued **Directive (EU) 2019/1023** on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt (the Restructuring Directive).[9]

The Restructuring Directive aims to contribute to harmonisation of insolvency laws and to a more effective and efficient debt restructuring regime among the Member States. It primarily focuses on the availability of pre-insolvency, preventive restructuring frameworks in each Member State, to increase the chances of a company being able to restructure itself into a viable business rather than going into liquidation. Regarding restructuring and insolvency procedures, the directive highlights the importance of expeditious treatment of these procedures and requires the Member States to ensure that the judicial and administrative authorities as well as insolvency practitioners have the necessary expertise for their responsibilities.

The directive has taken inspiration from UK schemes of arrangement[10] and, to an even greater extent, bankruptcy proceedings under Chapter 11 of the US Bankruptcy Code[11] and evidences the shift towards a more debtor-friendly system favouring corporate rescue.

The main aspects of the restructuring regime envisaged by the Restructuring Directive are:

1. Availability of preventive restructuring frameworks that enable debtors to avoid insolvency and restore the financial stability. The aim is to rescue economically viable companies and restructure the debt at an early stage ('likelihood of insolvency') before the company is in fact insolvent. Preventive restructuring frameworks constitute a 'debtor-in-possession' procedure, where the debtor remains in control of its assets and business operations, subject to the limited involvement of a restructuring practitioner in specified circumstances.
2. Availability of a stay on creditors' enforcement actions for a limited time period (maximum 12 months), covering secured as well as unsecured creditors, and subject to review by the supervising judicial or administrative authority. During the stay, the debtor benefits from the protection of essential contracts that are necessary for day-to-day operations. Furthermore, contractual clauses allowing creditors to terminate or modify contracts solely on the grounds of commencing a restructuring procedure cannot be invoked.


Lithuania

[9] Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventing restructuring frameworks, insolvency, and discharge of debt, and amending Directive (EU) 2017/1132, OJ L 172; hereafter referred to as the Restructuring Directive.

[10] A UK scheme of arrangement is a court-approved agreement between a company and its creditors used to reorganise debts. Most of it takes place privately and once an agreement has been reached it is submitted to the court for sanctioning and thus making it mandatory to all parties. In addition, since it is part of the Companies Act and not of the Insolvency Act, it does not carry the negative stigma that insolvency proceedings usually have.

[11] Chapter 11 of the US Bankruptcy Code provides for a court-supervised reorganisation procedure where a debtor in financial difficulties is granted protection from creditors for a limited period to allow it to reorganise its financial affairs.

3. Within the preventive restructuring frameworks, the debtor can conduct a restructuring with the following parameters:

a) the debtor can choose the creditors to be affected by the restructuring plan as not all of the company's creditors need to be included in the procedure;

b) voting on the restructuring plan is conducted by classes of creditors, while the composition of classes is based on the commonality of creditors' interests;

c) majority thresholds for the approval of the restructuring plan are to be determined by each Member State, but should not exceed 75% in value and/or majority in number of affected creditors;

d) the plan, if approved, has to be ratified by a judicial or administrative authority by reference to a 'best interests of creditors test'[12] and other requirements safeguarding creditors' interests.

4. Cross-class cram down of dissenting classes of creditors[13] is allowed in the event that the restructuring plan is not supported by all voting classes. In order for the restructuring plan to be confirmed by means of the cross-class cram down, the judicial or administrative authority will review additional requirements protecting the interests of dissenting creditors.

5. New financing is protected from avoidance actions should the debtor nevertheless go into an insolvency procedure after conducting the restructuring. To encourage the provision of new credit, lenders are protected from liability and, depending on whether the Member State chooses to implement this option, new financing may also benefit from priority in repayment in a subsequent insolvency procedure over existing claims.

6. Directors of the distressed company are obliged to consider the interests of creditors, equity holders and other stakeholders, as well as to take steps to avoid insolvency.

The Restructuring Directive is silent on some of the important areas related to reorganisation such as the removal of shareholders' pre-emption rights relating to any debt for equity swap – a common reorganisation tool – and the definition of the likelihood of insolvency has been left to the implementing Member States. Furthermore, although the Directive does resemble the procedure of Chapter 11 of the US Bankruptcy Code, the requirements for the so-called cross-class cram down (cram down of an entire class of dissenting creditors) differ among the two legislative pieces. The directive left the choice between the absolute priority rule[14] and relative priority rule[15] up to the Member States and even provided for more flexibility, whereas the Chapter 11 procedure strictly adheres to the absolute priority rule. In any case, the Directive is concept-based and will be grafted onto the national legislation which enables the Member States to legislate for the most suitable option as they deem appropriate.

[12] The 'best interest of creditors test' refers to the assessment of whether the creditors are better off under the restructuring plan than in a liquidation or in any other relevant scenario.

[13] Cram down of creditors means that the will of the majority of creditors within the context of a restructuring can be imposed on dissenting creditors if the pre-established required majority is achieved. This can be performed either within a class (in the event that the majority threshold within a class has been reached) or across classes (in the event that the majority threshold has not been reached in each voting classes; for example, if an entire class objected the plan).

[14] The absolute priority rule (APR) establishes that a dissenting class must be paid in full before a more junior class is able to receive any distribution or keep any interest under the restructuring plan. For example, in the EU, the Directive further provides that where Member States choose APR, they can exclude its application if two conditions are met, namely it is necessary in order to achieve the aims of the restructuring plan and where such plan does not unfairly prejudice the rights or interests of any affected parties. As an example, Member States are able to derogate from the APR where it is considered fair that equity holders keep certain interest under the plan despite the more senior class being obliged to accept a reduction of its claims or that essential suppliers (covered by the provision on the stay of individual enforcement actions) are paid before more senior classes of creditors.

[15] The restructuring plan must ensure that dissenting voting classes of affected creditors be treated at least as favourably as any other class of the same rank and more favourably than any junior class. This is known as the relative priority rule (RPR) and in practical terms it means that senior creditors should be treated pari passu but that other more junior creditors (including, potentially controversially, and to the extent they are included in the plan, shareholders) may still receive some value even where senior creditors would not be paid in full.

Moldova

2. The EU Regulation on Insolvency Proceedings (Recast) 2015

The **Regulation (EU) 2015/848** of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast)[16] (the "Recast Insolvency Regulation") replaced the original **Council Regulation (EC) 1346/2000** on insolvency proceedings and introduced new rules in order to enhance the effective administration of cross-border insolvency proceedings. The Recast Insolvency Regulation does not aim to harmonise the national insolvency laws; it rather provides for solutions of conflicts of laws with regard to insolvency proceedings concerning debtors with cross-border operations within the EU. It is directly applicable in the EU Member States and does not require an implementation into the national laws.

The Recast Insolvency Regulation has a wider scope of application than the previous Council Regulation and includes public collective proceedings, interim proceedings and pre-insolvency proceedings which aim to rescue the business and avoid the insolvency. The procedures should be conducted either under the control of or supervision by a court or an appointed insolvency practitioner, or a temporary stay of individual enforcement proceedings should be granted by a court or by operation of law, in order to allow for negotiations between the debtor and its creditors. The Annex A of the Recast Insolvency Regulation provides a full list of procedures that fall under the Recast Insolvency Regulation.

The jurisdiction over the main insolvency proceedings is determined according to centre of main interests (COMI) of the debtor and is established in the relevant Member State where the debtor has its COMI. The COMI is presumed to be at the place of the registered office of the debtor company, unless otherwise proved. Additionally, the presumption will only apply if the registered office has not been moved to another Member State within the three-month period prior to the filing of the application for the insolvency proceedings. In this regard, the Recast Insolvency Regulation aims to discourage 'forum shopping' seeking to obtain more favourable conditions to the detriment of the general body of creditors. The Recast Insolvency Regulation also addresses the issues caused by the opening of secondary proceedings which were often considered disruptive. To this end, the regulation provides that secondary proceedings may only be initiated in a Member State where the debtor has an establishment and will be limited to the assets that are located in that Member State. In specified circumstances, the opening of the secondary proceedings may be refused by the court provided that the interests of the local creditors are adequately protected.

Another important feature of the Recast Insolvency Regulation relates to the enforceability of court judgements. According to the EU legislator, the court judgement opening the insolvency proceedings which was handed down by the competent court should be recognised in all Member States following the moment when it becomes effective in the Member State opening the proceedings.

In order to enhance the procedural efficiency of insolvency proceedings concerning different members of a group of companies, the Recast Insolvency Regulation provides for rules on cooperation and communication between the insolvency practitioners and courts involved in different procedures and even allows for a coordinated cross-border restructuring of the group.

Finally, the Recast Insolvency Regulation introduced some additional procedural provisions facilitating the conduct of the insolvency proceedings. Most importantly, it required the Member States to establish national insolvency registers where information concerning insolvency proceedings will be published. As a next step, the databases should be interconnected, and an EU-wide electronic register of insolvency proceedings should be created.

[16] The Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), hereafter referred to as Recast Insolvency Regulation, available at: **www.eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32015R0848**

3. SME insolvency

One of the most recent legislative trends relates to the treatment of small and medium-sized enterprises (SMEs) being insolvent or at the verge of insolvency. Recently, the World Bank as well as the EBRD have been dealing with the issues that SMEs face in financial difficulties, aiming to highlight the special needs that this type of enterprises may have and to provide possible solutions by also considering some SME-specific legislation that is already in place in certain economies. Further consideration should be given to the fact that SMEs have been particularly hit by the Covid-19 pandemic as they have smaller operating capital and less resources available. This section analyses both the World Bank publication and the EBRD memorandum on insolvency reforms targeting SMEs.

3.1. The World Bank Report on the Treatment of MSME Insolvency

The World Bank Report on the Treatment of micro, small and medium-sized enterprise (MSME) Insolvency was published in 2017 and is the result of the panel presentation that took place during the 2015 meeting of the World Bank Group's Insolvency and Creditor/Debtor Regimes Task Force (the ICR Task Force) and subsequent discussions among Task Force members in 2016 in which the EBRD also took part. The report aimed to address the challenges, needs and responses to MSME insolvency. The report acknowledges the lack of a uniform definition of MSMEs (or SMEs), the economic importance of these enterprises – as they constitute the majority of businesses – and the challenges that they face due to the smaller capital, lower market share, smaller workforce, and fewer resources overall as compared to large enterprises.[17]

Within the insolvency context, the report outlines the challenges that are specific to MSMEs in financial difficulties. These include:

1. Incentives to access the procedure;
2. Creditor passivity;
3. Limited information during insolvency;
4. Accessing financing during the insolvency proceeding;
5. Overlaps between business insolvency and personal insolvency regimes;
6. Insufficient assets to fund the insolvency proceedings.

The report further analyses the existing approaches to the MSME insolvency by referring to the existing systems in Argentina, Germany, Greece, India, the Organisation for the Harmonisation of Business Laws in Africa (OHADA) and the United States, and highlights that these jurisdictions resort to elimination of certain elements of the proceedings and shortening of timeframes in order to address the above issues. In contrast, economies such as Japan and South Korea are considered to have taken a different approach and have passed a comprehensive legislation specifically designed for MSMEs.

The following conclusions are outlined as the result of the work undertaken by the ICR Task Force:

1. Any definition of MSME insolvency should not be overly prescriptive;
2. MSME issues may be addressed through specific provisions in the existing insolvency frameworks;
3. Insolvency frameworks should also focus on expeditious liquidation mechanisms;
4. Jurisdictions should consider providing out-of-court assistance to MSMEs;
5. Further exploration is needed between the intersection of personal insolvency frameworks and MSME insolvency.

The work carried out by the World Bank in their Report on the Treatment of MSME Insolvency (2017) has informed the ICR Principles revision of 2021 to incorporate the new section on Insolvency of Micro and Small Enterprises (MSEs) and on Simplified Insolvency Proceedings.

It should also be mentioned that a number of countries, including Australia and Singapore, have introduced amendments recently to facilitate SMEs' rescue, albeit Singapore's amendments are on a temporary basis in response to the Covid-19 generated economic crisis. Other countries such as Kosovo, Argentina and South Korea have had an SME insolvency regime for some time. Common features of the new legislative initiatives include: a more limited role of insolvency practitioners/trustees; a single majority threshold for plan approval; a simplified plan confirmation procedure with fewer formal requirements and/or shorter deadlines; debtor-in-possession; and the use of electronic means of communication and electronic voting procedures. Moreover, UNCITRAL's Working Group on insolvency has presented a final draft text on a simplified insolvency regime which was approved in principle at the 54th session held in June-July 2021.

[17] See World Bank Report on the Treatment of MSME Insolvency, 2017, p. 5, available at: **www.openknowledge.worldbank.org/handle/10986/26709**.

Key objectives of the draft simplified insolvency regime according to the UNCITRAL document are as follows:

(a) Putting in place expeditious, simple, flexible and low-cost insolvency proceedings;

(b) Making simplified insolvency proceedings available and easily accessible to micro and small enterprises (MSEs);

(c) Promoting the MSE debtor's fresh start by enabling expedient liquidation of non-viable MSEs and reorganisation of viable MSEs through simplified insolvency proceedings;

(d) Ensuring protection of persons affected by simplified insolvency proceedings, including creditors, employees and other stakeholders;

(e) Providing for effective measures to facilitate creditor participation and address creditor disengagement in simplified insolvency proceedings;

(f) Implementing an effective sanctions regime to prevent abuse or improper use of the simplified insolvency regime and to impose appropriate penalties for misconduct;

(g) Addressing concerns over stigmatisation because of insolvency; and

(h) Where reorganisation is feasible, preserving employment and investment.[18]

It is important to state that the document expressly requires that the adopting states ensure that all debts of an individual entrepreneur are addressed in a single simplified insolvency proceeding unless the respective state decides to subject some debts of individual entrepreneurs to other insolvency regimes. The document envisages a simplified regime for both liquidation and reorganisation of the debtor's assets and liabilities. It also specifies that the simplified insolvency regime should have short time periods for all procedural steps, narrow grounds for their extension and a tight limit to the maximum number, if any, of permitted extensions. Furthermore, consistent with the objective of establishing a cost-effective simplified insolvency regime, the proposed regime should reduce formalities for all procedural steps, including for submission of claims, for obtaining approvals and for giving notices and notifications. It is notable that in the proposed new proceedings, the debtor should remain in control of its assets and the day-to-day operation of its business with appropriate supervision and assistance of a competent authority, subject to certain exceptions.

The draft UNCITRAL text provides for a simplified insolvency regime putting in place expeditious, simple, flexible and low-cost insolvency proceedings that are available and easily accessible to micro and small enterprises.

The following are the key features of the recent legislative amendments in Australia and Singapore to support SME rescue:

1. Key features of the Australian simplified procedure include: an eligibility criterion to enter into the new process based on liabilities of the debtor; the debtor remains in possession during the procedure; a more limited role for the small business restructuring practitioner; and voting through online methods.

2. Key features of the simplified procedure in Singapore include: an eligibility criterion based on liabilities, number of employees and creditors; the court can approve the scheme without a hearing; and a single creditor approval threshold (two-thirds in value) then required in a typical scheme of arrangement (majority in number holding 75% in value).

There is an increased recognition by policymakers of the importance of SME-specific insolvency systems that was caused by the fact that SMEs are particularly vulnerable to the Covid-19 generated economic crises. One of the main incentives for adopting the new legislation was to reduce the costs of restructuring procedures. It is also important to note that the bills of laws in both economies have included simplified winding up (liquidation) procedures, which is in line with the conclusions of the World Bank Report discussed above.

[18] UNCITRAL, Working Group V (Insolvency Law), Draft recommendations on a simplified insolvency regime considered by the Working Group at its fifty-seventh session with accompanying commentary (A/CN.9/WG.V/WP.172), Key Objectives, p. 2, available at: **www.undocs.org/en/A/CN.9/WG.V/WP.172.** The commentary is expected to be finalised during the December session of the UNCITRAL Working Group V (Insolvency Law) and published together with the Legislative Recommendations under the title "UNCITRAL Legislative Guide on Insolvency Law for Micro and Small Enterprises" as part five of the UNCITRAL Legislative Guide on Insolvency Law and as part of the UNCITRAL MSMEs text series.

D. Selected benchmarking economies

The section below analyses the reorganisation framework of four economies that were selected for benchmarking purposes. The Assessment Team chose to review the reorganisation procedures available in France, Germany and the UK from the European economies. The UK has long been considered the restructuring hub in Europe and world-wide, and has attracted several companies in financial difficulties due to its flexible and fast tools such as the scheme of arrangement, which has now been supplemented by the restructuring plan (see below). The insolvency system of France contains six different reorganisation procedures for different stages of financial distress and for purposes of preventing or curing this distress. Germany, on the contrary, long had only one formal reorganisation procedure which was frequently applied in practice and which is now supplemented by a separate procedure under the Restructuring Code, which transposes the EU Restructuring Directive. To refer to global reorganisation practices, the Assessment Team also took into consideration the chapter 11 of the US Bankruptcy Code which was one of the pioneer procedures to allow for the debtor to maintain the control over is assets and continue trading. Chapter 11 has been applied in reorganisations of several large companies and has partially been the inspiration for the Directive.

4.1 France

The French reorganisation framework contemplates a number of procedures aiming at reaching an amicable agreement with creditors and reorganising the debtor's business. The procedures may be distinguished according to their purpose and whether they are conducted during the preventive (pre-insolvency) or curative phase, according to the gravity of the debtor's position. The following analysis provides an overview of all available reorganisation options.

It should be noted that by the Ordinance No. 2021-1193, dated 15 September 2021 and effective as at 1 October 2021, the EU Restructuring Directive was fully transposed into the French legal system, by amending Book V of the Commercial Code on reorganisation and collective proceedings. The reform does not apply retrospectively to any ongoing proceedings. A major impact of the transposition of the EU Restructuring Directive was that expedited financial restructuring proceedings (procedure de sauvegarde financière accélérée) were abolished.

The analysis below is based on the French framework following transposition of the EU Restructuring Directive.

The early warning mechanism (procédure d'alerte) aims to detect potential issues within the company with the help of the company's management. It can only be employed if the identified difficulties may be overcome, and the debtor is not in default (cessation des paiements) according to the cash flow insolvency test. This procedure is similar to an early warning system which aims to detect the approaching difficulties at an early stage. Following the Ordinance No. 2021-1193, dated 15 Sept. 2021, the power of the president of the court is reinforced by allowing him to initiate a 'mini-investigation' phase as soon as he summons the director. Previously the court president had to wait until the end of the interview with the director or until the director's failure to appear for such interview to launch an investigation.

Another out-of-court procedure is the mandate ad hoc procedure (mandat ad hoc) which is only available in the pre-insolvency stage when the company is solvent according to the French cash flow test (cessation des paiements) and may only be initiated at the application of the debtor's management. A mandataire ad hoc is appointed by the president of the commercial court with the task of assisting the management in negotiating an amicable agreement with all or part of the debtor's creditors.

The precise scope of duties and powers of the mandataire ad hoc is determined by the president of the court on a case-by-case basis and does not include replacing the debtor's managing bodies. As the procedure does not have a limited timeframe, the appointment of the mandataire ad hoc may last until an agreement is reached. The procedure itself is confidential, private in nature and does not provide for the judicial involvement for purposes of approving the agreement. As the debtor cannot benefit from a statutory stay on creditors' enforcement actions, the mandataire ad hoc will usually enter into a standstill agreement with creditors.

The conciliation procedure (procédure de conciliation) is – similar to the mandate ad hoc procedure – a voluntary and private negotiation process aimed at reaching an amicable agreement with the main creditors (principaux créanciers) under the supervision of a conciliator (conciliateur). The procedure may be commenced upon the application of the debtor if the company is facing existing or foreseeable legal, economic or financial difficulties and is not in default (cessation des paiements) for more than 45 days. The conciliation procedure does not foresee a stay on enforcement actions. However, during the procedure, the debtor may ask the judge to postpone or reschedule the payment, within the limited time period of the conciliator's mission, of a claim due or to be due. The procedure itself lasts up to four months and may be extended by another month. Different from the ad hoc procedure, the conciliation agreement can be endorsed by the commercial court either by way of judicial certification or by means of a formal approval (homologation). The judicial certification has the advantage that the agreement remains confidential, while the formal confirmation will be made available to the public, even if the content of the agreement remains confidential.

The formal confirmation can be affected by the court if the following requirements are satisfied: the debtor is not in default or the proposed agreement resolves such situation; the agreement allows the continuation of the business; and the agreement does not affect the interests of the creditors who did not participate in the agreement. The formal confirmation offers new creditors to benefit from a super-priority status over all existing creditors (except: subsidies due to the debtor's manager; super-senior wage claims; post-judgement legal fees; and specific new lien granted to agricultural producers) should the debtor become subject to insolvency proceedings after the conciliation procedure. Additionally, new financing provided within the agreement may not be declared void in the subsequent insolvency proceedings.

The transposition of the EU Restructuring Directive created a new regime regarding the voidance or the failure of an amicable agreement under the conciliation procedure. This should prevent any provisions of an agreement whose purpose is to secure a reorganisation and its consequences from being declared void or unenforceable as a result of the opening of a collective procedure. This clarification of the validity of such provisions aims to protect security granted in the context of the conciliation agreement.

The safeguard procedure (procédure de sauvegarde) constitutes a formal, court-supervised reorganisation procedure which is available to companies that are still solvent according to the cash flow test and that face difficulties that cannot be overcome. The application for opening of the procedure can be filed by the debtor solely and results in appointing an insolvency judge who supervises the proceedings, an administrator (administrateur judiciaire) to assist the debtor's management in negotiating the plan and a creditors' representative (mandataire judiciaire). Similar to conciliation and the mandate ad hoc procedure, the safeguard proceedings are conducted as debtor-in-possession proceedings (certain acts are however subject to a double signature when the administrator has been appointed with an assistance mission). The initial stage (observation period) where the negotiations with creditors take place, lasts up to six months and can be extended for a maximum period of 12 months in total. Creditors are required to register their claims. Should the debtor company have more than either: 250 employees and €20 million of turnover; or €40 million of turnover, the law provides for the constitution of classes of affected parties in order to vote on the restructuring plan. According to the new regime: classes of affected parties are constituted by the administrators and are required to vote on the restructuring plan (to be presented by the debtor and/or administrators). The approach to classification is as follows provided that the new legislation presents guidelines rather than explicit and detailed rules:

- only parties who are affected by the restructuring plan can be included in the classes;
- creditors sharing a sufficient commonality of interests will be in the same class and should benefit from equal treatment under the restructuring plan;
- to constitute classes, administrators take in consideration (amongst other things) existing subordination agreements and security packages (there are likely to be separate classes for secured creditors, shareholders, preferential creditors and strategic suppliers);
- certain claims such as those arising from employment contracts or those secured by a fiducie cannot be affected by a restructuring plan.

To be adopted, the restructuring plan must be approved by a two-third majority vote within each class. After the restructuring plan has been adopted with a two-third majority vote, it must be approved by the court. Before rendering its decision, the court verifies that the overall process has been conducted in accordance with applicable rules.

The court also verifies (amongst other things) that individual dissenting creditors are no worse off than in a liquidation scenario (the best interests of creditors test). The restructuring plan can be imposed by the court on dissenting creditors or creditor classes (cross-class cram down) where the two-third majorities have not been met, provided several conditions are met, namely:

- the restructuring plan has been approved by: a majority of the classes of affected parties, provided that at least one of those classes is secured or senior to ordinary unsecured creditor (créanciers chirographaires); or at least one of the classes of affected parties, other than a shareholders' class, which would be entitled to be paid based on the order of priority of creditors and in respect of the value of the debtor as a going concern in case of distribution of assets in compulsory liquidation or the sale of business (upon a valuation of the company by an independent expert);
- the restructuring plan must comply with the absolute priority rule (dissenting senior creditors must be fully repaid when a junior ranking class is entitled to be paid or retains an interest).

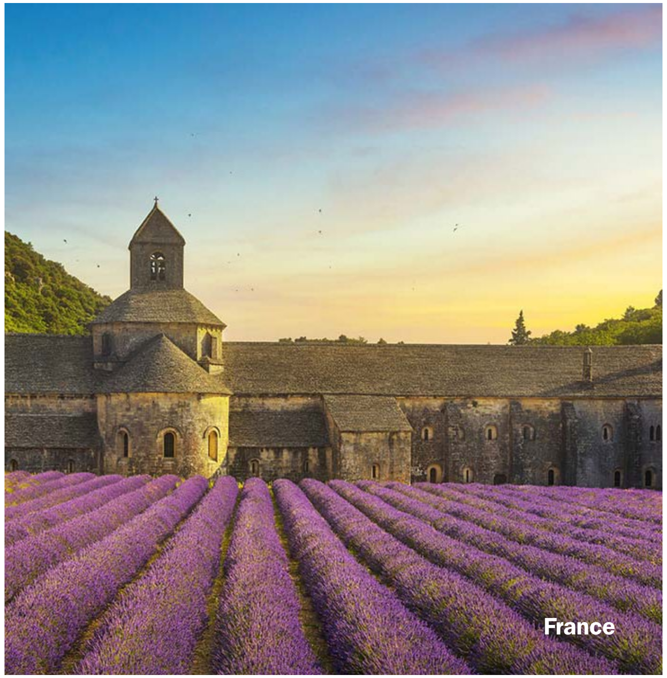
In the event the cross-class cram down is used against a shareholders' class, the court also verifies that additional conditions are met. The court's confirmation of the approved plan makes it binding on all parties, including the dissenting creditors within a class.

Ordinance No. 2021-1193 also provides for an accelerated safeguard proceedings (procédure de sauvegarde accélérée) where the time period for the adoption of the plan is two months following the decision commencing the proceedings, with a possible extension of two more months. The accelerated safeguard proceedings require a conciliation procedure to be pending and to be supported by a sufficient number of creditors that makes it likely that the required majority for the approval of the safeguard plan will be achieved. The accelerated safeguard proceedings are available upon the application of the debtor. The Ordinance No. 2021-1993 has enlarged the scope of application of the accelerated safeguard procedure to all companies whose accounts have been certified by a statutory auditor or which have been drawn up by a chartered accountant.

Lastly, the French law provides for a fully-fledged court-supervised judicial rehabilitation procedure (procédure de redressement judiciaire) which can be commenced within 45 days after the debtor becomes insolvent according to the cash flow test. The application to the court may be made by the debtor, any of its creditors or the public prosecutor. An insolvency judge has oversight over the proceedings, while an insolvency administrator is appointed to assist the management in negotiation of the rehabilitation or, unlike the safeguard proceedings, to replace the debtor's managing bodies. The initial stage (observation period) where the negotiations with creditors take place, lasts up to six months and can be extended for a maximum period of 18 months in total. Similar to the safeguard proceedings, a creditors' representative will also be appointed. As at the transposition of the EU Restructuring Directive, any of the affected parties can propose a draft judicial rehabilitation plan and only affected parties are allowed to vote in classes. Similar to the safeguard plan and, for companies of certain size, the judicial rehabilitation plan requires, at least, secured creditors, unsecured creditors and shareholders to vote in separate classes. In rehabilitation proceedings, should no restructuring plan be implemented, the court can impose a term-out over a maximum of 10 years. Furthermore, if no reorganisation is possible within the frame of a restructuring plan, the court can impose a sale of the assets as a going concern following an auction process organised under the supervision of the administrator.

One of the changes endorsed with the Ordinance No. 2021-1993 is that in all safeguard proceedings and in judicial rehabilitation proceedings, the term "creditors committee" is replaced with the term "classes of affected parties". Affected parties are considered to include: creditors whose rights are directly affected by the proposed plan; and any equity holders whose equity interest or rights are modified by the draft plan.

During all above pre-insolvency and insolvency procedures, the debtor is protected from third party termination provisions on the grounds of insolvency (so-called ipso facto clauses) as creditors are prohibited from accelerating a loan or terminating a contract solely on the ground of commencing any of the procedures.



	Procedure d’alerte	Mandat ad hoc	Conciliation	Sauvegarde	Sauvegarde accélérée	Redressement judiciaire
Who?	The Debtor, auditors, or President of the court.	The Debtor	The Debtor	The Debtor	The Debtor who is already in a conciliation process and has an advanced plan with the creditors for the survival of the company	The Debtor, creditor or public prosecutor
What is the process about?	Collection of information to be provided to auditors and/ or President of the court	Depends on the actual purpose of the mandate ad hoc	Reorganisation or sale of the company as a going concern	Reorganisation or partial sale of the activity	Reorganisation	Reorganisation, sale of the company as a going concern, or sale of the assets
Insolvency practitioner?	No	Mandataire ad hoc upon request of the debtor	Conciliateur upon request of the debtor	(1) Juge-commissaire (insolvency judge) (2) Mandataire judiciaire (acting for the creditors) (3) Administrateur judiciaire (acting for the debtor) However, the court is not required to appoint an administrator when the proceedings are opened for a debtor whose number of employees and turnover (excluding tax) are below thresholds set by decree by the Conseil d’État	(1) Administrateur judiciaire (acting for the debtor), who can be the conciliator if also in the list of insolvency practitioners (2) Mandataire judiciaire (acting for the creditors) (3) Juge-commissaire (insolvency judge)	(1) Mandataire judiciaire (acting for the creditors) (2) Administrateur judiciaire (acting for the debtor) (3) Juge-commissaire (insolvency judge)
Moratorium?	No	No	During the procedure, the debtor may ask the judge to postpone or reschedule the payment, within the limited time period of the conciliator’s mission, of a claim due or to be due	Automatic stay of payments and actions. No payment of debts except set off and sustenance claims. Security holders are also subject to the moratorium	Yes. No payment of debts except set off and sustenance claims. Security holders are also subject to the moratorium. The creditors can pursue legal actions before the court but they cannot enforce	Yes. No payment of debts except set off and sustenance claims. The creditors can pursue legal actions before the court but they cannot enforce

	Procedure d'alerte	Mandat ad hoc	Conciliation	Sauvegarde	Sauvegarde accélérée	Redressement judiciaire
Majorities?	N/A	N/A	N/A	The claims should be declared. In case of classes of affected parties (due to the size of the company) 2/3 in value within each class. In case of a cram down: (i) a majority of the classes of affected parties, provided that at least one of those classes is secured or senior to ordinary unsecured creditor or (ii) at least one of the classes of affected parties is "in the money" other than a shareholders' class	The claims should be declared and especially all the claims that were part of the conciliation. Mandatory classes: 2/3 in value within each class. In case of a cram down: (i) a majority of the classes of affected parties, provided that at least one of those classes is secured or senior to ordinary unsecured creditor or (ii) at least one of the classes of affected parties is "in the money" other than a shareholders' class	The claims should be declared. In case of classes of affected parties (due to the size of the company) 2/3 in value within each class. In case of a cram down: (i) a majority of the classes of affected parties, provided that at least one of those classes is secured or senior to ordinary unsecured creditor or (ii) at least one of the classes of affected parties is "in the money" other than a shareholders' class
Who does it bind?	N/A	Participants only	Participants only	Everyone	Affected parties	Everyone
Special features?	N/A	Confidential	Confidentiality if the agreement is confirmed, public disclosure if the agreement is ratified. If the agreement is ratified, any new money during the conciliation gets super priority over all other creditors in case of a safeguard procedure, judicial rehabilitation procedure or judicial liquidation procedure	New money, in the form of loans, capital increase or new equity subscription, gets super priority even over secured creditors but after employees claims. New equity subscriptions, linked to the execution of the plan, also benefit from protection against any rescheduling. For the rest of the new money, rescheduling and write-off are possible except for the creditors who have provided new money in a conciliation procedure	New money, in the form of loans, capital increase or new equity subscription, gets super priority even over secured creditors but after employees claims. New equity subscriptions, linked to the execution of the plan, also benefit from protection against any rescheduling. For the rest of the new money, rescheduling and write-off are possible except for the creditors who have provided new money in a conciliation procedure	If no reorganisation is possible, the court can impose the sale of the assets as a going concern. If no 2/3 majority is met, the court can impose a term-out over a maximum of 10 years. New money, in the form of loans, a capital increase or new equity subscription, benefits from super priority even over secured creditors but after employee claims. New equity subscriptions, linked to the execution of the plan, also benefit from protection against any loss of priority. For the rest of the new money, rescheduling and write-off are possible except for the creditors who have provided new money in a safeguard procedure

4.2 Germany

Germany recently introduced the Code on continued Development of Restructuring and Insolvency Law (Gesetz zur Fortenwicklung des Sanierungs- und Insolvenzrechts – SanInsFOG) (the Reform Bill) which came into force on 1 January 2021. The first part of the Reform Bill implements the EU Restructuring Directive (the Directive) and contains the Code on Business Stabilisation and Restructuring (Unternehmensstabilisierungs- und restrukturierungsgesetz – StaRUG) (the Restructuring Code)[19] and sets out the new German restructuring regime. Additionally, the Reform Bill complements the insolvency plan procedure (Insolvenzplanverfahren) and provisions on self-administration (Eigenverwaltung) under the Insolvency Act (Insolvenzordnung).[20] The reorganisation options under both the new Restructuring Code and the Insolvency Code are analysed below.

a) Stabilisation and restructuring frameworks

The Restructuring Code sets out the stabilisation and restructuring frameworks as the primary regime for business rescue. The restructuring plan is at the heart of that regime and can be supported by additional stabilisation and restructuring instruments that require a formal application to the court. These additional supportive measures are: plan voting supervised by the court; preliminary judicial assessment of certain issues relevant for plan confirmation; measures restricting the individual enforcement actions (so-called stabilisation); and judicial confirmation of the restructuring plan. The German response to the Restructuring Directive is a 'toolbox' of several mechanisms, giving the debtor the freedom to choose which instrument or combination of instruments to employ.

The stabilisation and restructuring instruments are available upon a formal notification of the restructuring court about the intended restructuring in the case that the debtor is facing imminent illiquidity (drohende Zahlungsunfähigkeit) during a period of 12 – 24 months from the moment of entering into the restructuring process. The restructuring regime is a debtor-in-possession procedure without the requirement to displace the debtor's management. In specified circumstances a restructuring expert (Restrukturierungsbeauftragter) may be appointed by the court with mainly supervisory and administrative duties, including the duty to assess the debtor's economic situation. As one of such stabilisation and restructuring instruments, a moratorium may be ordered by the court if necessary to safeguard the prospects of a successful restructuring for the initial duration of up to three months and with the possibility to be extended up to eight months.

The debtor has the possibility to make an offer of a restructuring plan to creditors whose claims will be affected by the plan without requesting any of the additional court-supervised instruments. The Restructuring Code also allows for private (no court involvement) voting on the plan. However, a restructuring plan is only valid and binding for opposing creditors if additionally confirmed by the restructuring court. For voting purposes, the Restructuring Code sets out mandatory, separate classes for secured creditors, unsecured creditors, lower-ranking creditors and holders of shares or membership rights; additional classes may be formed based on the economic interests of the creditors in the debtor's estate. The restructuring plan requires the approval of 75 per cent by value of claims of affected creditors without the additional requirement of the majority in number of creditors. In line with the Directive, the restructuring court may confirm the plan even if it has not been supported by all voting classes (cross-class cram down), provided that certain requirements, including the 'best interests of creditors test', for safeguarding the interests of dissenting creditors have been satisfied.

The Restructuring Code also contains an additional procedure aimed at rescuing the business. The voluntarily rescue mediation as set out by the Code may be employed if the debtor is in economic or financial difficulties (but not yet insolvent) and constitutes a private negotiation process supported by a rescue mediator appointed and supervised by the court (Sanierungsmoderator). The debtor may also apply for confirmation of the restructuring settlement (Sanierungsvergleich) by the restructuring court, which limits the possibilities of the settlement being voided in a subsequent insolvency proceeding of the debtor. However, the rescue mediation does not provide for any stay on enforcement actions or any cram down provision for dissenting creditors.

b) Further amendments to insolvency plan and debtor-in-possession procedure

The German Insolvency Code provides for an insolvency plan procedure as part of the court-supervised formal insolvency proceeding allowing a restructuring or sale of the debtor's business as opposed to and as an alternative to its liquidation. It may only be employed following a formal commencement of insolvency proceedings which has the access threshold of over-indebtedness (balance sheet insolvency) or (imminent) illiquidity (cash flow insolvency). During insolvency proceedings, the debtor is supported by a moratorium covering all types of creditors' claims. Upon separate application, the debtor may also be granted the possibility to remain in possession and manage its business and assets. An insolvency procedure (plan) may be preceded by so-called protective umbrella proceedings (Schutzschirmverfahren) which require an insolvency application at an early stage, for example, when the debtor is still able to meet its due debts, and allow the debtor to remain in possession and prepare an insolvency plan. An insolvency plan procedure ultimately requires approving of the insolvency plan by the creditors within separate classes – similar to the restructuring regime under the new Restructuring Code. The approval of an insolvency plan requires that a majority in number

[19] The Restructuring Code (Unternehmensstabilisierungs- und restrukturierungsgesetz – StaRUG) of 22 December 2020, (Federal Law Gazette I page 3256).

[20] The Insolvency Code (Insolvenzordnung) of 5 October 1994 as amended (Federal Law Gazette I page 2866).

of voting creditors in each class supports the plan and that the sum of claims of consenting creditors exceeds 50 per cent of the sum of claims of voting creditors in each class. An insolvency plan that can also lead to a cross-class cram down requires confirmation by the insolvency court.

The Reform Bill includes some minor amendments to the insolvency plan rules such as the possibility to affect secured creditors within a group of companies. Additionally, the requirements to apply for debtor-in-possession proceedings have been tightened, e.g., the debtor now needs to present to the court a (positive) liquidity plan for at least six months showing well-founded financing sources.

4.3 The UK

The UK insolvency legislation was recently reformed by the Corporate Insolvency and Governance Act 2020 (CIGA 2020) which received Royal Assent on 25 June 2020. The Act provides for permanent as well as temporary amendments to the insolvency laws and was enacted (partially) in response to the Covid-19 pandemic to give support to businesses during the crisis. Permanent amendments established a new stand-alone moratorium, prohibited third-party termination provisions on the grounds of insolvency (ipso facto clauses) such as supply contracts, and, most importantly, introduced a new business reorganisation tool: the arrangements and reconstructions for companies in financial difficulty (the restructuring plan).

The restructuring plan, similar to the schemes of arrangement, is set out in the Companies Act 2006 as a procedure mainly aimed at financial restructuring. The restructuring plan is the new restructuring tool in the UK with limited court involvement, incorporating the cross-class cram down which was not available before the insolvency reforms. It provides for a compromise or arrangement between the company and its creditors, or its members, if the debtor has encountered, or is likely to encounter, financial difficulties affecting its ability to carry on business as a going concern. Accordingly, the purpose of the restructuring plan is to eliminate, prevent, or mitigate the effects of the financial difficulties. As a stand-alone restructuring tool, it is not automatically supported by a moratorium, which may only be triggered upon a separate application. The plan may be confirmed by the court and therefore become binding on all affected creditors if it is approved by 75% in value by each creditors' class, present and voting either in person or by proxy at the voting meeting. Should one of the voting classes object to the plan, the court may nevertheless confirm the proposal if the dissenting class would be any worse off than in the event of a relevant alternative if the plan was not sanctioned, and it is approved by 75% in value of a creditors' class with a genuine economic interest in the company, in the event of the relevant alternative.

The scheme of arrangement is a court-approved arrangement between a company and its creditors used to reorganise its debts. The scheme of arrangement is not classed as an insolvency proceeding and most of the procedure takes place privately, without the involvement of the court or an insolvency practitioner. Nevertheless, the court has to sanction the meeting of creditors for voting on the proposal and, once an agreement has been reached, it needs to be confirmed by the court. Unlike the restructuring plan, the scheme of arrangement does not require the company to be in financial difficulties. In order to vote on the proposed scheme, the shareholders and affected creditors are divided into appropriate classes by reference to their shared economic interests, whereas 'out of the money' creditors, in other words creditors which would not expect to receive any payment in an insolvent liquidation, do not vote. The scheme is deemed to be approved if it is supported by 75% in value and by the majority of creditors present and voting in each class. However, the court does not have the discretion to impose the scheme on a dissenting class of creditors and confirm it despite the objection of that class.

Furthermore, the UK reorganisation framework provides for the company voluntary arrangements (CVAs) which is available to companies in financial difficulties with a view to continuing business. CVAs are typically proposed where a company is heavily indebted, so that it is unable to service all of its debt, but where its underlying business is sound and profitable. The arrangement cannot affect the rights of secured creditors to enforce their security or the rights of preferential creditors without their consent. Therefore, CVAs are usually used for financial restructuring of unsecured creditors (typically landlords). Furthermore, CVAs may be supported by a limited moratorium on the enforcement actions only in case of small companies. A voluntary arrangement may be proposed by the directors of the company, or by the administrator if the company is already in administration, or by the liquidator if the company is already in liquidation, while the proposal must nominate a person (the 'nominee') responsible for supervising the implementation of the voluntary arrangement. To approve the arrangement, the majority of creditors representing at least 75% in value of those attending the meeting (including proxies) and voting but excluding secured creditors as well as the majority of creditors who are not connected with the company, should vote in favour. For shareholders, a simple majority of the votes cast is sufficient.

Lastly, a company that is, or is likely to become, unable to pay its debts, may undergo the administration procedure. Administration is a formal, court-supervised reorganisation procedure which may lead to either: the rescue of the company as a going concern; the achievement of a better result for the company's creditors than if the company were wound up; or the realisation of property to distribute to the secured or preferential creditors. In practice, the procedure is usually employed to realise the assets by selling the business as a going concern. An advantage of administration is that the debtor benefits from a moratorium, applying to secured as well as unsecured creditors. The procedure involves the appointment of an administrator who acts in the interest of all creditors and takes over the control of the company, with a view to achieving the administration objectives. In most cases, the administration is conducted as a 'pre-packaged reorganisation' where the deal is agreed with creditors prior to the filing for the procedure.

Requirements	Schemes	Restructuring plan	CVAs	Administration
Who?	A company that can be wound up under Insolvency Act 1986/ sufficient connection (assets in England; COMI; or, contracts with UK jurisdiction)	A company that can be wound up under Insolvency Act 1986/sufficient connection	Companies which have a UK COMI	A company which must be, or be likely to become, unable to pay its debts
What the process is all about?	A plan is drafted providing for financial restructuring	A plan is drafted providing for financial restructuring	A plan is drafted providing for financial restructuring	The company may be dissolved by the administrator; or, the administration may be converted into a creditors' voluntary liquidation. Business is sold as a going concern
Moratorium?	No (can be contractually agreed or run in parallel with an administration to benefit from a moratorium)	No (separate application for the moratorium may be made)	Only for small eligible companies	Yes (after Administrator is appointed)
Insolvency practitioner?	No requirement to have a scheme administrator (if appointed, not required to be an insolvency practitioner)	No	The nominee/supervisor must be a licensed insolvency practitioner	The nominee must be a licensed insolvency practitioner
Majorities?	75% value + >50% numerosity in each class	75% in value in each class	(1) 75% in value of unsecured present and voting + contingent and future (+sub-test: 50% in value of unconnected creditors) (2) >50% of companies' members present and voting	Blessing of the route proposed by the Administrator (which will specify the exit strategy) in the initial statement of proposal
Who does it bind?	Secured and unsecured creditors	Secured and unsecured creditors	Unsecured creditors (not secured or preferential)	Unsecured and preferential creditors
Special features?	(1) Quick, efficient, used to cram down dissenting creditors including secured (2) Configuration of classes is the key (3) Limited court involvement	(1) Quick, efficient, used to cram down dissenting creditors including secured (2) Configuration of classes is the key (3) Limited court involvement	(1) Intended to come to an arrangement with creditors over the payment of their debts (2) No court involvement (except challenge) (3) Secured creditors can vote for their 'undersecured' part	(1) Intended to either: rescue the company as a going concern; get a better result for the company's creditors than if the company were wound up; or realise property to distribute to the secured or preferential creditors (2) Administrator's in- or out-of-court appointments (3) Mostly done as pre-packaged deals (fait accompli + phoenix companies) (4) The legal entity cannot continue: only used to benefit from the moratorium (5) Negative stigma (insolvency process)

4.4 The US

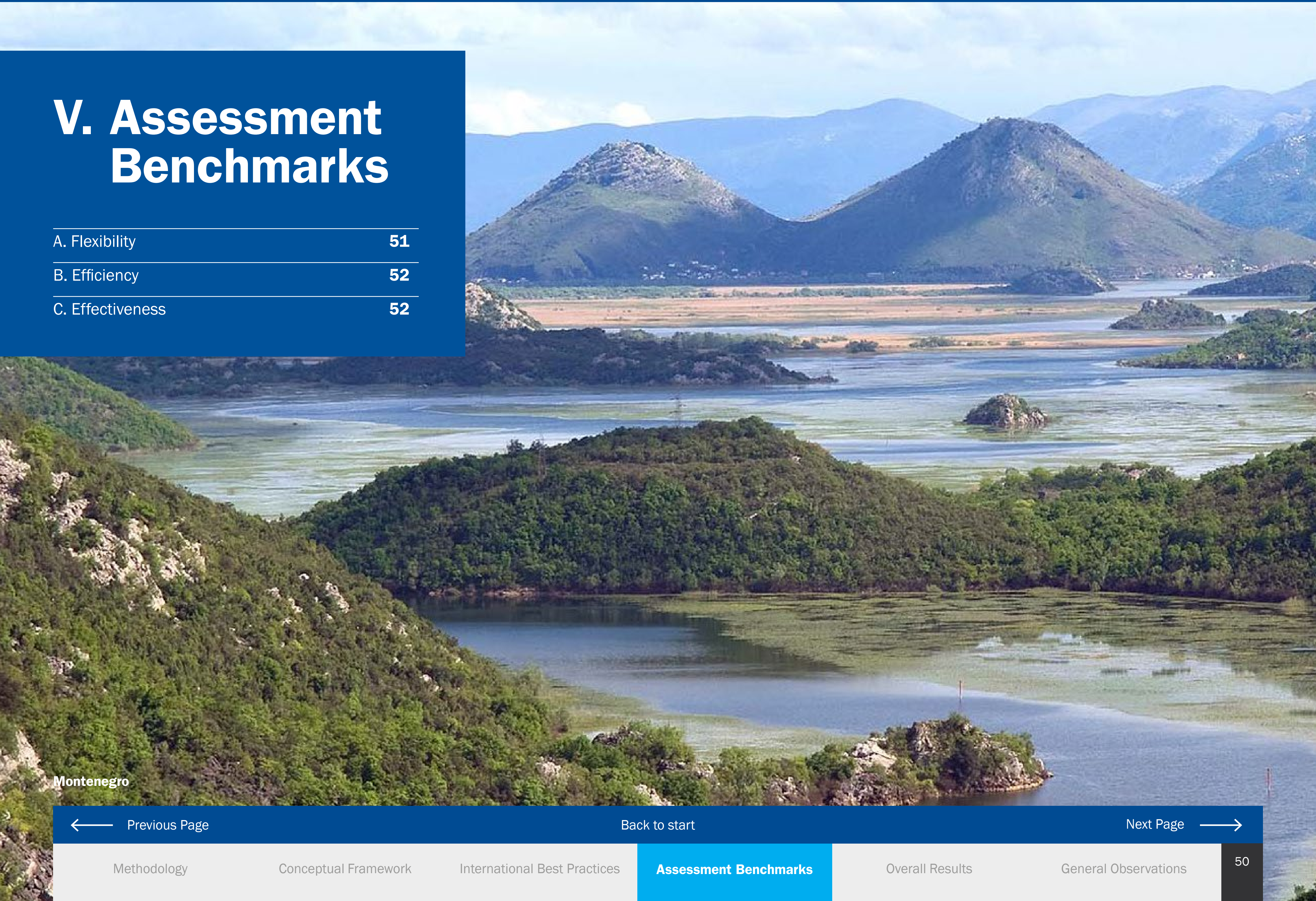
The US Bankruptcy Code provides under Chapter 11 for a court-supervised reorganisation procedure that allows the debtor to reorganise its business, continue operations and make a fresh start. The reorganisation is achieved by the preparation of a reorganisation plan that needs to comply with the requirements set out by the law and should be confirmed by the federal bankruptcy court in order to become effective. The reorganisation procedure can be commenced by the debtor upon a voluntary or involuntary filing and by creditors if the debtor is unable to service its debts. The application under the Bankruptcy Code triggers an automatic stay on creditors' enforcement actions, any other actions that aim to seize the debtor's assets, as well as litigation actions against the debtor. Interestingly, secured creditors enjoy a special treatment during the procedure and should be adequately protected if the value of their collateral is declining. In specified circumstances, secured creditors may also be exempted from the moratorium.

The reorganisation procedure is often referred to as a 'debtor-in-possession' (DIP) procedure since, as a rule, the debtor remains in possession of its business and can continue its operations, unless the federal court appoints a trustee. An additional benefit is provided by the fact that the providers of utility services are prohibited from modifying or terminating the services exclusively on the grounds that a case under the Bankruptcy Code has been commenced. Another important hallmark of the US reorganisation regime is the wide-ranging possibilities and privileges regarding obtaining new credit. This DIP financing allows the debtor (or the trustee) to receive new financing in specified circumstances and upon approval of the court. The new lenders may have priority over all existing administrative expenses or may be granted a security on unencumbered assets of the debtor. In addition, a super-priority financing may be arranged which will grant the new lenders security equal to or senior to the existing secured creditors, subject to certain requirements.

After the filing for the procedure, the debtor has an exclusive right to submit the reorganisation plan within 120 days, and 180 days to solicit the acceptances of creditors. These time limits may be extended up to 18 months for preparing the plan and 20 months for soliciting the votes. For the purposes of voting on the reorganisation plan, creditors should be placed into classes of substantially similar claims or interests. Generally, all classes of impaired claims and interests need to vote in favour of the plan with at least two-thirds majority in value and more than 50% in number of creditors. Unimpaired creditors are considered to have accepted the plan. If the stated majorities are reached, the reorganisation plan is considered to be consensual, followed by the confirmation by the court. The court will assess whether the plan complies with provisions set out by the law, and whether it is feasible and in the best interest of creditors. The latter two requirements provide that the plan is likely to lead to a successful reorganisation of the debtor and that the creditors receive at least as much as they would have received in the case of liquidation. Additionally, the US reorganisation regime also allows for a non-consensual plan to be confirmed – this is if not all impaired classes support the plan. The confirmation applying the cram down provisions requires, among other things, that at least one impaired class accepts the plan, it is fair and equitable and does not discriminate unfairly with respect to each dissenting class.

The Chapter 11 expressly allows for pre-packaged reorganisations and provides that the acceptances from creditors may be obtained before the commencement of the procedure. In a pre-packed reorganisation plan, the debtor prepares and negotiates the terms of the reorganisation out-of-court. The plan is pre-voted by the creditors and is then submitted to the court together with the petition for commencing the formal procedure. In contrast, a pre-arranged plan may also be considered within the US reorganisation framework. In this case, the reorganisation plan is negotiated with the creditors privately, without judicial involvement. However, the acceptances are solicited after the filing, in the course of the court-supervised reorganisation.

V. Assessment Benchmarks



Montenegro

Assessment Benchmarks

The assessment results per economy were, in addition to the overall scoring, evaluated according to certain benchmarks. The three selected benchmarks were: (1) Flexibility; (2) Efficiency; and (3) Effectiveness.

These three benchmarks were applied to guide conceptually the analysis of the responses and followed a slightly different scoring system than the assessment results, which were based on the five sections of the questionnaire.

The introduction of benchmarks resulted from the need to measure the performance of each economy against certain overall goals and objectives. It was important, for the assessment results to be informative and meaningful, to compare the participating economies against each other. The Assessment Team developed these benchmarks in order to be able to make comparisons among the performers, taking into account conceptual considerations that are reorganisation-specific and underpin the project. As a starting point, the insolvency system generally, and the business reorganisation framework specifically, should be flexible, efficient and effective. The three benchmarks were broken down into five to seven indicators that, in essence, articulate certain elements of any reorganisation framework to be evaluated as flexible, efficient and effective. These three benchmarks and their respective indicators are briefly explained below and in **Annex Business Reorganisation Assessment Methodology**. The total score for each benchmark is represented in percentages, with 100% as the maximum possible score under each benchmark.

A. Flexibility

According to the Flexibility benchmark, the insolvency framework should support corporate rescue and should have the flexibility to meet the needs of different market participants. This relates to the **EBRD Core Insolvency Principles** 1, 4 and 5.

These are the indicators that were used for this benchmark:

1. Whether the legal system supports informal corporate restructuring and private workouts, as these mechanisms also aim at reorganisation of the debtor's liabilities, without the involvement of the court.

2. Whether the insolvency law contains one or more specific procedures for business reorganisation that are available on application of the debtor or its creditors. Many economies assessed offer a number of different reorganisation procedures as can be seen from the **Annex Business Reorganisation Procedures**.

3. Assessing whether the reorganisation procedure is available to businesses at an early stage of financial difficulties, without the need to evidence actual technical insolvency. This is important as the reorganisation efforts usually have better chances of success when applied as early as possible.

4. Whether the insolvency law recognises a hybrid 'pre-packaged reorganisation' approach, where a reorganisation plan is developed out-of-court and is submitted to the court for its confirmation and approval.

5. Whether SMEs have access to simplified insolvency processes with fewer formalities and documentation requirements and/or shorter deadlines. This is mainly important due to the fact that the SMEs have smaller operating margin and fewer resources for a successful reorganisation. More importantly, they represent the vast number of operating businesses in any given economy.

The Assessment questionnaire collected information regarding the availability of out-of-court and court-supervised corporate reorganisation procedures, including any procedures that may be designed for specific types of enterprises, such as SMEs. However, the questionnaire did not distinguish between several procedures that may be available under a single jurisdiction and did not have separate sections for each of the available reorganisation procedures in the respective jurisdiction because it would have made the questionnaire too long and quite technical with the potential of affecting the numbers of respondents. Therefore, the answers received represent an amalgam of all reorganisation procedures where more than one exist. It also sought to identify whether the national insolvency laws support consensual restructuring solutions and allow for hybrid approaches where the terms of reorganisation are privately agreed and subsequently submitted to the court for its confirmation. This rests on the understanding that an early access to reorganisation procedures at a stage where the business is still viable allows the going concern value to be preserved in the company and may maximise the chances of a successful rehabilitation.

B. Efficiency

The Efficiency benchmark aims to identify whether the domestic insolvency law and practice are efficient from a procedural and economic point of view. The Efficiency benchmark furthermore refers to balancing out the interests of all stakeholders and considers whether the general acceptable principles of insolvency laws, such as the principle of universality and equal treatment of creditors, are followed. The Efficiency benchmark relates to the **EBRD Core Insolvency Principles** 2, 3, 7, 12, 13 and 14.

Questions allocated to the Efficiency benchmark predominantly aim at obtaining the respondents' views on specific topics and were mostly presented as 'traffic light' questions to assess the perception of the respondents.

These are the indicators that were used for this benchmark:

(a) Whether the reorganisation procedure can be completed within an expeditious timeframe. It should also be noted that the respective questions of the questionnaire are perception-based and ask for the opinion of the respondents, not for the 'law on the book'.

(b) Whether the law takes a universal approach and respects the principles of equal ranking and equal treatment of creditors.

(c) Assessing whether the insolvency law is procedurally simple and maximises value for creditors.

(d) Whether reorganisation proceedings are conducted in accordance with high ethical and professional standards.

(e) What is the degree of involvement of a court or administrative authority in the reorganisation proceeding and whether it is limited and is aimed at guaranteeing fairness and transparency.

(f) Whether the tax regime supports the reorganisation process (by not taxing the benefit received) and neither penalises the creditors for foregoing some or all of their claims nor the debtor for receiving an indirect benefit by reducing its debt obligations.

C. Effectiveness

Regarding the Effectiveness benchmark, the questionnaire aimed to evaluate whether the insolvency law of the economies covered contains the necessary tools to facilitate a successful reorganisation compared against international best practice in this area, including Directive (EU) 2019/1023, US Chapter 11, and the UK's Scheme of Arrangement and new Restructuring Plan. The Efficiency benchmark relates to the **EBRD Core Insolvency Principles** 6, 9, 10, 11 and 13.

This is a more technical benchmark and encapsulates a vast number of questions of the assessment as it relates to the different steps of the actual reorganisation procedure looking at issues such as the debtor's reorganisation options, the availability of any moratorium, class formation and cross-class cram down with respect to approval of a reorganisation plan, new financing, etc.

These are the indicators that were used for this benchmark:

(a) Whether the debtor can propose any reorganisation option (including a debt write-off) that is feasible and in the best interest of creditors - that is, the creditors are no worse off under the plan than they would be in the case of liquidation and/or any other relevant alternative.

(b) Whether the insolvency law contains measures aimed at the stabilisation of the debtor's business, including a temporary suspension of enforcement actions by creditors and restrictions on termination of contracts because of the debtor filing for a reorganisation procedure.

(c) Assessing whether the reorganisation plan can compromise the liabilities of all types of creditors, subject to the right of dissenting creditors to challenge the plan.

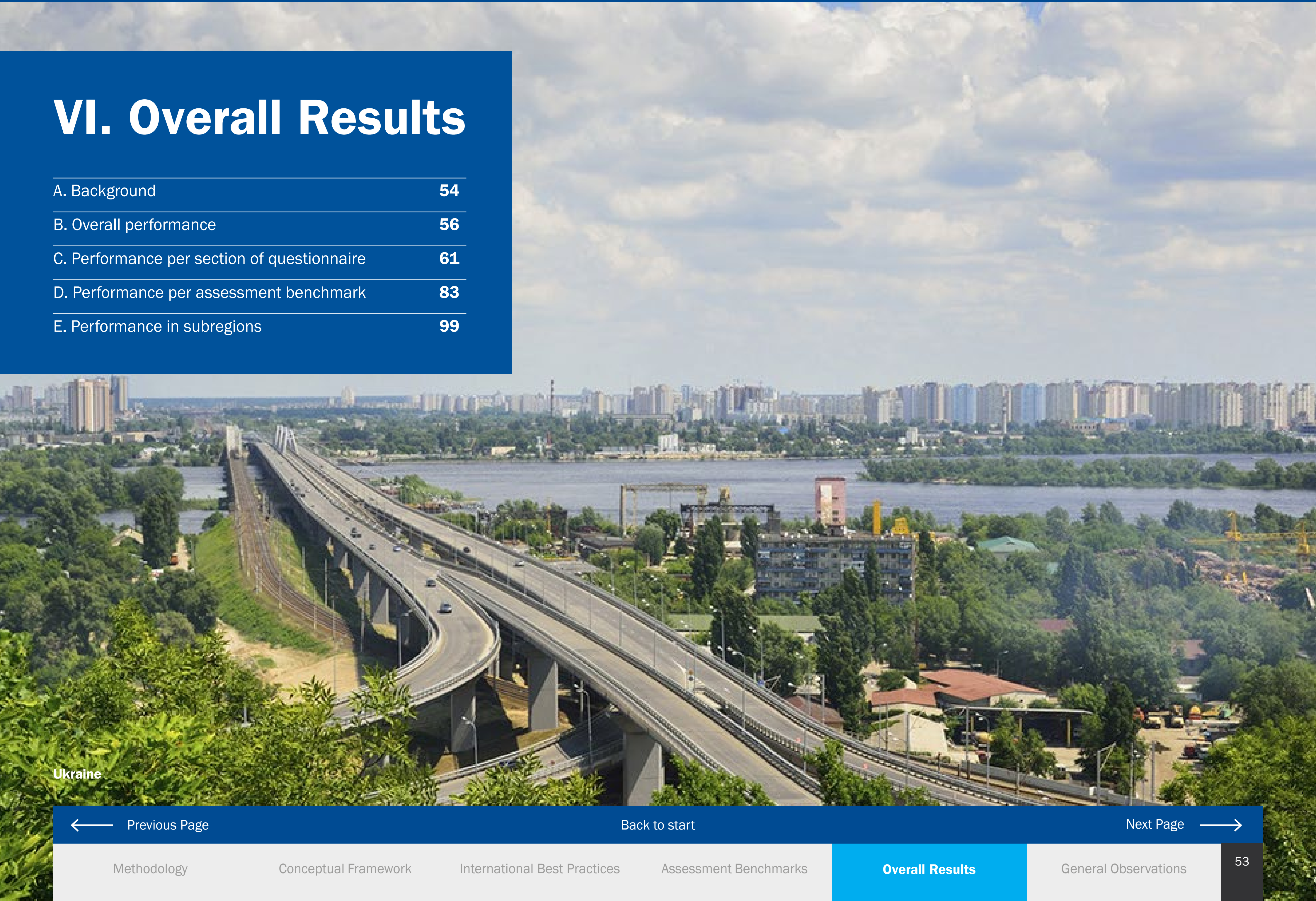
(d) Whether the debtor has the discretion to choose which creditors are affected by its reorganisation plan and can propose classes of creditors with similar interests for voting purposes.

(e) Whether the vote of a majority of creditors in one or more classes can bind a dissenting minority of creditors in that class and creditors across different classes. This includes whether shareholders and connected parties are prevented from frustrating a viable reorganisation and/or whether any party can veto the reorganisation plan.

(f) Considering whether the insolvency law supports new financing in reorganisation procedures by recognising the priority of any new financing over existing claims and protecting the validity of new financing arrangements from avoidance actions in a subsequent liquidation procedure.

See **Annex Business Reorganisation Assessment Methodology** with a description of the benchmarks and indicators cross-referenced with the questions assessed under this analysis (and a list of the non-weighted questions in the questionnaire that inform these benchmarks).

VI. Overall Results



Ukraine

Overall Results

A. Background

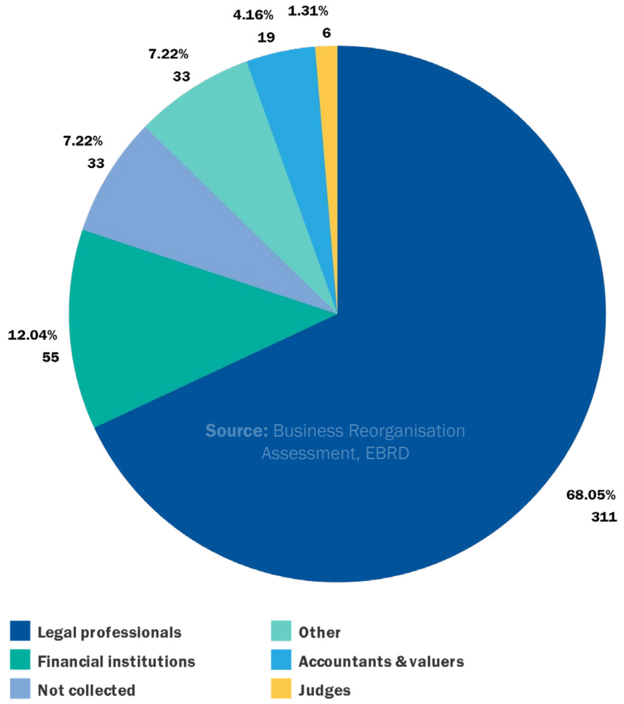
The assessment received in total 457 responses[1] from within the EBRD regions including at least four responses from every economy where the EBRD operates[2]. The respondent groups were:

- Legal professionals
- Judges, other court officers, and academics
- Accountants, actuaries and valuers
- Lending and other financial institution
- Other (to be specified).

The names of respondents in each economy who consented to be recognised as contributors are listed in the **Annex Questionnaire Respondents** to this report.

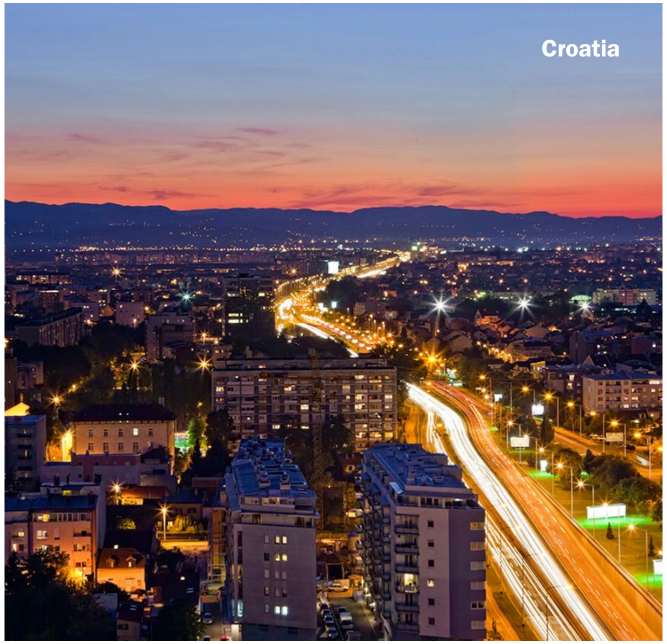
Legal professionals provided the highest number of responses (in total 68%), whereas the activity of other respondent categories, such as financial or lending institutions (55 responses or 14%) or accountants (19 responses or 4%) was relatively low. It should be mentioned that the questionnaire was of technical character and respondents needed a legal background in order to answer the questions. For this reason, the Assessment Team targeted lawyers within the financial institutions. Figure 6.1 shows the number of questionnaires, expressed in percentages, received from each group of contributors.

Figure 6.1 Professional background of questionnaire respondents



Source: Business Reorganisation Assessment, EBRD

Note: This pie chart illustrates the professional background of all respondents of the questionnaire across the EBRD regions.

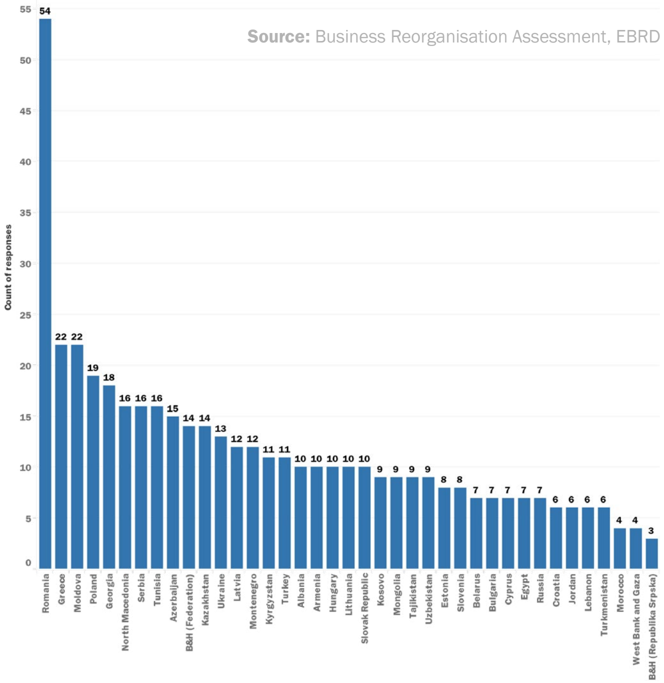


[1] The Assessment Team was supported in generating the responses by: contacts of the Assessment Team and contacts of EBRD resident offices, particularly with local banks; Investment Councils in Albania, Armenia, Georgia, Kosovo, Kyrgyz Republic, Moldova, Montenegro, Tajikistan, Tunisia, Ukraine and Uzbekistan; the European Commission; the International Development Law Office (responses from judges); INSOL Europe (responses from insolvency practitioners); INSOL International (responses from outside the EBRD regions); and UNCITRAL.

[2] A further 48 completed questionnaires were received from respondents outside the EBRD regions in the following order of highest number of responses: Spain (8), France (6), England and Wales (5), Germany (4), Argentina (3), India (3), Belgium (2), Brazil (2) , Austria (2), China (1), Italy (1), Luxembourg (1), Netherlands(1), Portugal (1), South Africa (1), Sweden (1) and USA (1).

Figure 6.2 below shows the number of questionnaires received per jurisdiction, with the highest number of questionnaires by far received from respondents in Romania.

Figure 6.2 Geographical representation of questionnaire respondents



Note: This chart shows (in descending order) the number of respondents of the questionnaire in each EBRD economy.

This section analyses the responses from 421 'qualifying' questionnaires from the EBRD regions which met the Minimum Response Threshold, the Minimum Completion Threshold and the Minimum Accuracy Threshold, as described in **Section II Methodology** of the Assessment Report. Where relevant, the analysis is supplemented with information from ten cross-jurisdictional tables **(Annex 5 to Annex 14)** of the Assessment Report, where the information per jurisdiction was further broken down by procedure and cross-checked with at least two counsel in each jurisdiction to obtain the most accurate results[3]. The section below analyses the data collected from both the questionnaire responses and the Annexes.

The first subsection commences with a review of the overall performance of the economies in the EBRD regions by highlighting the performers that collected the highest and lowest number of scores. The second subsection focuses on the performance in each of the five sections of the questionnaire and summarises some important trends among the questionnaire responses. The third subsection considers the three benchmarks – **'Efficiency'**, **'Effectiveness'** and **'Flexibility'** – that were developed for purposes of the assessment, and evaluates the compliance of each EBRD economy with each benchmark. It analyses all questions of the questionnaire that were not already reviewed as part of the second subsection (performance per section). Lastly, the fourth section compares the performance of each of the eight subregions. The EBRD economies of operations are grouped into eight subregions based on the geographical location of the particular economy.

Efficiency **Effectiveness** **Flexibility**

[3] The Assessment questionnaire referred to reorganisation procedures generally and for reasons of expediency and over complexity did not distinguish between different types of procedures.

B. Overall performance

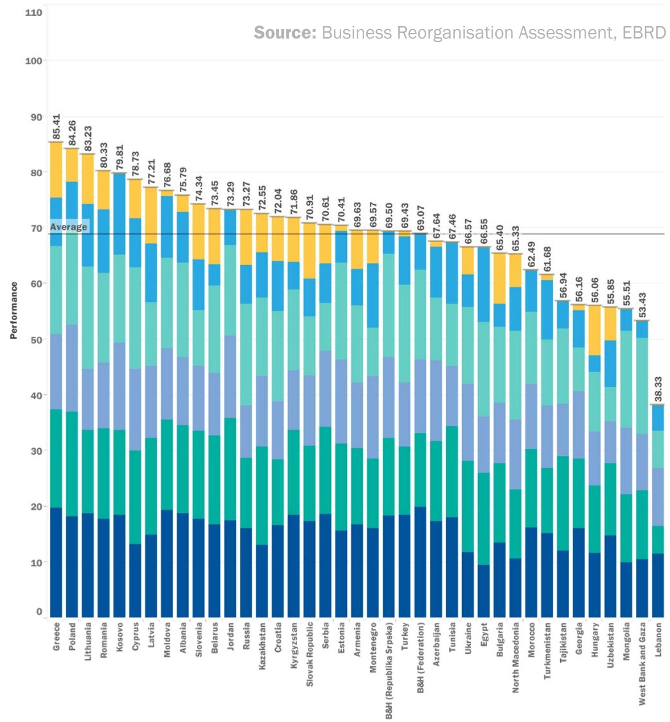
1. Results

The overall performance of the EBRD economies of operations with respect to business reorganisation procedures as assessed by the questionnaire is satisfactory and shows positive trends in a number of areas despite the fact that none of the surveyed economies reached the maximum possible score of 110 for the assessment. This score is based on a maximum possible score of 100 points in the questionnaire plus a maximum 10 points for transparency and availability of insolvency data in each jurisdiction – the Data Transparency Factor as described in **Section II Methodology** of the Assessment Report. The Assessment Team introduced the Data Transparency Factor in order to give a bonus to economies that collect and publish insolvency-related data, as this practice is essential for the enhancement of the transparency of an economy's insolvency framework. Transparency benefits users of insolvency systems, courts and potential NPL investors, and supports greater data-driven policymaking.

The validation process as described in the **Section II Methodology** of the Assessment Report, however, revealed that the insolvency and reorganisation laws are not frequently applied in many jurisdictions. The lack of practice in those economies is assumed to have had impact on questions seeking to identify current domestic practices and their strengths and weaknesses. These questions are likely to have been answered with little practical reference.

The top five economies (Greece, Poland, Lithuania, Romania and Kosovo, in descending order) scored similarly, with a close range between 85.4 and 79.8 points, indicating a high level in the quality of the business reorganisation framework. Cyprus and Latvia scored only about 1-2 points lower than Kosovo, the fifth top performer, with 78.7 and 77.2 points respectively. Moldova, Albania, and Slovenia are among the ten best performers and fall slightly behind Cyprus and Albania with 76.7, 75.8 and 74.3 points, respectively. The average overall score of all assessed economies is 68.9, including the Data Transparency Factor, which indicates a medium to average performance. The overall assessment scores are shown in Figure 6.3 below. The stacked coloured blocks represent the different sections of the questionnaire and the yellow-coloured block on top represents the Data Transparency Factor.

Figure 6.3 Overall business reorganisation assessment performance including the Data Transparency Factor



Note: This chart illustrates the performance (in descending order) of each EBRD economy on an aggregate basis with respect to each of the five sections of the questionnaire, as well as the level of transparency of each economy in respect to insolvency data (the Data Transparency Factor). Each section of the questionnaire has a maximum of 20 points, and the Data Transparency Factor has a maximum of 10 points. The maximum possible 110 points signals the existence of optimal legal and regulatory frameworks for business reorganisation, as well as good availability of data on insolvency procedures.

In order to present the overall results purely based on the collected scores in the questionnaire, Figure 6.4 shows the performance of each economy without the Data Transparency Factor. The comparison of the overall ranking in these two graphs indicates that Bosnia and Herzegovina (Federation), Bosnia and Herzegovina (Republic Srpska), Jordan, Kosovo and Moldova are the economies whose positions were significantly worsened due to lack of bonus for available insolvency-related data. In contrast, Bulgaria and Hungary moved into higher positions because of the additional points awarded by the Data Transparency Factor. Overall, the Data Transparency Factor bonus, when added to the points awarded by the questionnaire, produced an average score of 68.9 points in the overall assessment ranking, which is more than 4 points higher than that without the bonus (64.4 points).

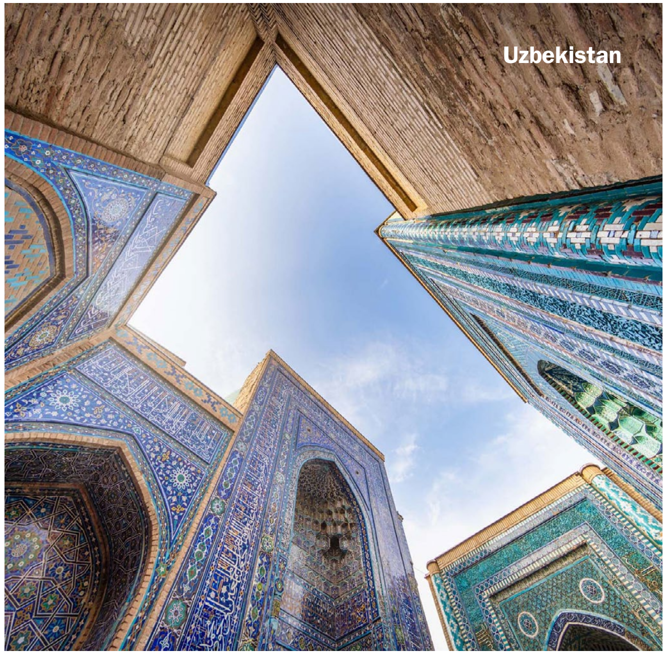
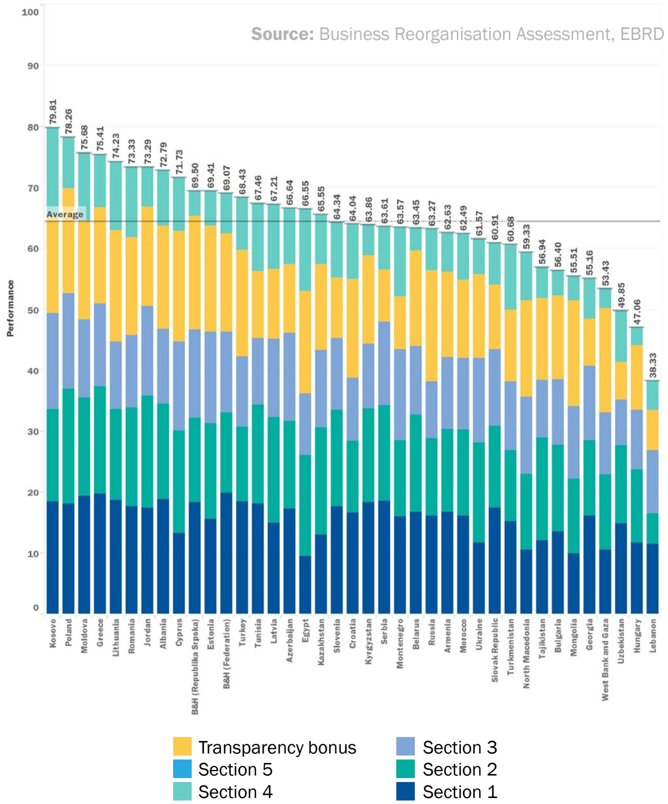


Figure 6.4 Overall business reorganisation assessment performance excluding the Data Transparency Factor



Note: This chart illustrates the performance (in descending order) of each EBRD economy on an aggregate basis with respect to each of the five sections of the questionnaire, excluding the level of transparency of each economy in respect to insolvency data (the Data Transparency Factor). Each section of the questionnaire has a maximum of 20 points. The maximum possible 100 points signals the existence of optimal legal and regulatory frameworks.

It is a positive trend that in the overall assessment results including the Data Transparency Factor (see Figure 6.3), Greece ranks first, notwithstanding the fact that the responses to the questionnaire (and accordingly the ranking) are based on the old law. The economy achieved 75.4 points and collected a full 10 points for the Data Transparency Factor. As explained in the **Section II Methodology** of the Assessment Report, Greece (as well as Georgia) was in the process of adopting new insolvency legislation at the time when the questionnaire was open. Therefore, the respondents referred to the then existing 'old' law and practice which is further reviewed in this report. The new insolvency legislation of Greece that has been in force since March 2021 is analysed as part of the Business Reorganisation Assessment overview of Greece. This notwithstanding, the reforms introduced in Greece favour corporate rescue and mostly transpose the EU Restructuring Directive, including recent EU requirements related to electronic registries for insolvency procedures. Had these changes been taken into account, this most likely would have resulted in an even more positive perception of the insolvency framework.

Poland, as the second-best performer, achieved 78.3 out of 100 points under the questionnaire and achieved 6 further points when the Data Transparency Factor is taken into account, totalling 84.3 points out of 110 points available. This indicates a high degree of quality of the business reorganisation framework as per the law 'on the books' as well as in the current practice perception. This seems to be related to the fact that the economy has actively promoted business reorganisation with four different reorganisation procedures. In addition, Poland introduced a simplified reorganisation regime to mitigate the impact of the Covid-19 pandemic and provide for an accelerated procedure with fewer formalities, also known as the Covid-19 urgent arrangement procedure, which will become permanent as of December 2021.

However, as will be discussed later in this section, too many procedures may also be a disadvantage. Covid-19 related emergency legislation is assumed to have been included in some of the respondents' answers, although it should be noted at this point that the focus of the assessment was on the permanent reorganisation procedures.

Lithuania stands out with a well-developed debtor in possession reorganisation procedure that can also be initiated as a 'pre-packaged' reorganisation where the plan is drafted, agreed and pre-voted by the creditors before filing with the court, which decides on opening of the main insolvency proceedings and approves the plan in the same order. In line with the EU Restructuring Directive, which was fully transposed and effective in July 2021, Lithuania now also provides for the comprehensive protection of new financing.

Kosovo has a relatively new insolvency law, adopted in 2016, which provides for a court-supervised as well as for a pre-packaged reorganisation procedure. The Kosovan Insolvency Law contains furthermore an expedited SME-specific reorganisation regime that contains shorter deadlines and more light touch involvement of an insolvency practitioner. It should be noted, however, that the Assessment Team could not verify the existence of any critical reorganisation practice under the new Kosovan Law and thus all observations contained in this report are based on the letter of the law, which is well-prepared. This issue may be the case for other jurisdictions as well, which however do not have such a solid insolvency and restructuring framework as Kosovo. The existence of a SME reorganisation regime (as opposed to an accelerated insolvent liquidation procedure for smaller companies) is observed in only a few economies worldwide and is significant as SMEs usually lack the resources to conduct a successful reorganisation and are often liquidated rather than restructured. Unfortunately, for similar reasons, SMEs have been the most affected during the Covid-19 pandemic.

Notably, four out of five best performers are EU Member States and so required to transpose the EU Restructuring Directive into their national insolvency laws. Therefore, it is expected that the quality of reorganisation frameworks of these EU economies will improve further.

Most assessed economies revealed a medium performance, scoring between 65 and 75 points, including the Data Transparency Factor. A positive trend is that most of the economies located in the middle of the scale show a relatively balanced distribution of scores in the first four sections of the questionnaire, these being: General Approach to Corporate Reorganisation; Planning and Initial Stage of the Reorganisation; The Reorganisation Plan; and The Reorganisation Approval Phase. This trend is particularly true for Armenia, Bosnia and Herzegovina (Federation), Bosnia and Herzegovina (Republic Srpska), Jordan and Latvia, all of which achieved similar points in each of the first four sections. This indicates an overall medium performance of these economies regarding the general approach to reorganisation as well as its planning, performance, and approval. Exceptions of note are Egypt, Hungary, Russia, Tajikistan and Uzbekistan, where the third section of the questionnaire on the reorganisation plan collected comparably low scores. Furthermore, Georgia, Lebanon, Montenegro, Slovenia, Serbia and Uzbekistan revealed a comparably low performance in the fourth section of the questionnaire which relates to the reorganisation approval phase. In contrast to the first four sections, the fifth section on other relevant aspects of insolvency laws was an outlier across most participating economies as the scores collected in this section were remarkably lower. Further analysis of the fifth section is presented at the end of this section.

Among the least good performers are Lebanon (38.3 points), West Bank and Gaza (53.4), Mongolia (55.6), Uzbekistan (55.9) and Hungary (56), including the Data Transparency Factor.


Lithuania

All economies still reached about half of the maximum possible score, which is a positive trend, except for Lebanon, which falls behind West Bank and Gaza by about 15 points. All five performers have a specific reorganisation procedure in their legislation, which allows for a court-supervised restructuring of the business. Unlike its counterparts which offer only one reorganisation procedure, Uzbekistan provides for multiple reorganisation options that serve different purposes and follow separate rules, as can be seen in the Business Reorganisation Assessment overview of Uzbekistan.

Further at the lower end of the scale are Georgia, Tajikistan, Turkmenistan, Morocco, and North Macedonia, in order of scoring. Georgia and Hungary have recently amended their insolvency legislations and while these reforms have not been reflected in the overall ranking of the economies (which is based on the data from the 2020 questionnaire) they have been taken into consideration for the input provided in the multi-jurisdictional tables contained in the **Annexes (Annex 5 to Annex 14)**. Hungary has implemented the EU Restructuring Directive with its insolvency law reforms and is now expected to have a more advanced reorganisation legislative framework. Bulgaria is also in the process of implementing the EU Restructuring Directive. A positive trend among the ten least good performers is that five economies collected scores for the Data Transparency factor: Hungary received 9 out of 10 points, followed by Uzbekistan and North Macedonia with 6 points each, and Georgia and Turkmenistan with 1 point each. The Data Transparency Factor has advanced the performance of Hungary and Uzbekistan.

2. Data Transparency Factor

Separate consideration should be given to the points awarded for the transparency of the insolvency-related data. Transparency is a common good, and access to valuable insolvency data not only assist the entire insolvency system but also the resolution of NPLs and distressed situations. Six economies scored an optimal total of 10 points. Regrettably, 11 economies scored zero points, evidencing that there is no reporting of insolvency data at all and no identifiable central authority responsible for national insolvency data. Figure 6.5 shows the number of points scored in the Data Transparency Factor.

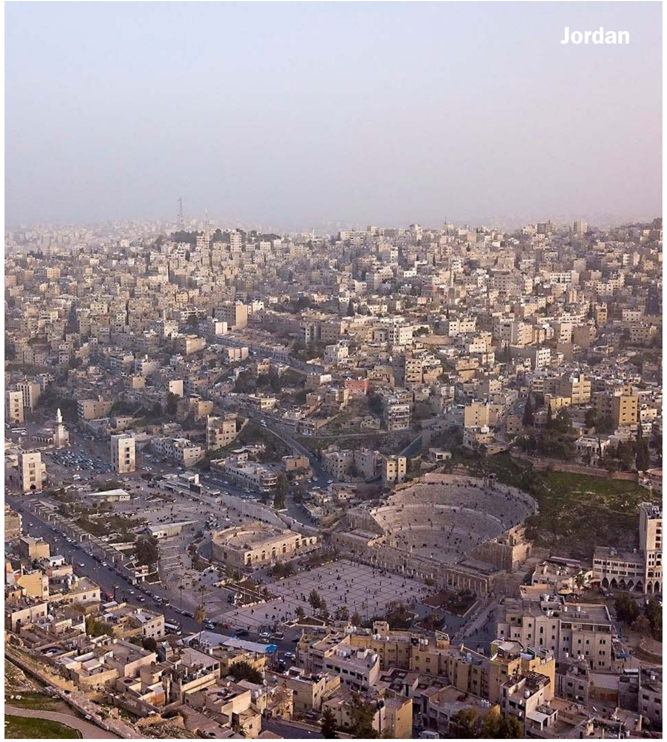
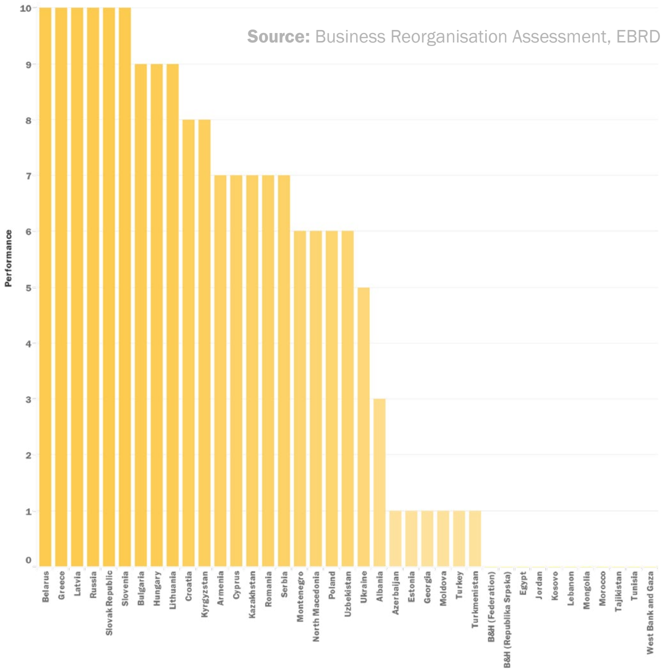


Figure 6.5 Data Transparency Factor performance among assessment economies



Source: Business Reorganisation Assessment, EBRD

Note: This chart illustrates the assessment points (in descending order) for each EBRD economy with respect to the level of transparency of each EBRD economy with respect to insolvency data (the Data Transparency Factor). The maximum possible of 10 points signals comprehensive available data on insolvency procedures, including business reorganisation procedures. An explanation of the scoring system is set out in the **Annex Data Transparency Factor**.

All top five best performers overall achieved very different scorings in the Data Transparency Factor: Greece 10/10, Poland 6/10, Lithuania 9/10, Romania 7/10 and Kosovo 0/10. This reflects the uneven and wide range of data disclosure in all five economies, which is representative of how the issue is addressed within the EBRD regions. In Lithuania, Poland and Romania, data on insolvency proceedings is available, is published online, and is centralised and maintained by an official government authority. Like Greece, the data in Lithuania is updated on a daily basis in an electronic register and can be aggregated or disaggregated by filtering as per the nature and the stage of the procedure. However, data in Lithuania is not fully comprehensive as it does not record how many of the restructuring proceedings are pre-packaged restructurings. In Poland, there is not yet an electronic register and data is published with some delay. The most recent data as of publication of this report covers insolvency proceedings until end of 2018, with a breakdown as per the type of the reorganisation procedure but not capturing the recent Covid-19 urgent arrangement procedure due to the time lag of publication. In Romania, as in a number of economies, the published data is incomplete with respect to reorganisation-type proceedings and does not show the number of preventive composition proceedings or mandate ad hoc proceedings, the latter being a confidential procedure. No insolvency data is yet published in Kosovo and there is no clearly identifiable single authority responsible for insolvency data.

The best performers regarding the Data Transparency Factor are Belarus, Greece, Latvia, Russia, the Slovak Republic and Slovenia, all of which achieved the maximum possible score of 10. Accordingly, these economies showed full compliance with all five indicators of the Data Transparency Factor assessment (see the indicators described in the **Annex Data Transparency Factor**).

In contrast, Kosovo, which was leading based on the results of the five sections of the questionnaire, could not collect any points for the Data Transparency Factor, dropping to the fifth position in the overall ranking. In a similar situation are Jordan and Bosnia and Herzegovina (Republic Srpska), which were ranked seventh and tenth, respectively, and after the application of the Data Transparency Factor, dropped to twelfth and twenty-second respectively. In the case of Bosnia and Herzegovina (Republic Srpska) the drop is more severe due to the close performance between economies in the mid level of the rankings.

Also, three out of five of the least good performers did not achieve any points regarding transparency either. The lack of insolvency-related data in these economies may be linked to and explained by the limited use of the available procedures and/or a comparably weak reorganisation framework. The economies that did not score any points for the Data Transparency Factor are Bosnia and Herzegovina (Federation), Bosnia and Herzegovina (Republic Srpska), Egypt, Jordan, Kosovo, Lebanon, Mongolia, Morocco, Tajikistan, Tunisia and West Bank and Gaza.

Overall, in 21 economies insolvency data is centralised and overseen by an official authority or body. In about half the economies (18 in total) the data is published regularly and at least on an annual basis. In 14 economies the published data is available on an aggregated basis at national level. In nine economies published data is available on a disaggregated basis at national level with a breakdown by each available insolvency procedure. However only seven economies publish comprehensive insolvency data online in a searchable insolvency register. A more detailed explanation per economy of the Data Transparency Factor scoring can be found in the **Annex Data Transparency Factor**.

Generally, it is expected that the standards for data will improve as several economies have or are planning to introduce more advanced systems for capturing, monitoring and publishing data. Where supported by statistical reporting, these systems can reveal to policymakers and the wider public how insolvency systems are being used and the relative priority or success of existing and new procedures. For example, Greece has adopted a new Electronic Insolvency and Reorganisation Register, which contains data as from 31 March 2021 on all types of insolvency procedures (but not on the voluntary pre-insolvency out-of-court debt settlement procedure administered by the Special Secretariat for the Administration of Private Debt under the Ministry of Finance). This system will enable Greece to track the use of its new pre-insolvency business recovery procedure. Jordan and Poland have planned the adoption of new electronic registers. Serbia is planning to grant more responsibility to the Bankruptcy Supervision Agency for publishing data and modernising its electronic data collection and reporting systems. Among the best performers on the Data Transparency Factor, Slovenia can be seen as a role model in data capturing as it updates its aggregated data, on all insolvency proceedings, daily and also provides official statistics.

Another important factor is that the authority collecting the data varies considerably among the surveyed economies, ranging, for example, from an official government registry to a judicial body. For example, the Supreme Court in Ukraine and the sole commercial court in Montenegro are responsible for collection of insolvency-related data. It is noted that in both Montenegro and Ukraine the collection and publication of data is not fully comprehensive, which may support the role of a separate government body in data collection. In both Montenegro and Ukraine, data cannot be fully disaggregated according to the type of insolvency procedure. In Montenegro there is no information on the number of reorganisation proceedings, a difficulty experienced by many jurisdictions such as Montenegro which have a 'one gateway' entry into insolvency proceedings that can result in either reorganisation or liquidation-type proceedings. In Ukraine, similarly to Serbia and other economies that have a pre-packaged or pre-negotiated plan option, there is no publicly available data on the use of the so-called 'Article 5' pre-insolvency rehabilitation procedure. In Uzbekistan, the Ministry of Justice has mandated the State Assets Management Agency (SAMA) to collect and disseminate the insolvency data. However, the data is not fully comprehensive since it does not show the number of reorganisation-type proceedings. It is interesting that in some economies a private sector company also sells access to insolvency data. For example, in Latvia, a company called Lursoft aggregates data which is published regularly by the Insolvency Service, making it more user-friendly.

The following section analyses the performance per section of the questionnaire.

Kosovo

C. Performance per section of questionnaire

1. Background

The questionnaire was divided into five key sections. Four sections largely follow the sequential steps that businesses take when faced with financial distress and when they embark on a reorganisation exercise. The fifth, final section focused on other general aspects of domestic insolvency law and practice that are important for the overall improvement of the reorganisation/insolvency environment.

The five sections are as follows:

1. General Approach to Corporate Reorganisation
2. Planning and Initial Stage of the Reorganisation
3. The Reorganisation Plan
4. The Reorganisation Approval Phase
5. Other Relevant Aspects.

The analysis follows the order of the sections and provides a detailed review of the responses received to questions contained in the respective section of the questionnaire and the information compiled in the tables in the **Annexes 5 to 14** of the Assessment Report. The Data Transparency Factor is not relevant for the points awarded for each section of the questionnaire.

2. General Approach to Corporate Reorganisation

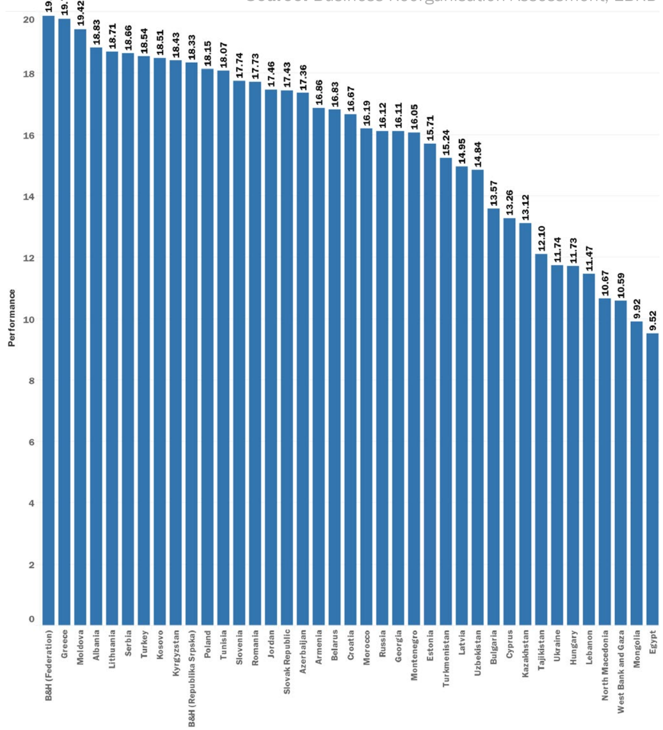
This section mainly asks whether the respective national legislation allows for court-supervised or out-of-court reorganisation procedures, including a simplified reorganisation for SMEs. It also aims to determine who is eligible to commence these procedures, which is usually the debtor, creditors, both or other stakeholders as well. Furthermore, the first section seeks to identify whether private workouts are frequently used in practice and refers to certain specific aspects such as protection of new financing. Good performance in the first section indicates that the general approach to reorganisation is effective and extensive.

The best performer in the first section is the Federation of Bosnia and Herzegovina, followed by Greece and Moldova. All three economies came close to the maximum possible score of 20 by collecting 19.9, 19.8 and 19.4, respectively, which indicates a very high level in the general approach to reorganisation in these economies. Greece and Moldova also dominate the overall performance of the ranking, whereas the Federation of Bosnia and Herzegovina is located in the middle of the scale. As a general trend, most of the participating economies collected their highest score in the first section rather than any of the other four sections. It is also remarkable that only about one-third of the economies reached less than 15 points out of a maximum of 20 points. This indicates a good performance in this section on average across the EBRD regions. At the lower end of the table are West Bank and Gaza, Mongolia and Egypt, with 10.6, 9.9 and 9.5 points, respectively, still reaching about half of the maximum possible score. The scores for the first section are presented in Figure 6.6.


Federation of Bosnia and Herzegovina

Figure 6.6 Assessment points for general approach to business reorganisation procedures

Source: Business Reorganisation Assessment, EBRD



Note: This chart illustrates the performance (in descending order) of each EBRD economy with respect to the first section of the questionnaire, "General Approach to Corporate Reorganisation". The maximum possible of 20 points signals a very high level in the general approach to business reorganisation in these economies, according to respondents and EBRD review of the legislation.

The responses to the first section of the questionnaire revealed that the insolvency laws of all participating economies allow for court-supervised or out-of-court reorganisation to take place. The **Annex Business Reorganisation Procedures** of this Assessment Report confirms this finding and furthermore lists all available procedures in each of the EBRD economies of operations. Whereas out-of-court reorganisation can be conducted on the basis of a private contract, where the signing parties agree on the terms of the restructuring without the involvement of a court or any other authority, court-supervised reorganisation needs to be set out in the law. In each of the 40 jurisdictions, the Assessment Team could identify at least one specific procedure in the insolvency laws that provides for some form of reorganisation aiming at addressing the financial difficulties of the debtor, restoring its viability, or avoiding liquidation. The reorganisation procedures observed provide for different options, such as changing the composition, conditions or structure of the debtor's assets and liabilities, allowing for the sale of the business as a going concern, or the operational restructuring of the business.

Furthermore, the questionnaire asked whether an ongoing liquidation of the debtor can be converted into reorganisation. This is important in situations where the debtor's business can be rescued instead of being realised or sold within liquidation and creditors are willing to collaborate and agree on reorganisation terms. This option is of even greater significance where the liquidation has been commenced upon the application of a creditor so that the debtor did not have a chance to consider reorganisation and prove its business worth rescuing. Conversion from liquidation to reorganisation contributes to avoiding unnecessary liquidations and maximises creditor satisfaction. A positive trend is that in slightly more than half of the participating jurisdictions (22 out of 40) the conversion from liquidation to reorganisation is possible.

The review of the national legislation and practice furthermore revealed that a few economies even prevent a liquidation procedure from being commenced without first attempting reorganisation. Arguably, this is an even more effective approach than the possibility to convert at a later stage.

a. How many reorganisation procedures?

The jurisdictions may be grouped according to the number of available reorganisation procedures. Only a few economies – such as Jordan, Lithuania, Mongolia, Montenegro, Serbia and Ukraine – set out only one procedure in their insolvency laws that allows for business reorganisation.[4] In some cases the dividing lines are not entirely clear. For example, Kosovo technically has one main reorganisation procedure but the insolvency legislation also contains chapters for a pre-packaged reorganisation plan and a simplified procedure for SMEs which adapts the provisions for the reorganisation procedure. Generally, having only one procedure cannot be regarded as a disadvantage as long as the procedure has all relevant tools, is well-developed and flexible in terms of entry requirements (see analysis below dealing with Section 2 of the questionnaire), and can be commenced by the debtor as well as by creditors.

Lithuania is a good example of this, as the economy ranks second with only one procedure, perhaps due to its pre-packaged restructuring plan option within the restructuring procedure. Like Lithuania, Jordan, Serbia and Ukraine all have pre-packaged options. All other economies have at least two specific reorganisation procedures. Besides Poland and Romania, a number of former Soviet Union economies provide for three or more different procedural options that (mainly) serve different purposes and follow separate rules. More precisely, Kyrgyz Republic, Turkmenistan and Uzbekistan allow for three or more reorganisation procedures.

Some jurisdictions, such as Azerbaijan, Belarus and Russia, have reorganisation options within insolvency proceedings known as settlement agreements or amicable agreements, which are not procedures per se. In Cyprus the company law scheme of arrangement is an important reorganisation tool, although technically not a corporate insolvency procedure; the only procedure is the examinership procedure. Furthermore, a number of economies have formal legislative restructuring frameworks that complement what is available under the insolvency laws. Serbia has an additional consensual restructuring framework for workouts, although this is rarely used, possibly due to the popularity of the pre-negotiated reorganisation plan option. Similarly, Ukraine has a financial restructuring framework but this has been more widely used by state-owned banks, and Turkey's Banking Association administers a framework for financial restructuring known as the 'Framework Agreements'.

[4] At the time of the questionnaire, the Federation of Bosnia and Herzegovina also had only one reorganisation procedure but in September 2021 this was supplemented by an additional restructuring procedure, similar to the procedure that exists in Bosnia and Herzegovina (Republika Sprska). Information about the restructuring procedure is contained in the tables found at **Annexes 5 to 14** of the Assessment Report.

An interesting aspect of having several different procedures is that this may complicate the overall process of reorganisation. Taking Poland as an example, as can be seen from the procedural flowchart in the Business Reorganisation Assessment overview of Poland, there are three different arrangement procedures, one remedial procedure and one simplified Covid-19 procedure in place, which is five procedures in total. The Arrangement Procedures differ in terms of timeline (for example, the Accelerated Arrangement Procedure) and in terms of the rights and powers the debtor maintains during the procedure. However, there are no differences regarding filing, entry conditions, objectives of the procedures or approval requirements for the relevant arrangement. This may lead to the issue that the end users face too many available procedures and cannot distinguish between them to choose the best suitable option, at least not without the involvement of a highly skilled professional advisor. As of 1 December 2021, an amendment of the insolvency law in Poland is envisaged, which will introduce permanently the Covid-19 urgent arrangement procedure into the Polish legislative regime and may also aggregate certain of the arrangement procedures aiming to reduce the number of procedures available to the debtors.

Another example is Kyrgyz Republic, where, in contrast to Poland, the different procedures do serve different purposes. The sanation procedure mainly serves the purpose of providing new money to the business and binding the new lenders (third parties) within the procedure to guarantee full satisfaction of all creditors. The second option under Kyrgyz law – special administration – rather focuses on the sale of assets, and the third option lastly provides for the negotiation of a restructuring plan. Like Poland, the end users may face the same issues of having too many procedures. A clear view as to the best reorganisation option may not be available at the time of filing or even after the commencement of the formal procedure which might lead the debtor to choose an inappropriate procedure or spend valuable time choosing the 'right' procedure.

b. Settlement agreements

It is interesting that the former Soviet Union economies also include a special option referred to as the amicable settlement agreement. This is the case in Azerbaijan, Belarus, Kyrgyz Republic, Russia, Tajikistan, Turkmenistan and Uzbekistan. Characteristic to the settlement agreement is that it is not a separate insolvency or reorganisation procedure. It rather constitutes a possibility for the debtor and creditors to exit the ongoing formal insolvency procedure by reaching an amicable solution. It can only be entered into if the formal insolvency proceedings before the court have already been commenced and the participating parties can agree on amicable terms of the debt settlement and consent to its execution through voting in accordance with the law. The main benefit of the settlement agreement is that it can be concluded at any stage of the procedure, and it allows the avoidance of certain formalities of the reorganisation procedure, such as strict timeframes, establishment of creditors' claims and their voting rights and other procedural aspects. On the other hand, the settlement agreement usually does not provide for the rules protecting creditors' interests that are typically in place for reorganisation plans and are then reviewed by the court. Also, successful conclusion of the settlement agreement may be less likely as some jurisdictions require unanimous agreement by all secured creditors, such as Russia.

c. The observation period

A further feature of a number of ex-USSR economies, such as Belarus, Russia, Tajikistan and Uzbekistan, is the compulsory observation period (sometimes referred to as a protection period) when entering into general insolvency proceedings that provides for the possibility of either reorganisation or liquidation. This period can vary substantially. In Russia, it is up to seven months. In Belarus, up to three months, extendable on request of the debtor and other bodies to three years in certain circumstances. In Uzbekistan, it is up to one month, which in exceptional circumstances can be extended by up to one further month, and in Tajikistan, it is up to one month for SMEs and up to two months for larger companies.

The observation period can significantly extend the duration of the proceedings and reduce the success of a reorganisation which relies on a swift procedure. Interestingly, this approach is also a feature of the French insolvency system and other countries whose legislation closely follows French law, such as Morocco and Tunisia. In Tunisia, the observation period for the more court-intensive judicial settlement procedure is a period of nine months, during which the situation of the debtor is monitored and a plan is prepared. In Morocco, the equivalent judicial rehabilitation procedure involves a period of four months during which the trustee needs to prepare a rehabilitation plan, a plan for sale of the business as a going concern, or a plan for its insolvent liquidation.

d. Who can initiate a reorganisation procedure?

The participating economies also differ in terms of who can initiate the available reorganisation procedures. Possible responses in this regard can be the debtor only, the creditors only, both debtor and creditors, as well as external parties, such as the public prosecutor or the court of its own accord, such as in the case of Morocco. Best practice seems to be to allow both the debtor and creditors to file for insolvency and reorganisation proceedings. However, in over half of the economies, there are reorganisation procedures which only the debtor has been granted the right to file for. This can be summarised as follows:

Jurisdiction	Debtor-only procedures	All procedures
Albania	1	2
Armenia	2	3
Bulgaria	1	2
Egypt	1	2
Estonia	1	2
Georgia	1	2
Hungary	2	2
Jordan	1	2
Kazakhstan	1	2
Latvia	2	2
Lebanon	1	2
Moldova	1	2

Jurisdiction	Debtor-only procedures	All procedures
Morocco	2	3
Poland	4	5
Romania	2	3
Serbia	1	3
Slovak Republic	1	2
Slovenia	1	3
Tunisia	1	2
Turkey	2	3
Turkmenistan	2	4
Ukraine	2	3
West Bank	1	2
Gaza	1	2

In all but a small handful of economies – namely, Hungary and Latvia – there is at least one reorganisation procedure that can be commenced upon the application of creditors which constitutes a notable strength. In this context it should also be mentioned that some limitation on the creditors' right to file may be useful where the debtor is not yet technically insolvent, meaning that the insolvency is imminent or likely to occur. Restrictions on creditors' filing rights might furthermore be relevant where the aim of the pre-insolvency reorganisation framework is to create a more debtor-led procedure in which the debtor also remains in possession of its business. An overview of the available procedures in all EBRD economies of operations is contained in the **Annex Business Reorganisation Procedures** of the Assessment Report.

e. SME-specific procedures

Lastly, one of the latest trends in the international best practice and a critically needed tool amid the Covid-19 crisis is a specific reorganisation procedure for small and medium-sized enterprises (SMEs). The definition and categorisation of SMEs differ among jurisdictions and is usually established based on a combination of number of employees, annual turnover, and value of assets. The assessment questionnaire did not refer to any specific definition or categorisation indicator; it rather referred to SMEs as defined by the respective national law. Simplified reorganisation procedures for SMEs are important, as SMEs usually lack the resources to conduct a successful reorganisation and are often liquidated rather than restructured.

This has been highlighted by the World Bank and, more recently, UNCITRAL has adopted a draft text on a simplified insolvency regime for SMEs. The EU Restructuring Directive also seeks to tackle the special needs of SMEs, and allows for certain exceptions, such as no requirement to group creditors in separate classes. Unfortunately, in the EBRD regions only Kosovo has a fully-fledged reorganisation regime for SMEs, where enterprises with an annual turnover of up to €1 million or up to 25 employees are eligible. While there is no publicly available insolvency data in Kosovo to show how the procedure is used, the existence of this procedure is of real potential benefit to smaller businesses both in terms of time and cost. The significant difference from ordinary reorganisation is that an SME reorganisation in Kosovo has shorter deadlines, particularly for filing and confirming the reorganisation plan, and the role of the insolvency practitioner, known as a monitor, is also more limited than in ordinary reorganisation proceedings. Furthermore, an SME debtor may confirm a plan without meeting all the requirements of an ordinary reorganisation regime if the court finds that certain prescribed requirements are met.

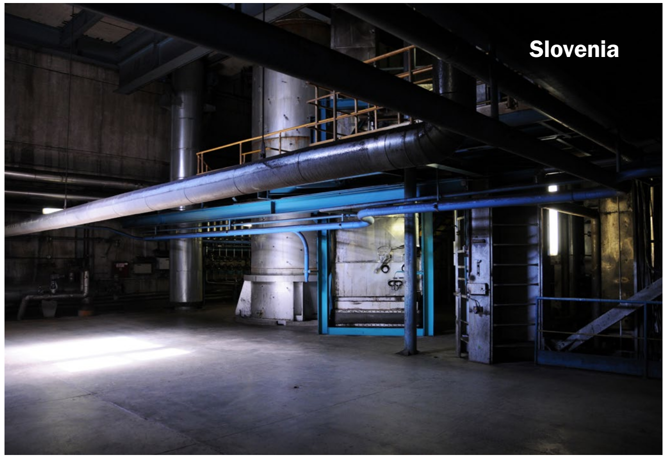
All the above constitute significant ease of the burden that would otherwise be caused by formalities and procedural time frames.

The fact that SMEs represent 99% of businesses in economies where the EBRD invests further emphasises the need for the law to be tailored to these enterprises rather than to larger companies. This is also in line with the new legislative initiatives and recommendations described in the **Section IV International Best Practices**.

Of the EBRD economies of operations, Hungary has a simplified preventive restructuring procedure, including simplified preparation of the restructuring plan, a lower amount of claims for the allocation of voting rights, and lower thresholds for the approval of the restructuring plan. North Macedonia and Slovenia have certain rules that apply to smaller companies without setting out a separate and specific procedure. In North Macedonia an accelerated out-of-court settlement procedure is available for debtors with maximum claims of approx. €16,000 according to the report on the financial status and operation of the debtor and which employ fewer than ten workers. The shortened procedure must end within 60 days of its initiation. In Slovenia, specific procedural rules apply for entrepreneurs and micro companies as defined by local legislation. The **Annex SME Reorganisation Procedures** provides all information on SME-specific procedures in the participating economies.

From the non-EBRD jurisdictions that participated in the assessment[5], it is noteworthy that Argentina has a reorganisation regime for SMEs. The respondents from Argentina indicated that the SME debtors benefit from a faster reorganisation procedure and are also entitled to submit less documentation than large-sized enterprises.

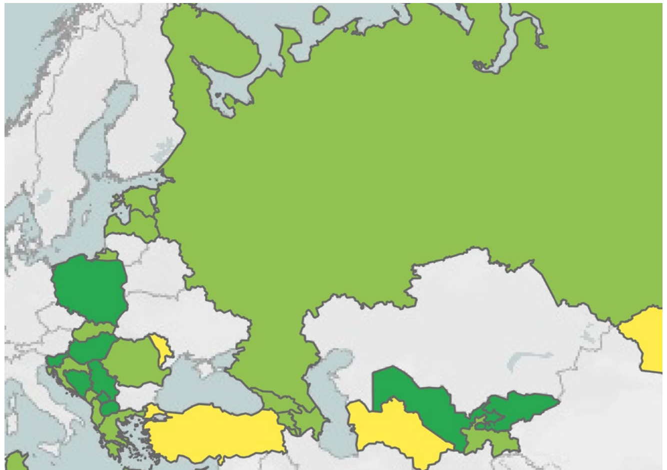
Overall, an SME-specific procedure should have the primary aim of reducing the time and cost required for a reorganisation and the lack of such procedures is a major deficiency in the EBRD region, particularly given the current crisis triggered by the Covid-19 pandemic. This is also clearly desired by the insolvency users. Most of the respondents replied that, in their perception, SMEs should benefit from less burdensome and faster procedures if the minimum standards and requirements are observed. The map below (see Figure 6.7) shows the level of agreement of respondents and indicates that only in Moldova, Mongolia, Turkey and Turkmenistan could the respondents not take a position. In most economies where the assessment collected any responses, the response was positive, with strong levels of agreement recorded in Bosnia and Herzegovina (Federation), Cyprus, Hungary, Kosovo, Kyrgyz Republic, North Macedonia, Poland, Serbia, Slovenia, Uzbekistan, and West Bank and Gaza.


Slovenia

[5] The jurisdictions from outside the EBRD regions that participated in the Assessment are: Argentina, Austria, Belgium, Brazil, China, England and Wales, France, Germany, India, Italy, Luxemburg, Netherlands, Portugal, Spain, South Africa, Sweden and USA.

The map follows a 'traffic light' colour system, with five colour indicators to measure the effectiveness of the law. The information included in the map is based on a question that seeks the respondent's opinion. This same system is applied in the other coloured maps included in the Assessment Report unless specified differently.

Figure 6.7 SMEs should benefit from faster business reorganisation procedures



Source: Business Reorganisation Assessment, EBRD

- Strongly Disagree
- Disagree
- Neither Agree nor Disagree
- Agree
- Strongly Agree

Note: This map displays respondents' level of agreement with the following question: "Do you think that small and medium-sized enterprises should benefit from a less burdensome and faster reorganisation procedure as long as the minimum standards and requirements are observed?" Respondents from most countries agreed with this statement.

3. Planning and Initial Stage of the Reorganisation

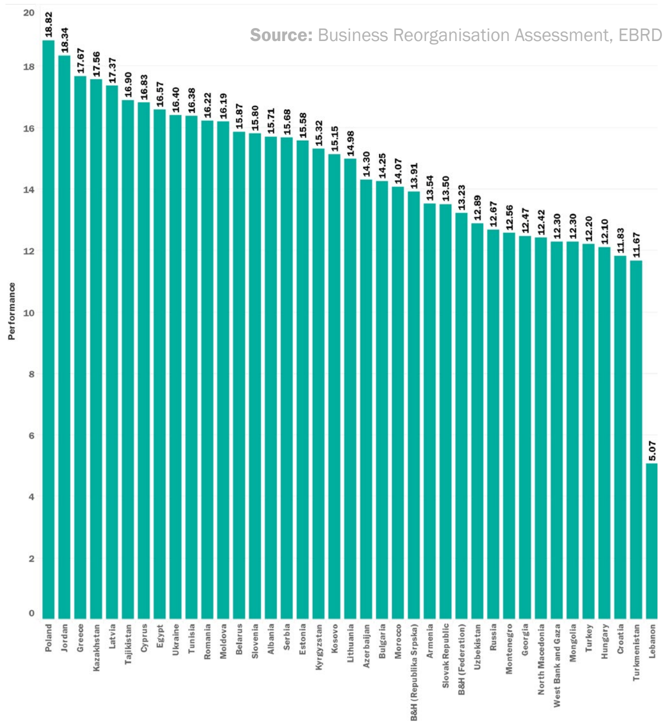
The second section of the questionnaire refers to the planning of the reorganisation and its initial stages. It includes questions regarding the entry requirements into the relevant procedures, the involvement of the court, the availability of a moratorium on creditors' enforcement actions and the extensiveness of such a moratorium. Good performance in the second section indicates that the planning and initial stages of the reorganisation are effectively and extensively set out in the law and applied in practice.

In the second section, Poland, Jordan and Greece performed the best, reaching 18.8, 18.3 and 17.7 points, respectively. Although the scores of best performers in the second section are slightly lower than those in the first section, the EBRD economies still showed very good results. Greece and Poland scored very high also in the overall ranking, whereas Jordan ranked 12th and is therefore located in the middle of the scale. Regarding Jordan, the Assessment Team noted that the legislation was substantially reformed in 2018 in order to promote corporate rescue and it now also includes a pre-packaged reorganisation procedure. However, there is no data available on the application of these procedures yet and data is expected to become accessible once the electronic register is established. Overall, only about half of the economies reached less than 15 points out of a possible maximum 20 points, which indicates a medium to good performance on average across the EBRD regions. The least good performers in the second section are Croatia, Turkmenistan, and Lebanon, with 11.8, 11.7 and 5 points, respectively.

The scores for the second section of the questionnaire are showed in Figure 6.8 below.

Figure 6.8 Assessment points for planning and initial stage of the business reorganisation

Source: Business Reorganisation Assessment, EBRD



Note: This chart illustrates the performance (in descending order) of each EBRD economy with respect to the second section of the questionnaire "Planning and the Initial Stages of Reorganisation". The maximum possible 20 points signal a high-level effectiveness of the legal framework for planning and initial stages of the reorganisation.

a. Insolvency, imminent insolvency, likelihood of insolvency

One of the most important aspects from the second section relates to the entry conditions to the available reorganisation procedures. The results are generally positive for the EBRD regions, as according to the questionnaire responses and analysis by the EBRD project team, of the cross-jurisdictional information contained in the tables at **Annex Business Reorganisation Procedures Table** of the Assessment Report only in five of the assessed EBRD economies – Azerbaijan, Kyrgyz Republic, Mongolia, Russia and West Bank and Gaza – under legislation in place as of October 2021, the company needs to be in a legal state of insolvency (cash or balance sheet insolvency) as defined by the national law to access any available business reorganisation procedure. This means that in all other economies, there is at least one business reorganisation procedure for debtors at risk of insolvency. (In some countries the law is silent on (in)solvency requirements for certain procedures; for example, Egypt, for the restructuring procedure, and Hungary, for the bankruptcy reorganisation procedure.)

Typically, a state of insolvency is established when the debtor's liabilities exceed its assets (balance sheet insolvency), or the debtor is unable to fulfil its obligations when they fall due (cash flow insolvency). To require the debtor to be technically insolvent to commence the procedure has several disadvantages. It is less likely that the reorganisation will be successful when the company is already cash flow insolvent as it might not be able to continue and fund its business operations. Also, restructuring efforts at a stage where the business is actually insolvent may no longer assure the creditors that the solvency can be restored, and the business continued.

Indeed, addressing financial difficulties as early as possible seems to be a more efficient approach and currently also best practice, as restructuring at a stage where the business is still viable allows the going concern value to be preserved in the company and maximises the chances of a successful rehabilitation. (See, for example, the best practices in France, Germany, the UK, and the US described in **Section IV International Best Practices**.)

In EBRD regions other than those mentioned, there is at least one procedure that can be commenced when the likelihood of insolvency, or imminent or expected insolvency exists, with an imminent insolvency suggesting a higher level of distress than the general likelihood of insolvency. The exact factors determining these thresholds differ among jurisdictions. In jurisdictions that contain both reorganisation procedures with legal insolvency as an entry condition and procedures without this requirement, it may be advisable to lower the access thresholds for all reorganisation procedures and allow for early access. The exception is in jurisdictions which provide for a gradation in insolvency procedures according to the level of distress of the business (for example, the sanation and arrangement procedures in Poland) and which incentivise early 'lighter-touch' reorganisation by limiting access to more formal reorganisation procedures where the debtor loses possession. The **Annex Business Reorganisation Procedures** in the EBRD regions contains the information on entry requirements in all EBRD economies of operations.

Tunisia

b. Moratorium

A common strength in the second section of the questionnaire relates to the moratorium or stay on creditors' enforcement actions against the debtor. The assessment asked whether the reorganisation procedures available in each jurisdiction enjoy the benefit of a moratorium during which creditors are prevented from taking certain enforcement actions. In all EBRD economies of operations, there is at least one reorganisation procedure in each economy that provides for a moratorium or stay and gives the debtor 'breathing space' from enforcement actions to contemplate restructuring options and execute them as appropriate. A moratorium is furthermore important to prevent creditors from disrupting the negotiation process and reducing the value of the debtor's assets. The overview of the available moratoria in all 40 jurisdictions, their duration, application to different types of claims and special features for each of the available reorganisation procedures are presented in the **Annex Availability of Moratoria in Business Reorganisation Procedures**.

There were several trends revealed regarding the moratorium. Notably, where the reorganisation plan is developed outside the court, that is, privately, and then submitted to the court for its confirmation, the moratorium may only arise once the court approves the plan, or optional. For example, in Latvia during the extrajudicial legal protection proceedings (ELPPs), and in Poland during the arrangement approval procedure – all of which constitute hybrid procedures – a moratorium arises after the court approves the plan. In Serbia, the judge may take (at the request of the petitioner) measures to protect the debtor's property, including a moratorium, as part of its decision to commence preliminary insolvency proceedings for a pre-negotiated reorganisation plan. This is because the first stage of the process is conducted without commencing the formal court-supervised procedure which would then trigger a moratorium automatically or on request. However, parties are free to negotiate a private standstill agreement which would bind the signatories during the first stage of the reorganisation.

Similar to the Latvian and Polish examples, during the restructuring procedure in Egypt – which, however, is not a hybrid procedure – the moratorium is in place once the submitted plan is ratified by the court.

Most economies that provide for statutory supported restructuring frameworks include restrictions on creditor actions against the debtor. The moratorium is typically for the duration of the procedure; however, some countries limit the time period of the moratorium. In Greece, North Macedonia and Ukraine, the relevant legislation for statutory supported restructuring includes a moratorium during business reorganisation procedures. In Serbia and Turkey, the debtor is supported by a contractual standstill, which in the case of Turkey arises automatically pursuant to the Framework Agreements signed by Turkish banks. This is a remarkable strength – since during out-of-court restructurings without the statutory frameworks, creditors are not prevented from enforcing their claims, so the debtor only has the option to agree on a standstill privately and so runs the risk that creditors who did not sign the agreement will rush to the courts. The option of a moratorium within the out-of-court restructuring frameworks, even if it only applies to the participating creditors (for instance, Greece and Turkey), is another benefit of statutory supported consensual restructurings over 'pure' private workouts.

The moratorium may apply to all types of creditors, including creditors secured by collateral, such as a mortgage, and sometimes also preferred creditors such as tax authorities and social security authorities. Whereas the application of a moratorium to unsecured creditors is found in all 39 economies, as can be seen from the **Annex Availability of Moratoria in Reorganisation Procedures**, secured creditors benefit from more special treatment in a number of jurisdictions. Nevertheless, a positive finding is that in only a few jurisdictions (Kyrgyz Republic and West Bank and Gaza) secured creditors are unaffected by a reorganisation procedure. In West Bank and Gaza secured creditors are expressly subject to a moratorium only for any unsecured portion of their claim.

In some jurisdictions, such as Estonia, Slovenia and Turkmenistan, preferred creditors are also excluded from any moratorium in a reorganisation procedure. The rationale for making preferred creditors exempt is to maintain their enforcement rights to protect public interests, whereas the justification for excluding the secured creditors seems to be to favour the provision of security and afford maximum protection to secured creditors in reorganisation procedures. However, the international best practices, including the EU Restructuring Directive, evidence that extending the moratorium to secured creditors maximises the chances of a successful restructuring as it preserves the debtor's assets, allows the restructuring negotiations to take place without disruptions and supports a common agreement.

According to the assessment results, economies where secured creditors are generally allowed to enforce their security during a reorganisation procedure without making an exceptional case (see below) include Croatia (in the pre-bankruptcy procedure), North Macedonia (in the out-of-court settlement procedure unless secured creditors have renounced their rights to separate satisfaction), and Turkey (during the concordat procedure, which is the main reorganisation procedure used, although in practice secured creditors cannot exercise their rights of sale). The insolvency laws in Croatian and North Macedonian include what is referred to as creditors with a right of 'exclusion' or 'separate satisfaction' and creditors with 'segregation rights', which may be, but are not necessarily, secured. Whereas creditors with a right of 'exclusion' can claim the asset according to the right of exclusion to be completely excluded from the debtor's estate, creditors with ‘segregation rights’ maintain their rights to enforce over the assets that are subject to such rights.

Therefore, these two types of creditors (creditors with exclusion rights and creditors with segregation rights) are not bound by the moratorium.[6] In both economies, secured creditors which are not subject to moratorium can continue with any ongoing legal proceedings regarding their secured claim until they obtain a court order.

In many jurisdictions where the moratorium generally applies to secured creditors, the insolvency laws provide in certain exceptional circumstances for the court to lift or ease such standstill on application of the secured creditor. This is sometimes because the value of the pledged collateral may be declining, therefore disadvantaging the secured creditor by not allowing enforcement over the asset. This is the case, for example, in Azerbaijan, Latvia and Ukraine, where the law specifically mentions damaging the collateral and harming the secured creditors’ interests as an economic justification for lifting the moratorium, and in Bulgaria, where the court will allow the continuation of any ongoing enforcement action in one reorganisation procedure on these grounds. Albania, Armenia, Georgia, Kazakhstan, Russia and Tajikistan grant the secured creditor the right to apply to the court for derogations from the general applicable moratorium under specific circumstances. In a few jurisdictions – for example, Romania and Poland – the extensiveness of the moratorium and whether it affects secured creditors depends on the procedure.

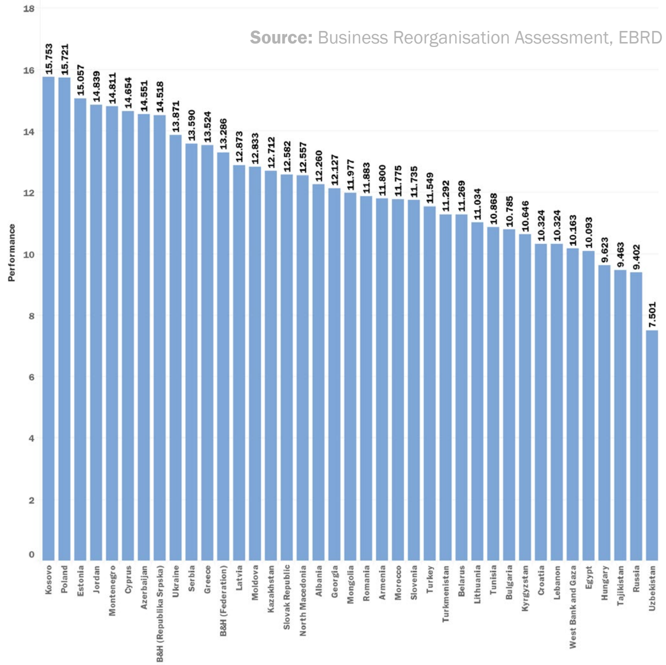
The grounds for this exceptional treatment of secured creditors differ among jurisdictions and are mostly linked to whether the respective assets are necessary to continue the debtor’s operations (such as with Albania) or whether or not it is part of the reorganisation plan. In Bosnia and Herzegovina (Federation) a secured creditor can request satisfaction of their claims when the encumbered asset is sold, or in the case of sale of the insolvency debtor as a going concern, and may request the right to resume the enforcement process. In any event, circumstances where secured creditors may be disadvantaged or unfairly treated because of the application of the moratorium should be considered by the legislation, and relevant provisions should be included in the insolvency laws. In some cases the legislation distinguishes between ongoing security enforcement proceedings which may continue and new security enforcement proceedings which are prohibited.

4. The Reorganisation Plan

The third section mainly deals, among other things, with the types of restructuring options that may be employed, how creditors vote on the reorganisation plan, and whether there are any parties who can block or veto the reorganisation plan. Good performance in this section is regarded as showing that the legislation and current practice regarding the reorganisation plans is efficient and extensive, meaning that the reorganisation plan provides for extensive restructuring options and serves its purpose.

The scores for the third section of the questionnaire are showed in Figure 6.9 below.

Figure 6.9 Assessment points for the business reorganisation plan



Source: Business Reorganisation Assessment, EBRD

Note: This chart illustrates the performance (in descending order) of each EBRD economy with respect to the third section of the questionnaire, “The Reorganisation Plan”. The maximum possible 20 points shows that the legislation regarding the business reorganisation plans is efficient and extensive.

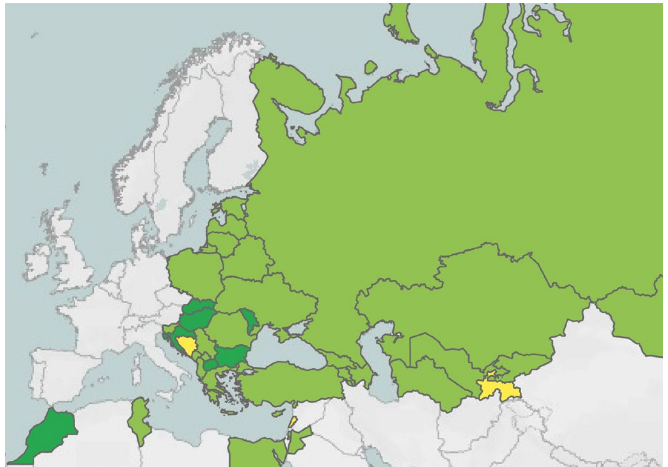
[6] Although in Croatia the creditors are free to waive their right to separate settlement and agree to a postponed settlement of their claims.

The ranking in the third section is dominated by Kosovo and Poland with 15.7 points each, and followed by Estonia with 15 points. Poland and Kosovo also lead according to the overall scores, whereas Estonia ranked 19th in the overall assessment ranking. It is notable that economies such as Georgia, Mongolia and Morocco, that were identified as least good performers in the overall ranking, are in the middle of the scale in this third section and, therefore, show a medium performance. Similarly, at the lower end, the ranking includes economies that scored higher in all other rankings, such as Russia and Egypt. The scores for the third section were, on average, lower than those for the first two sections. However, all EBRD economies of operations showed a satisfactory performance as the absolute majority of them achieved half or more of the maximum possible score for this section.

Positive results were observed across the EBRD regions regarding the reorganisation options and whether the debtor has the freedom to propose any restructuring option to its creditors. The respondents were asked to indicate their level of agreement with the statement. Within the restructuring options the questionnaire referred to measures such as reduction of face value of creditors' claims, debt to equity swaps, extension of maturities, reduction of applicable interest, payment holidays, etc. The below map shows that only in Lebanon, Tajikistan and in Federation of Bosnia and Herzegovina could the respondents not take a position regarding these options, while at the same time the law provides for such tools. In all other economies the respondents either strongly agreed (dark green) or agreed (green) that the debtor can propose any reorganisation option. This is a positive trend as the success of a reorganisation may depend on the availability of different reorganisation options and this can be an indicator of whether they have been used in practice so that the creditors are confident when consenting to the plan.

Figure 6.10 below presents the traffic light map to showcase the degree of agreement of participants with the freedom to propose restructuring options within the EBRD regions.

Figure 6.10 Debtors generally enjoy freedom to propose reorganisation options



Source: Business Reorganisation Assessment, EBRD

Strongly Disagree
Disagree
Neither Agree nor Disagree
Agree
Strongly Agree

Note: This map displays respondents' level of agreement with the following question: "Does the debtor have the freedom to propose any reorganisation (or restructuring) options to its creditors?" Respondents from most economies agreed.

Tajikistan

a. Restructuring options

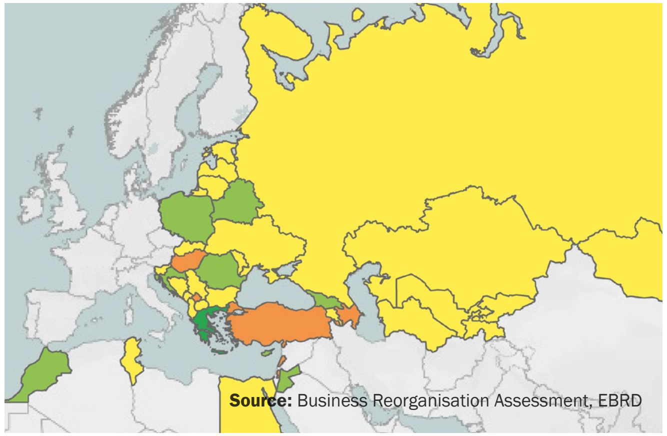
The assessment showed that in all 38 participating economies, the reorganisation plan can include debt reduction, which means the reduction of the nominal value of creditors' claims. This is a positive result, since in many situations, other reorganisation options, such as deferral of maturities or reduction of interest rates, may not be sufficient to ease the debt burden. However, there are economies where preferred debt cannot be written off. (Preferred debts are debts that have been given a priority in ranking or preference by means of the insolvency law or other legislation, such as employees and sometimes uncollected taxes.) This is the case in Belarus, Croatia (for the pre-bankruptcy procedure only), Estonia (reorganisation procedure only), Hungary for certain tax debts in the preventive restructuring procedure, Latvia (special rules apply for employees and tax authorities in both procedures), Montenegro for certain wages and pension claims, Morocco (in all three procedures, employees' claims cannot be written off), Slovenia, Poland (in all procedures subject to certain restrictions) and certain preferred claims in Turkey, as confirmed by the **Annex Business Reorganisation Tools**. In Russia, Romania and (for one out of the two procedures) Tajikistan and (for one out of the two procedures) Tunisia the preferred creditors should consent to a potential reduction of their claims. While it might be in the public interest to prevent social security contributions or outstanding tax debt to be reduced, the write-off of these obligations is often very important for a successful reorganisation, for rescuing the business and preserving the jobs.[7] If not, it can become a stumbling block towards the success of a reorganisation attempt. This aspect is also discussed in below within the analysis of the Effectiveness benchmark.

Furthermore, review of the legislation revealed that more than half (26) of the participating jurisdictions also expressly recognise debt to equity conversion in their insolvency legislation for at least one available procedure, which is another positive trend. It should, however, be noted that such conversion might require the consent of the shareholders of the debtor company, which might be difficult to obtain in certain situations. Therefore, if it would rescue the business, the legislator should seek to prevent the shareholders from obstructing the plan and refusing a debt-to-equity swap. In Slovenia, the insolvency legislation disapplies shareholder pre-emption rights in the compulsory settlement procedure.

Generally, the assessment showed the strength that in almost all economies (except for Armenia (without equivalent protection), Egypt, Lebanon, Turkmenistan and West Bank and Gaza), secured creditors' claims can be compromised within one of the available reorganisation procedures, meaning that these claims can be compromised as part of the reorganisation plan. Overall, it is important to stress that the reorganisation procedure should ideally be capable of binding and reorganising all types of creditors, including secured and preferred creditors. These reorganisation options are reviewed in the **Annex Business Reorganisation Tools** of this Assessment Report that encompasses all EBRD economies of operations.

Regarding other reorganisation options, such as the transfer of the business as a going concern without liabilities,[8] which is often applied where only the reorganisation of financial obligations is not sufficient and the sale of the business seems to be a more profitable option, or a change of management is desired, the questionnaire asked about the respondents' level of agreement. Most respondents indicated that they can neither agree nor disagree whether the transfer of the business as a going concern without liabilities is conducted in the respective jurisdiction. The fact the respondents in most of the assessed economies could not take a position already indicates a weakness, as this reorganisation option seems not to be used frequently. Common practice in some advanced economies such as the UK (sales out of administration) and Germany shows that the going concern sale of the business is frequently applied and constitutes a viable alternative when financial restructuring is not feasible. Within the EBRD regions, only in Belarus, Poland, Romania, Croatia, Cyprus, Morocco, Greece, Jordan, and Georgia were the responses positive. Figure 6.11 shows the traffic light map for the level of agreement on the sale of the business as a going concern in the EBRD regions.

Figure 6.11 Reorganisation procedures are not commonly used to transfer the business as a going concern



Source: Business Reorganisation Assessment, EBRD

- Strongly Disagree
- Disagree
- Neither Agree nor Disagree
- Agree
- Strongly Agree

Note: This map shows respondents' level of agreement with the following question: "Can a reorganisation procedure be used to transfer the business as a going concern without liabilities?" Most respondents indicated that they could neither agree nor disagree.

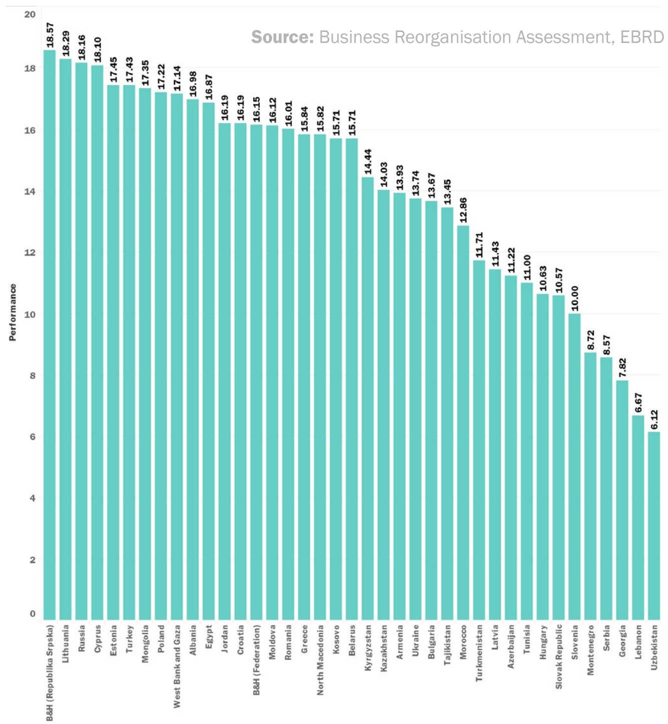
[7] It should also be noted that in some jurisdictions there are statutory restrictions as to the powers granted to public servants, when participating in a reorganisation.

[8] Although this question was part of the second section, it is reviewed at this point for consistency and completeness.

5. The Reorganisation Approval Phase

The fourth section of the questionnaire relates to the reorganisation approval phase which follows the negotiations of and voting on the reorganisation plan. During the approval phase, the main focus is on the activity of the court reviewing and assessing the presented plan. This stage of reorganisation is critical for the success of the process, as in most court-supervised procedures the court's approval is imperative and entails the assessment of certain provisions aiming at protecting creditors' interests. Accordingly, the questions in the fourth section sought to identify the involvement of the court and its tasks and powers. The scores for the fourth section are presented in Figure 6.12.

Figure 6.12 Assessment points for the business reorganisation approval phase in the EBRD regions



Note: This chart illustrates the performance (in descending order) of each EBRD economy with respect to the fourth section of the questionnaire "The Reorganisation Approval Phase". The maximum possible 20 points signals meaningful involvement of the court in reviewing and assessing the business reorganisation plan.

Different from all the rankings in Figure 6.12, the fourth section is dominated by the Republic Srpska, Lithuania, Russia, and Cyprus, with 18.6, 18.3, 18.2 and 18.1 points respectively. Lithuania, which collected 18.3 points, has taken the leading position in the overall ranking of economies as well as in the ranking for the first section. Remarkably, Mongolia ranked seventh in the fourth section, compared to other rankings where the economy collected relatively lower scores. It is also notable that Serbia, Montenegro, and Slovenia are located at the lower end of the scale, although they showed medium performance in all other rankings. Besides these economies, Uzbekistan, Lebanon, and Georgia are also among the least good performers. This indicates a low quality in the effectiveness and extensiveness of the reorganisation approval phase. Since most of the participating economies collected a score of between 10 and 15 points out of a possible maximum of 20 points, the average performance in the EBRD regions is regarded as satisfactory, showing a medium to high level of quality in the reorganisation approval phase. As regions are so diverse, it might be more meaningful to compare the overall performance with the combined regional scores in addition.

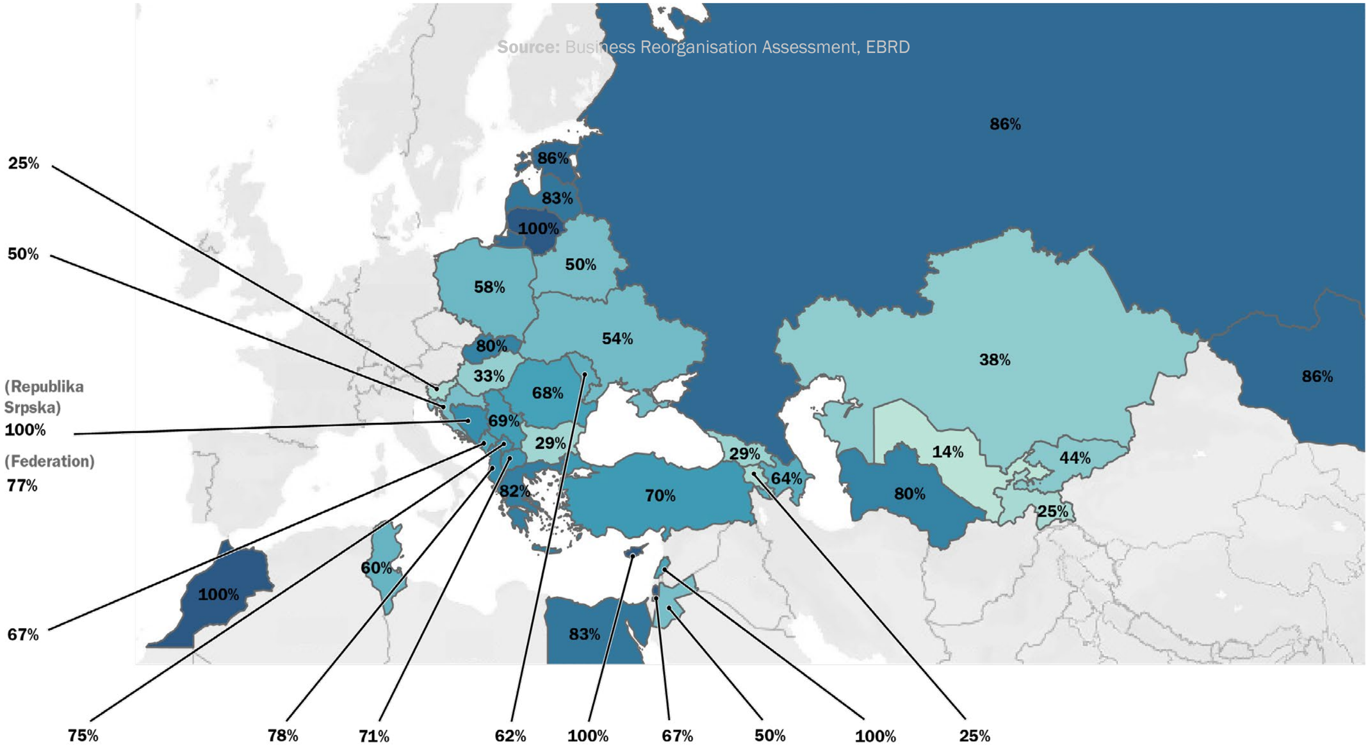
After being drafted, negotiated, and voted by the creditors (regarding classes of creditors and voting, see analysis below under the Effectiveness Benchmark), the reorganisation plan is usually reviewed and confirmed by the court within the court-supervised reorganisation procedure, or by an administrative authority within other types of procedures. In this regard, the assessment showed that in almost all economies the court (or administrative authority) reviews the reorganisation plan which has been previously accepted by the creditors (Figure 6.13). This is a positive trend as the formalities of the voting, the relevant majority thresholds as well as other statutory requirements for the approval of the plan should be reviewed by an independent authority.

Exceptions are Lebanon, Montenegro, and Uzbekistan where, according to the validated responses, the plan is approved in the creditors' meeting but not reviewed by the court subsequently, which seems to be a major deficiency in these economies.

As to the scope and extent of the judicial review, the approach among the jurisdictions differs greatly. The questionnaire asked whether the judge would limit his involvement to reviewing formalities, would assess the 'best interest of creditors' test and the 'feasibility' test. As these three questions are not strictly factual and are subject to interpretation, they were not validated by the Assessment Team to obtain definite 'yes' or 'no' answers. The Assessment Team instead kept the diverging responses received: that is, some respondents within the same jurisdiction agreed with the questions and others disagreed. In order to reflect the responses received correctly and precisely, the team calculated the level of agreement among the respondents within each economy by calculating the percentage of 'yes' and 'no' answers received out of the number of all obtained answers in that economy. These percentages are shown in the table below and express respondents' level of agreement with each shown question.

Only in Kyrgyz Republic, North Macedonia, and Slovenia an absolute majority indicated that the judge would only review formalities, such as the voting rights or the required majorities. In most of the assessed economies, the majority of respondents replied that the judge would not limit his involvement to reviewing formalities. Furthermore, in most of the assessed economies, most respondents expressed an agreement in that the judge would assess whether the plan satisfies the 'best interest of creditors' test as well as its 'feasibility' test.

Figure 6.13 Judges widely assess whether the reorganisation plan satisfies the 'best interest of creditors' test



Note: This map shows respondents' level of agreement with the the following question "Does the judge assess whether the plan satisfies the 'best interest of creditors test'?" The darker the shade of blue is, the more respondents responded 'Yes'.

Only in Kyrgyz Republic, North Macedonia, and Slovenia an absolute majority indicated that the judge would only review formalities, such as the voting rights or the required majorities. In most of the assessed economies, the majority of respondents replied that the judge would not limit his involvement to reviewing formalities. Furthermore, in most of the assessed economies, most respondents expressed an agreement in that the judge would assess whether the plan satisfies the 'best interest of creditors' test as well as its 'feasibility' test.

This is a positive trend as the best interest of creditors test typically guarantees that the creditors are not worse off under the plan than they would be in case of insolvent liquidation or other relevant alternatives and therefore provides for a significant protection of creditors' rights and interests. This is particularly important if not all creditors or creditors' classes consent to the plan and the plan is being confirmed despite their objections. In this case, the judge would assess whether the dissenting creditors who are nevertheless bound by the plan (crammed down) receive at least as much as if the debtor would have been liquidated or would have implemented other restructuring options.

It is also in this context that the judges in many jurisdictions assess whether the plan is feasible, meaning whether the implementation of the plan is likely to lead to a successful rehabilitation of the business or not. Besides a few exceptions such as Armenia, Bulgaria, Georgia, Hungary, Jordan, Kazakhstan, Kyrgyzstan, Slovenia and Uzbekistan, most respondents in other economies agreed that the feasibility is being reviewed by the court. Both the best interest of creditors test and the feasibility test are part of the reorganisation framework of advanced jurisdictions such as the US and Germany and are provided for in the EU Restructuring Directive. It is in the interest of creditors that the court as a third and independent authority reviews the plan, particularly if it needs to be confirmed against the will of the minority, and assesses that the rights of these minorities are protected. These two confirmation tests further highlight the need for specialised judges who have the necessary expertise to deal with businesses in distress. In particular, the best interest of creditors test requires corporate valuations to take place and the judge to review the proposed plan based on the valuation evidence. This is particularly important in order to deal with the insolvency case in a fast and effective manner.

Based on further review of the national legislation and verification with local counsels, the Assessment Team identified that many economies follow a commercial court system and assign insolvency cases to these commercial courts which is, overall, a positive trend. There also a few economies, such as Armenia and Egypt, that have specialised insolvency courts or specialised insolvency departments within the (general) courts. This latter approach seems to be better at responding to the recommendation to establish specialised courts or divisions with judges working specifically on insolvency matters and, therefore, providing specialists expertise in this field. In Belarus, Kazakhstan, Tajikistan, Turkmenistan and Uzbekistan, economic courts are competent for hearing insolvency cases. The **Annex Insolvency Courts, Regulators and Practitioners** contains more detail on the court system and licensing of insolvency practitioners in each of the economies.

6. Other Relevant Aspects

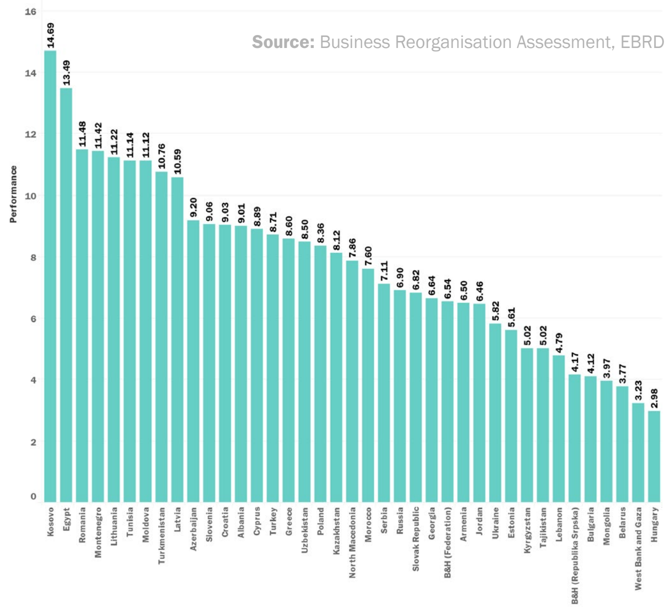
a. Background

Lastly, the fifth section of the questionnaire examined other relevant factors for the development of effective insolvency and reorganisation frameworks and legal systems. It includes questions on general principles of insolvency law as applied in a jurisdiction, such as principles of universality, procedural efficiency, economic efficiency, equality of creditors and professional and ethical standards. In addition, this last section of the questionnaire includes several questions that ask for the opinion of respondents and therefore provides for mostly perception-based information. Lower scores in section five may also indicate that, despite having a well-developed legislative reorganisation framework, the available procedures are not efficiently employed (or that is the perception of the users). Generally, the scores for the fifth section fluctuate the most across the surveyed economies and, on average, represent the lowest performances per section and per economy.

This might reflect the limited number of 'core' questions, which as a result produces a great impact on the overall scoring of the section.

The scores for the fifth section are presented in Figure 6.14.

Figure 6.14 Assessment points for other relevant aspects



Note: This chart illustrates the performance (in descending order) of each EBRD economy with respect to the fifth section of the questionnaire "Other Relevant Aspects". The maximum possible 20 points shows compliance with general principles of insolvency law, such as principles of universality, procedural efficiency, economic efficiency, equality of creditors and professional and ethical standards.

Kosovo and Egypt lead the ranking in the fifth section, with 14.7 and 13.5 points, respectively. Romania ranks third but falls by two points behind Egypt, reaching only 11.4 points. As mentioned, the scores in the fifth section were noticeably lower than the ones for any of the other four sections. Seven participating economies collected less than five points out of possible maximum of 20 points, which is a notable negative trend. The majority of economies only reached 10 or fewer points, which indicates a medium to low performance, on average, across the EBRD regions. As most questions in the fifth section were perception-based, the low scores give an indication that the current application of the general principles of insolvency laws is not as effective as is would be desired by the insolvency law users and users do not have confidence in their application.

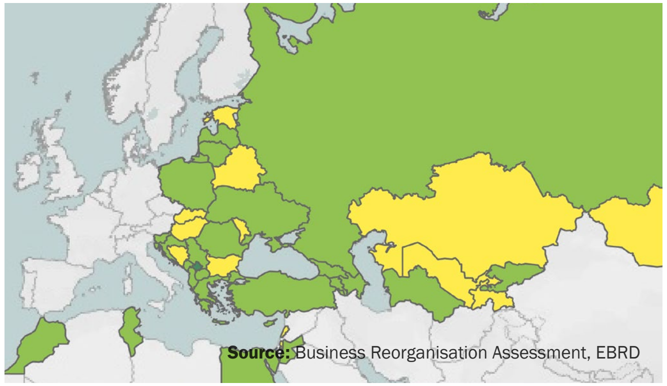
One of the aspects sought in this fifth section was to identify whether the principle of universality is followed in the EBRD regions. The principle of universality implies that there is only one competent court to decide on the insolvency of the company (procedural unity), and that the insolvency law of the jurisdiction in which the insolvency has been initiated will be used to decide matters relevant to creditors in all other countries where the company has assets or branches (universality). All assets and liabilities of the parent entity and its foreign branches are wound up as one single legal entity (with extra-territorial effect to the adjudication of insolvency). This principle is of the utmost importance in cross-border insolvencies where the debtor has assets and liabilities in a jurisdiction other than the jurisdiction where the insolvency procedure has been commenced.

In order to manage cases of cross-border insolvency, the economies who follow the principle of universality will not allow other insolvency procedures to be initiated and affect the efficiency and effectiveness of already commenced insolvency procedures. Within the European Union, this is enforced by the **EU Regulation on Insolvency (Recast) 2015** which is directly applicable and provides for the 'main' insolvency procedure to be opened in the state where the debtor has its centre of main interests and, in certain cases, for secondary insolvency proceedings to be opened, with these however requiring the courts to cooperate and making the judgement in the main insolvency procedure enforceable in all Member States (so-called limited universality). Outside the EU, the principle of universality needs to be enshrined in the national legislation and practice. The **Annex Cross-border Insolvency Proceedings** in this Assessment Report provides a detailed analysis of the cross-border aspects in all EBRD jurisdictions.

The questions on whether the respective national insolvency laws follow the principle of universality were not validated by the Assessment Team so that definite 'yes' or 'no' answers were obtained. The Assessment Team instead kept the diverging responses received: that is, some respondents within the same jurisdiction agreed with the question and some disagreed. In order to reflect the responses received correctly and precisely, the team calculated the level of agreement among the respondents within each economy by calculating the percentage of 'yes' and 'no' answers received out of the total number of obtained responses in that economy. In Albania, Belarus, Jordan, Kyrgyzstan, Lebanon, Mongolia, Morocco, Tajikistan, Ukraine, and West Bank and Gaza, about 50% or less of the respondents indicated that the principle is not recognised in their jurisdiction. This is a negative trend and constitutes a weakness of the law and practice in these economies. In contrast, in Armenia, Azerbaijan, Bosnia and Herzegovina (both Republic Srpska and Federation), Bulgaria, Greece, Egypt, Georgia, Kazakhstan, Moldova, of Russia, Serbia Tunisia, Turkey, Turkmenistan and Uzbekistan, most respondents agreed that the principle of universality is recognised. The **Annex Cross-border Insolvency Proceedings** to this Assessment Report contains further information on respondents' perception of the principle of universality in the EBRD regions.

Another important principle of insolvency laws is the principle of equality of creditors. This is usually reflected by the pari passu principle (equal ranking of creditors) and the par condicio creditorum (equal treatment of creditors) which constitute the main building blocks of any insolvency laws. The exceptions from the general equality of creditors are usually the creation of security interests or certain statutory preferences which are common in most jurisdictions. The map below (Figure 6.15) shows the respondents' level of agreement regarding whether the equality of creditors is protected in their jurisdictions. Notably, only in Belarus, Bulgaria, Estonia, Federation of Bosnia and Herzegovina, Hungary, Kazakhstan, Moldova, Mongolia, the Slovak Republic, Tajikistan and Uzbekistan, could the respondents not take a clear position. In all other economies the respondents agreed with the statement which is a positive trend.

Figure 6.15 General equality of creditors is mostly protected



Source: Business Reorganisation Assessment, EBRD

Strongly Disagree
Disagree
Neither Agree nor Disagree
Agree
Strongly Agree

Note: This map shows respondents' level of agreement with the following question: "Is equality of creditors protected?" Most respondents indicated their agreement with this statement.

i. Insolvency principles in the EBRD regions

Another important aspect assessed under the fifth section were the adoption of common guiding principles for an efficient and effective insolvency law. These are:

• Expediency/speed

A rapid resolution of the situation of distress can be achieved.

• High professional and ethical standards

The process is conducted according to high professional standards and under ethical parameters.

• Efficiency

The process is economically and procedurally efficient.

• Equal treatment

All parties are treated equally (debtor and creditors) and also among themselves (inter-creditors).

• Value maximisation

The creation of value for debtor and creditor should be enshrined in the process.

• Negotiability

There is flexibility in the options and certain degree of freedom to the parties to negotiate a favourable outcome.

• Reciprocity

The domestic recognition and enforcement of judgments or orders from a foreign court and vice-versa.

• Transparency and access to information

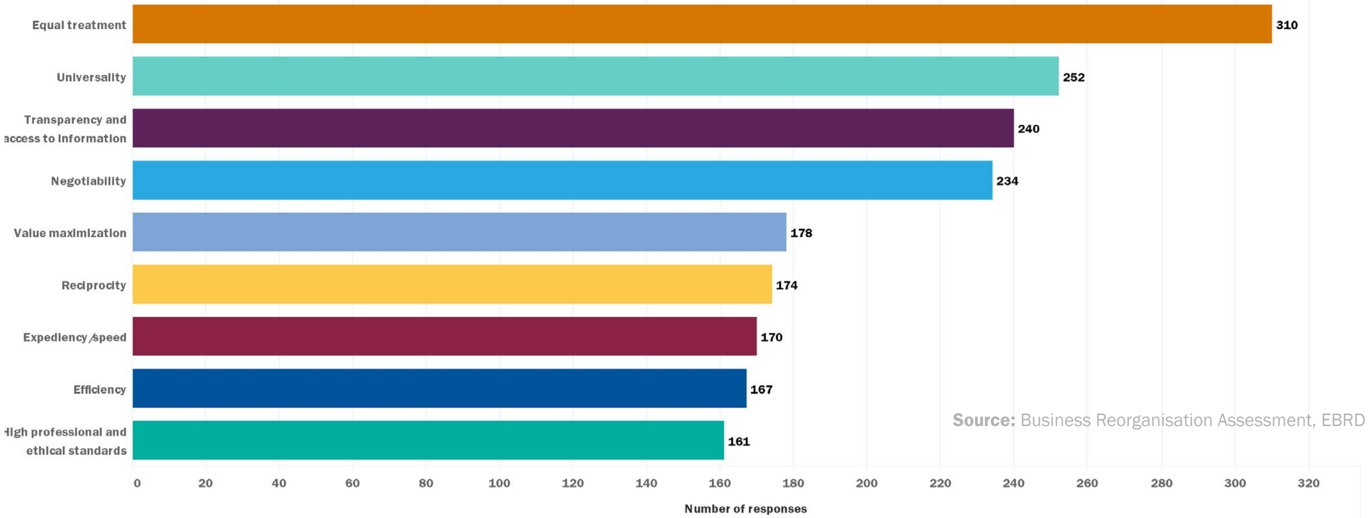
The process is conducted in an efficient manner and the parties have access to information to be able to make informed decisions.

• Universality

There is only one competent court to decide on the affairs of the company (unity), and the insolvency law of the jurisdiction in which the insolvency has been initiated is effective in all other countries where the company has assets or branches.

Whereas each of the listed principles is of outmost importance, many jurisdictions only follow some of them. Therefore, the respondents were asked to identify all the principles followed in their economies and to mark as many as they wanted without any particular priority. The answers are presented in the figure below (see Figure 6.16) that shows, overall, how many times has each principle been selected by the respondents.

Figure 6.16 Respondents' perception of guiding insolvency principles in the EBRD regions



Source: Business Reorganisation Assessment, EBRD

Note: This graph shows respondents' responses in relation to the insolvency principles they consider to be well-implemented in the EBRD regions.

The equal treatment of creditors was indicated by 310 respondents (84% of the responses received) and collected the highest number. This was followed by the principle of universality with 252 selections (68% of the responses received). Access to information was selected 240 times and negotiability 234 times (65% and 63% respectively of the responses received). These four principles are the most frequently applied and recognised principles in the EBRD regions. Equality, universality and negotiability have been selected at least one time in all 39 jurisdictions, whereas transparency and access to information were not even selected once in Belarus, Mongolia and West Bank and Gaza.[9] Regarding data transparency, the Assessment Team conducted a further review of the availability and accessibility of insolvency-related data as part of the Data Transparency Factor, which is presented under the **Overall Performance section** and described in detail in the **Annex Data Transparency Factor**.

The remaining principles also received significant affirmation, reaching numbers within a close range between 161 and 178. Value maximisation, reciprocity, expediency, high professional and ethical standards and efficiency all achieved around 43-48%. The positive trend is that all principles received a significant number of selections and none of the principles seem to have been completely or nearly 'rejected' by the respondents. For a more detailed analysis of the principles missing in each jurisdiction, refer to the table below (Figure 6.18).

Following the question on the common guiding principles for an efficient and effective insolvency law, the questionnaire asked what were the three principles that were lacking in each economy. This could be because it was not contemplated in the legislation or because it is not applied in practice. The table below (Figure 6.17) shows which have been the three most selected lacking principles in each economy.

This is a very important table as it provides a high-level indication of the overall weaknesses of an economy's insolvency framework according to market participants, which may inform future reforms – or, at least, the three main areas in which additional work is needed, be it of capacity building or awareness. All principles are listed on the horizontal axis and the economies on the vertical axis. Some important caveats need to be made:

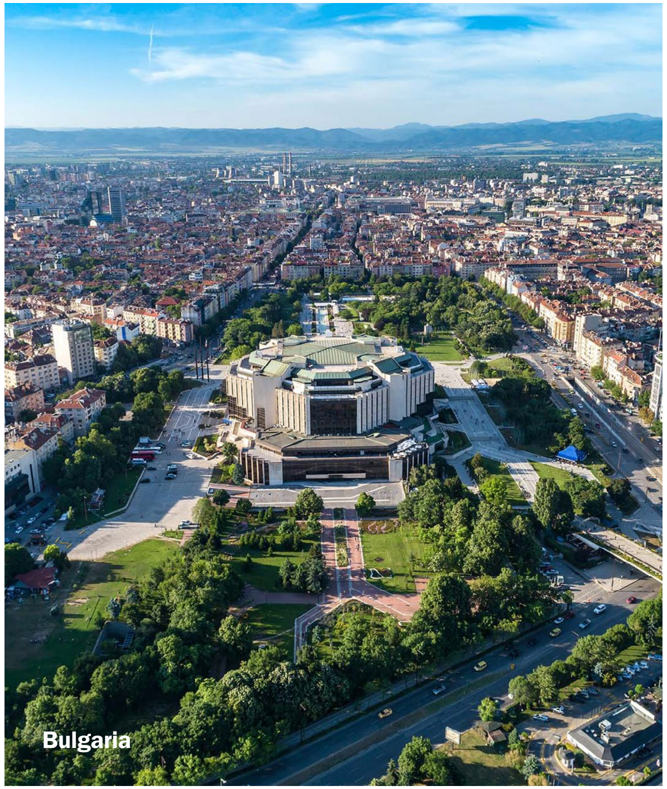
(i) There were some instances where only two insolvency law principles have been highlighted. This reflects the fact that there were more than two insolvency principles tied in third place. This was the case in Armenia, Jordan, Lithuania, Mongolia and Morocco.

(ii) There were some instances where two insolvency principles were selected with an 'X' and two other insolvency principles are marked with an 'O'. This means the latter were tied in third place with the same number of responses, and it was appropriate to highlight them (going beyond the usual three) but also denoting a second level of priority due to the fact that there are more than three. This was the case in Bosnia and Herzegovina (Federation), Hungary, Kosovo, Kyrgyzstan, Lebanon, Russia, Serbia and Slovenia.

(iii) In only one instance a single insolvency principle has been selected. This responds to the fact that there were several responses tied in second place, exceeding the required maximum of three responses (or the exception of four in certain instances where the tied number of responses in either second or third position did not exceed four in total). This is the case in Bosnia and Herzegovina (Republic of Srpska).

(iv) There also were some instances where only one insolvency principle is selected with an 'X' but other insolvency principles marked with an 'O'. These are instances in which there were three insolvency principles tied in a second position. This is the case in Egypt, Moldova, Tunisia and Turkmenistan.

(v) All other economies only have three selected insolvency principles marked with an 'X'.



[9] This is also related to the fact that only one respondent in each of these three economies answered the question.

Figure 6.17 General Insolvency Law Principles Lacking in the EBRD Economies – According to market participants

Economy	Expediency	High professional & ethical standards	Efficiency	Universality	Transparency and access to info.	Negotiability	Value maximisation	Reciprocity	Equal treatment
Albania	X	X					X		
Armenia (1)	X						X		
Azerbaijan	X	X				X			
Belarus			X		X		X		
Bosnia and Herzegovina (Federation) (2)		O				X	X	O	
Bosnia and Herzegovina (Republic Srpska) (3)							X		
Bulgaria	X	X	X						
Croatia		X				X	X		
Cyprus	X	X	X						
Egypt (4)	X	O	O				O		
Estonia	X		X				X		
Georgia	X	X	X						
Greece	X		X				X		
Hungary (2)	O	X	X		O				
Jordan (1)		X	X						
Kazakhstan	X	X	X						
Kosovo (2)	X		O		X	O			
Kyrgyzstan (2)	O	X	X		O				
Latvia		X	X			X			

Economy	Expediency	High professional & ethical Standards	Efficiency	Universality	Transparency and access to info.	Negotiability	Value maximisation	Reciprocity	Equal treatment
Lebanon (2)	X	X	O				O		
Lithuania (1)	X						X		
Moldova (4)	O		O		X		O		
Mongolia (1)	X						X		
Montenegro	X	X	X						
Morocco (1)	X	X							
North Macedonia		X	X				X		
Poland	X		X				X		
Romania	X	X	X						
Russia (2)	O	X	X				O		
Serbia (2)	X	X			O		O		
Slovak Republic	X	X	X						
Slovenia (2)	O		X		O		X		
Tajikistan		X	X		X				
Tunisia (4)	X		O		O		O		
Turkey	X	X	X						
Turkmenistan (4)		O	X		O		O		
Ukraine	X	X	X						
Uzbekistan	X	X							X
West Bank & Gaza	X	X					X		
TOTAL RESPONSES RECEIVED	**30**	**27**	**27**	**0**	**10**	**5**	**21**	**1**	**1**

(1) Only two principles have been highlighted because there were more than two tied in third place based on the number of responses.

(2) Two principles were selected with a 'X' and two other principles are marked with an 'O' since they were tied in third place.

(3) Only one principle is selected with a 'X' as there were several tied in second place.

(4) The 'X' denotes the most highly selected lacking principle and there are three 'O' as all were tied a second place with the same number of responses.

Figure 6.17, besides the specifics for each economy, provides some interesting findings, as these principles serve as guidance of both the business needs and the ethos of a modern insolvency law. These are:

(i) The principles of universality and reciprocity do not seem to be a concern for market participants as they obtained zero and one response respectively. On a previous question within section 5 of the **Assessment questionnaire**, the principle of universality was also assessed, and some economies indicated that it was not recognised (in Albania, Belarus, Jordan, Kyrgyzstan, Lebanon, Mongolia, Morocco, Ukraine and West Bank and Gaza, about 50% of the respondents indicated that the principle is not recognised in their jurisdiction). This lack of concern can be the result of the lack of internationalisation and cross-border insolvency cases.

(ii) Equal treatment is a pillar of insolvency law and as per what was found in a separate question in section 5 of the questionnaire (see the **Traffic Light Map: Equality of Creditors in the EBRD Regions**), it is widely accepted and endorsed. This is consistent with the findings under this perception-based question.

(iii) At the other spectrum of the responses, the ones that require more detailed attention are the top four problematic areas (those insolvency principles that are lacking the most across the EBRD regions). These are:

a. Expediency, which was highlighted in 30 of the EBRD economies of operations (in 79% of the totality of economies);

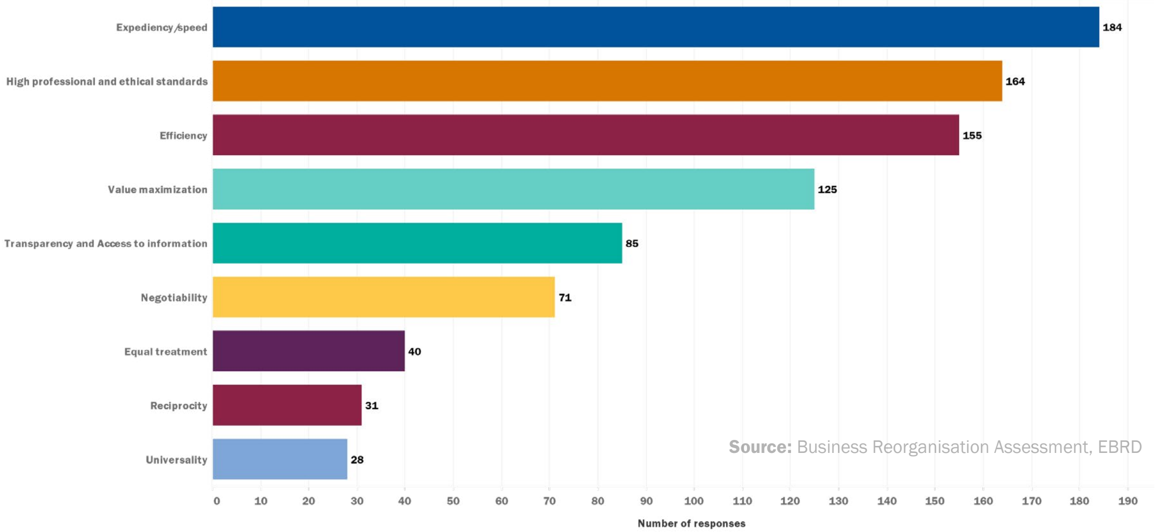
b. High professional and ethical standards, which was highlighted in 27 of the EBRD economies (in 71% of all economies);

c. Efficiency, which was also highlighted in 27 of the EBRD economies (in 71% of the totality of economies); and,

d. Value maximisation, which was highlighted in 21 of the EBRD economies (in 55% of the totality of economies).

The chart below (Figure 6.18) illustrates the relevance of those principles which according to the perception of the respondents are lacking in the EBRD economies of operations.

Figure 6.18 Respondents' perception of insolvency principles that require strengthening in the EBRD regions



Source: Business Reorganisation Assessment, EBRD

Note: This chart shows respondents' responses in relation to the insolvency principles they consider can be further strengthened in the EBRD regions.

To gain a better understanding of the current practice on business reorganisation in the EBRD regions, the questionnaire also asked for further information regarding whether business reorganisation procedures are often used, serve their purpose and if they carry a negative stigma. None of these questions were weighted. Therefore, they have not affected any of the rankings, such as the overall performance, the sections' ranking or the performance per benchmark. The answers to these questions rather informed about the perception of the insolvency law users of whether the reorganisation procedures are successful and help to achieve a sustainable rehabilitation of the debtor.

ii. Are reorganisations a common practice and serve their purpose?

According to majority of respondents' perception, the reorganisation procedures are commonly used in practice only in Greece, Morocco, Poland, Slovenia, Tunisia and Turkey. In Armenia, Azerbaijan, Belarus, Bulgaria, Hungary, Kosovo, Mongolia, North Macedonia, Russia the Slovak Republic and Tajikistan the respondents disagreed with the statement, which can be understood to mean that in their opinion the relevant procedures are not frequently used in practice. In all other economies, the respondents could not take a position, which also indicates a negative trend. The responses are presented below in a traffic light map (see Figure 6.19).

Similarly negative results were revealed by the question on whether the reorganisation procedures serve their purpose, that is, to enable the debtor to continue its operations on a sustainable debt basis. Only respondents who agreed with the previous question (whether the procedures are commonly used) provided answers to this statement. It is remarkable that some of the respondents that indicated a frequent application of the procedure consider that these procedures do not serve their purpose. In Belarus, Estonia and Kyrgyzstan, most respondents clearly indicated this to be the case. Whereas some economies were identified where most respondents think that the procedures serve their purpose, in most of the economies the insolvency law users could not take a position. The responses are presented below in a traffic light map (see Figure 6.20).

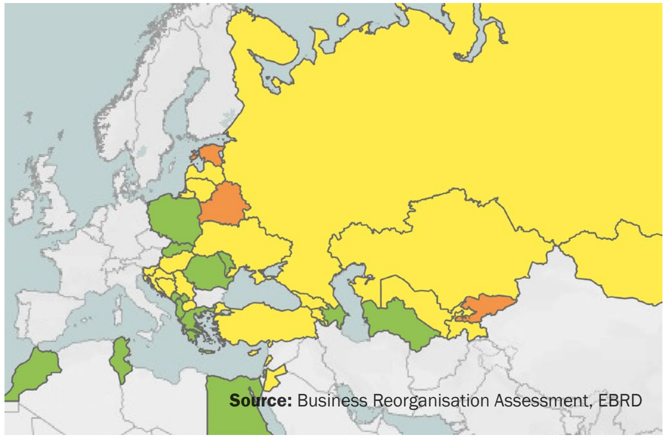
Instead of achieving a sustainable rehabilitation of the debtor, which is the genuine purpose of any reorganisation procedure, in some jurisdictions the respondents think that these procedures are applied to delay the unavoidable, namely the liquidation of the debtor. Only in Armenia, Belarus, Kosovo, Russia and Turkmenistan did the majority of respondents reply that the reorganisation is not used to delay the liquidation. From the remaining economies, in about half of the jurisdictions, the contributions could not take a clear position regarding the statement. This can be contrasted with the other half, where the contributors agreed that the reorganisation is (mis)-used to delay the liquidation. The responses are presented below in a traffic light map (see Figure 6.21).

Another trend is the negative stigma around business reorganisation procedures in many EBRD economies of operations. The questionnaire asked whether, in the opinion of the respondents, the commencement of a reorganisation procedure carries a negative stigma for the debtor. In the overwhelming majority of participating economies, respondents think that the commencement of the reorganisation process has a negative reputational effect on the debtor company. Only in Armenia, Belarus and Uzbekistan did the contributors clearly disagree with the statement. The negative public perception of the debtor being placed into reorganisation is one of the reasons why private workouts, which are usually conducted in confidentiality and hybrid procedures and which mostly take place out of court, should be supported by the legislators and more frequently applied. The responses regarding the negative stigma are presented below in a traffic light map (see Figure 6.22).

Figure 6.19 Business reorganisation is not a widespread choice

Note: This map shows respondents' level of agreement with the following question: "Are reorganisation procedures commonly used in practice in your jurisdiction?" Respondents' feedback was mixed.

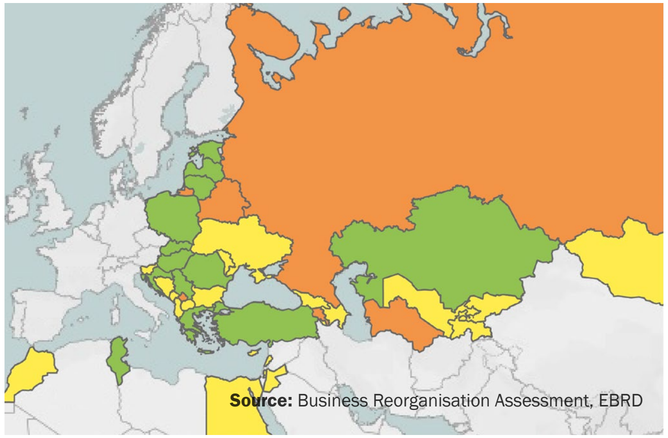
Figure 6.20 Business reorganisation procedures do not always serve their purpose



Strongly Disagree
Disagree
Neither Agree nor Disagree
Agree
Strongly Agree

Note: This map shows respondents' level of agreement with the following question: "Do you think that reorganisation procedures serve their purpose, that is, to enable the debtor to continue its operations on a sustainable debt basis?" Respondents' feedback was mixed..

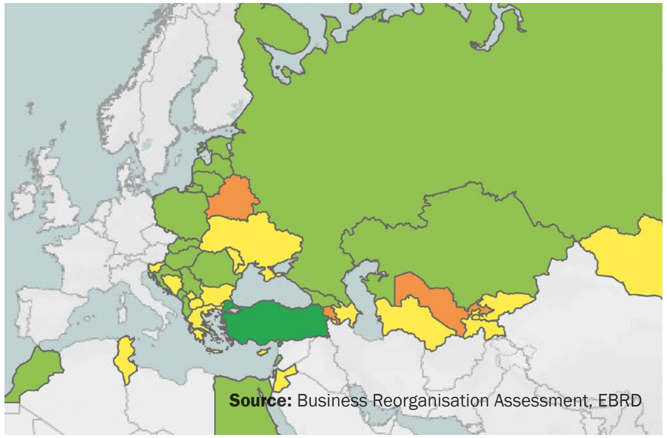
Figure 6.21 Business reorganisation is often used to avoid liquidation



Strongly Disagree
Disagree
Neither Agree nor Disagree
Agree
Strongly Agree

Note: This map shows respondents' level of agreement with the following question: "Is reorganisation often used to delay the unavoidable (insolvent liquidation)?" Respondents' feedback was mixed..

Figure 6.22 Business reorganisation still carries negative stigma



Strongly Disagree
Disagree
Neither Agree nor Disagree
Agree
Strongly Agree

Note: This map shows respondents' level of agreement with the following question: "Does a reorganisation process carry a negative stigma for the debtor?" Most respondents agreed.

C. Performance per benchmark

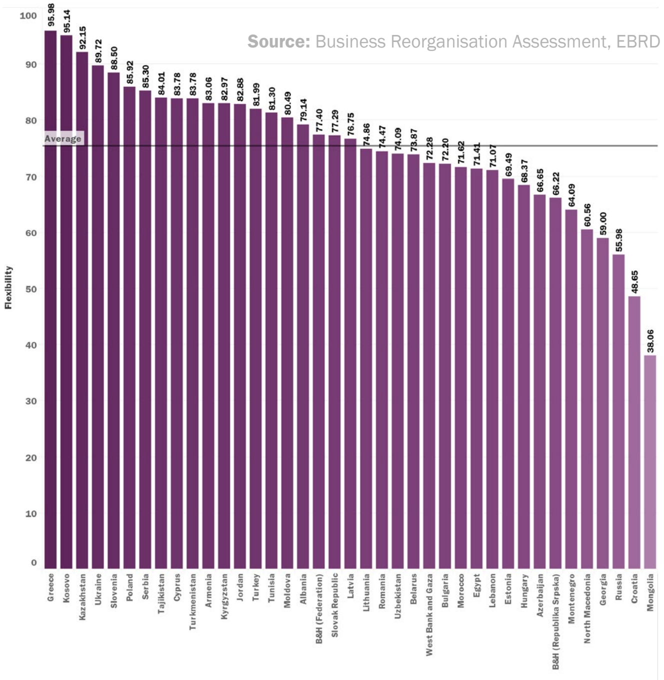
The Assessment Team developed benchmarks and indicators to articulate the key principles in international best practices, policy papers and the **EBRD Core Insolvency Principles** that were reflected in the scoring questions. The benchmarks and indicators provide conceptual guidance for the analysis of the responses and, therefore, for this Assessment Report. There are in total three benchmarks: 'Flexibility', 'Efficiency' and 'Effectiveness'. As the questions used for the assessment benchmarks were drawn from different sections and on an uneven distribution, it was not possible to assign an equal score to each of the three benchmarks. Therefore, the maximum score possible under each benchmark is treated as 100%, whereas each question carries an equal weight. See **Section II Methodology** and the **Annex Business Reorganisation Assessment Methodology** for a detailed description of the methodology including benchmarks and their indicators.

1. Flexibility

According to the Flexibility benchmark, the insolvency framework should support corporate rescue and should have the flexibility to meet the needs of different market participants. The questionnaire collected information regarding the availability of out-of-court and court-supervised reorganisation procedures, including any procedures that may be designed for SMEs.[10] It also sought to identify whether the national insolvency laws support consensual restructuring solutions and allow for hybrid approaches where the terms of a reorganisation are privately agreed and subsequently submitted to the court for its confirmation.

Figure 6.23 presents the overall scores for the Flexibility benchmark in each of the economies in the EBRD regions.

Figure 6.23 Overall score for Flexibility benchmark



Note: This table represents the performance of the Flexibility benchmark of each EBRD economy. The maximum possible 100 points signals the existence of optimal legal and regulatory frameworks of corporate rescue and flexibility that meet the needs of different market participants. For more information, see **Section II Methodology**. The horizontal line across the columns represents the average score for all represented economies.

Among the best performers in terms of flexible insolvency frameworks are Greece, Kosovo, and Kazakhstan, with a score of 95.9%, 95.1% and 92.1%, respectively. By reaching 90% or more out of maximum possible 100%, all three economies show very good performance in terms of flexibility of their reorganisation frameworks. Shortly thereafter, in the following positions are Ukraine, Slovenia and Poland, all of which also present very high level of flexibility. As can be seen, Poland, Greece and Kosovo also dominate the ranking according to the overall assessment results as three out of top five economies. In contrast, Slovenia and Ukraine rather showed medium performance in terms of the overall ranking. Perception of respondents has an impact on the scores for the Flexibility benchmark and therefore the results do not always accurately reflect the practice. As an example, an economy might have a high score based on perception but it can be attributed to very few reorganisation cases which in itself is not necessarily good practice.

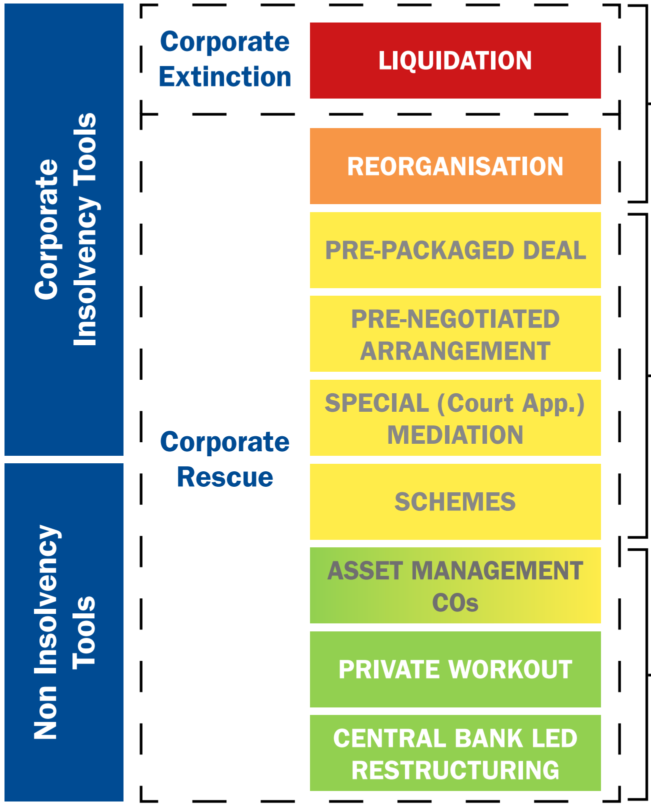
The average score of all assessed economies achieved for the Flexibility benchmark is 75.4% which indicates a good level of flexibility in the reorganisation frameworks across the EBRD economies of operations, at least in the legal framework. Only 4 out of 39 participating jurisdictions collected less than 60%. Major deficiencies are observed in Croatia, Mongolia and Russia, whereas Mongolia falls significantly behind Croatia with a difference of 10 percentage points. Unlike Mongolia, neither Croatia nor Russia have showed low performance according to overall results or the results per section. However, Croatia is expected to improve its reorganisation framework following the transposition of the EU Restructuring Directive. Their weaker performance against the Flexibility benchmark seems to be related to the fact that private workouts are not a common practice in any of these jurisdictions and hybrid procedures are not available under the relevant insolvency laws.

[10] These aspects were already reviewed as part of the analysis of **Section 1 of the questionnaire above**.

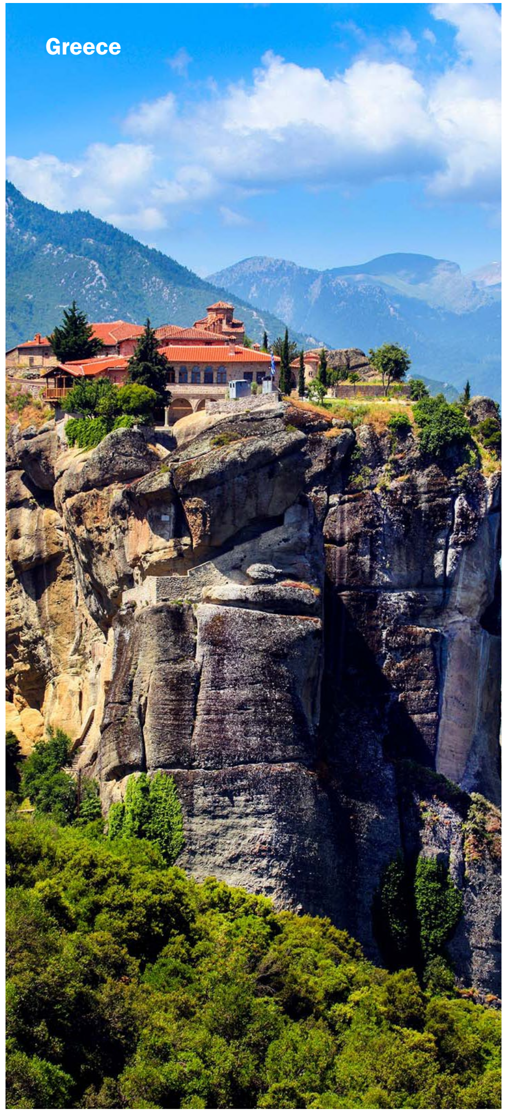
Among the least good performers are Georgia, North Macedonia and Montenegro, all of which still achieved around 60% or more and therefore, evidence a sufficient level of flexibility. Regarding Georgia, it should further be noted that the economy has enacted new insolvency legislation after the closure of the questionnaire. The new legislation is reviewed in the Business Reorganisation Assessment for Georgia.

a. Private workouts

Although the overall results for flexibility are very positive in the EBRD regions, the assessment revealed that the lack of private workouts is a major deficiency. Private workouts are a discrete, fast and flexible option to conduct a reorganisation, as the agreement between the debtor and all or some of its creditors is reached privately, outside the court. The agreement usually provides for the terms of restructuring of the debtor's assets and liabilities and only binds the parties who consent to its execution. Private workouts can, therefore, eliminate the need to file for a court-supervised procedure, avoid the negative publicity that is usually associated with such a procedure and reduce the time needed to conduct a reorganisation. Frequent application of out-of-court consensual reorganisation indicates a well-developed restructuring practice and a supportive legislative framework. In jurisdictions where private workouts are not frequently applied or do not constitute an available option, statutory supported out-of-court consensual mechanisms could be put in place. The below diagram visualises the most salient reorganisation methods, highlighting their source, aim and degree of court involvement.



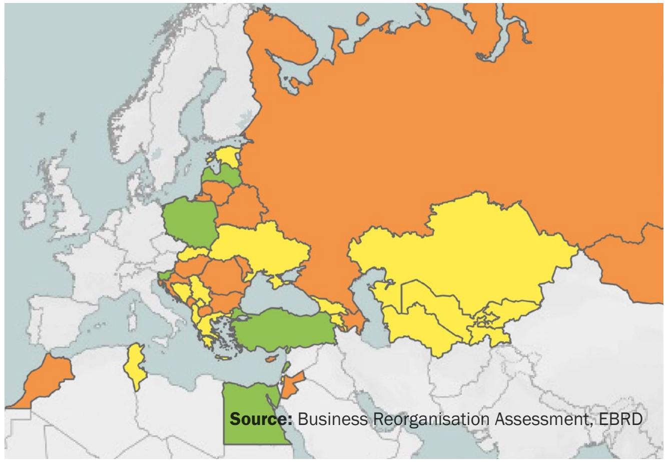
Note: Rodrigo Olivares Caminal, Expedited Corporate Debt Restructuring: Conceptual Framework and Practical Issues, in Expedited Corporate Debt Restructuring in the EU, R. Olivares-Caminal (Eds.), Oxford University Press, 2015.



As can be seen in Figure 6.24, in the EBRD regions, private workouts are not commonly used in most of the economies. This traffic light map shows the respondents' perception in each economy regarding the application of private workouts. In economies that are marked orange, most respondents disagreed with the statement (that is, private workouts are not commonly used). In others – marked in yellow – most respondents could not take a position, which rather indicates a negative trend. Only in Egypt, Latvia, Poland, Slovenia and Turkey did most respondents agree that out-of-court restructuring is frequently applied. As the success of a private workout mainly depends on the creditors' willingness to participate and collaborate, in these five economies, the creditors seem to have more confidence in private restructurings than in other economies.

In order to enhance the usage of private workouts in other jurisdictions, the legislators and regulators may consider establishing common guidelines for these workouts: Latvia, for example, published some guidelines for out-of-court restructurings. Furthermore, certain incentives such as tax benefits or the power of tax authorities to participate and agree on certain restructuring terms (for example, deferral of tax payment) could be established to facilitate the use of this alternative aimed at swiftly re-establishing sustainability.

Figure 6.24 Private workouts are not very common



Source: Business Reorganisation Assessment, EBRD

Strongly Disagree
Disagree
Neither Agree nor Disagree
Agree
Strongly Agree

Note: This map shows respondents' level of agreement with the following question: "Are private workouts a common practice in your jurisdiction?" Respondents' feedback gave mixed results.

Jordan

It is interesting that in economies where private workouts are frequently applied, only Turkey has temporary legislation supporting financial restructurings. The Framework Agreements that are currently in force in Turkey were designed for commercial loan debtors in financial difficulties to restructure the debt owed to credit institutions who are party to the FAs. Banks usually prefer to negotiate under the Framework Agreements than to be part of formal insolvency proceedings. Serbia, Ukraine, Greece and North Macedonia are other economies that provide for statutory supported private workouts. The advantage of this type of procedures is that the regulator/legislator can provide for certain regulatory or tax benefits for consensual restructurings that may not be available should the process be conducted as a 'pure' private agreement without the statutory framework. These benefits constitute additional incentives for the debtor and creditors to participate.

Furthermore, in Ukraine, Greece, North Macedonia and Turkey, the frameworks also provide for a moratorium on the enforcement actions of participating creditors. It is common for these mechanisms that a state or public body is involved to guarantee a fair procedure. The Serbian Chamber of Commerce takes, for example, the role of the institutional mediator. In Ukraine, the Ukrainian Secretariat which is not a state body, is responsible for the supervision of the voluntary financial restructuring and has the main duty to ensure that parties comply with the formal requirements and that the creditors and other parties involved in the workout are properly notified. The Ukrainian Secretariat does not participate in restructuring negotiations or in resolving disputes between parties. For the latter, the framework provides for an arbitration committee. Similarly, in Greece, the Special Secretariat for the Administration of Private Debt is a public authority in charge of facilitating debtors in distress and is overseen by the Ministry of Economy.

b. Hybrid procedures

Another useful approach to business reorganisation is the hybrid procedure. The hybrid procedure combines the features of both private workouts and court-supervised reorganisations as most of the reorganisation process takes place out-of-court and is negotiated privately, and subsequently submitted to the court for its confirmation. The advantage of hybrid approach is that the debtor has the freedom to agree with its creditors on the terms of reorganisation in a discrete and fast manner and then benefit from the court intervention which makes the submitted plan binding on all affected creditors, including dissenting creditors or those that decided not to participate. The so called 'pre-packed deal' and 'pre-negotiated arrangements' are part of reorganisation frameworks in many jurisdictions and are a common practice in the US (pre-packed Chapter 11) and UK (Schemes of Arrangements and pre-packed administrations) as well as other advanced economies.

It is a very positive trend that in about half of 38 participating EBRD economies of operations, the reorganisation framework allows for hybrid procedures to be conducted. The most frequent statutory configuration of hybrid approaches is to include certain provisions within the reorganisation procedure that provide for the reorganisation plan to be negotiated and/or approved first and then submitted together with the application for the opening of the formal procedure. It is, in essence, a procedural peculiarity of these insolvency laws, meaning that the prescribed reorganisation procedures can be applied as both fully court-supervised reorganisations or hybrid reorganisations. Other economies that lack this option could, therefore, easily implement a hybrid procedure by simply allowing for the reorganisation plan to be drafted without the involvement of the court and presented in creditor pre-negotiated or -approved form to the court for approval together with the party's (usually the debtor's) request to open the procedure.


Lebanon

In fewer economies, such as Latvia (Extra-judicial Legal Protection Proceedings) and Moldova (Accelerated Restructuring Procedure), the insolvency laws include an entire regime specifically designed as a hybrid procedure. In both cases, the court is asked to commence the formal reorganisation procedure and at the same to review the already prepared plan. As mentioned, the main advantage of this approach is to reduce the time spent in the formal procedure, minimise the reputational damage to the debtor and file to the court with the confidence of having the support of the creditors. Furthermore, the insolvency practitioner is usually appointed once the court receives the application and the plan which limits the involvement of such practitioner and the costs associated with it. There are certain instances where this can be done privately with the view of being confirmed by the court once the filing takes place.

In the UK, for example, the pre-packaged administration allows for the deal to be negotiated and agreed outside the court and is executed immediately after the appointment of the administrator by the competent court. Lastly, the involvement of the court itself is also limited to reviewing the reorganising plan, which reduces the duration and procedural stages of the reorganisation.

Figure 6.25 on the following page includes a list of economies where a hybrid procedure is available. As previously explained, a hybrid procedure is one that takes place largely out-of-court and where the involvement of the court is typically limited to the ratification of the reorganisation plan. For further information regarding the entry conditions, the parties who can apply and the potential involvement of an insolvency practitioner, refer to **Annex Business Reorganisation Procedures**.

Figure 6.25 Hybrid reorganisation procedures among assessment economies

Economy	Hybrid Reorganisation Procedures
Albania	Expedited reorganisation procedure (Procedura e Riorganizimit të Përshpejtuar)
Azerbaijan	Reorganisation (sanation) procedure (sağlamlaşdırma)
	Settlement agreement (barışıq sazişi)
Cyprus	Scheme of arrangement procedure (συμβιβασμός ή διακανονισμός)
Greece	Pre-insolvency rehabilitation procedure (διαδικασία εξυγίανσης)
Jordan	Pre-packaged reorganisation procedure (اقبسم†ةدعم†ةطخ†قفو†ميظنتلا†ةداعإ)
Kosovo	Pre-packaged reorganisation procedure (planet e para-dakorduara të riorganizimit)
Latvia	Extrajudicial legal protection proceedings (Ārpustiesas tiesiskās aizsardzības process)
Lithuania	Restructuring procedure (restruktūrizavimo procesas)
Moldova	Accelerated restructuring procedure (procedură accelerată de restructurare)
Montenegro	Reorganisation procedure (reorganizacija)
Morocco	Conciliation procedure (procédure de conciliation)
Poland	Arrangement approval procedure (postępowanie o zatwierdzenie układu)
	COVID-19 – simplified urgent arrangement procedure (uproszczone postępowanie restrukturyzacyjne)
Romania	Mandate ad hoc procedure (mandat ad hoc)
	Preventive composition procedure (concordat preventiv)
Serbia	Reorganisation procedure (pre-negotiated) (reorganizacija)
Slovak Republic	Restructuring procedure (reštrukturalizácia)
	Early protection mechanism (dočasná ochrana)
Slovenia	Preventive restructuring procedure (postop preventivnega prestrukturiranja)
Tunisia	Amicable settlement procedure (procédure de règlement amiable)
Turkey	Restructuring upon settlement procedure (uzlaşma yoluyla yeniden yapılandırma)
Ukraine	Pre-insolvency rehabilitation procedure (Санація боржника до відкриття провадження у справі про банкрутство)

2. Efficiency

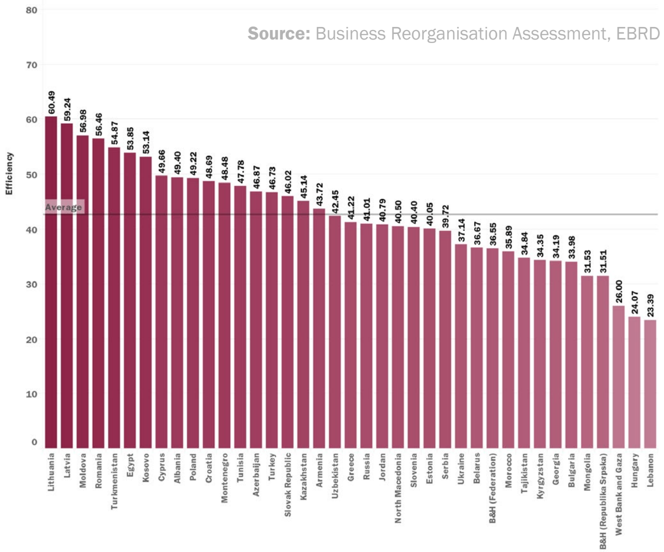
The surveyed economies performed least well when assessed against the Efficiency benchmark. In this regard, the assessment aims to identify whether the domestic insolvency law and practice are efficient from a procedural and economic point of view. In other words, it does not take long for insolvency laws to deal with the distress situation, and it is not economically burdensome either for debtor or creditor. The Efficiency benchmark furthermore refers to balancing out the interests of all stakeholders and considers whether the generally accepted principles of insolvency laws, such as the principle of universality and equal treatment of creditors, are followed.[11] Questions allocated to the Efficiency benchmark are predominantly aimed at obtaining the respondents' views on specific topics and were mostly presented as 'traffic light' questions. The Efficiency benchmark refers to the current practice of insolvency and reorganisation, and the perception of these procedures by the different stakeholders.

As can be seen from Figure 6.26 below, only one economy reached a score of 60% or more. The scores for most economies vary between 30% and 50%, indicating a quite low overall performance within the EBRD economies of operations. Even the best performer, Lithuania, only achieved 60.49%, followed by Latvia, Moldova, and Romania with almost equal scores of about 55-59%. All these four are top performers in the in the overall assessment scores (Lithuania, Romania, Latvia and Moldova ranked third, fourth, seventh and eighth, respectively) and in this benchmark (Efficiency) but showed an overall medium performance in the Flexibility benchmark results.

It is remarkable that Turkmenistan and Egypt made it into the top ten performers in the Efficiency benchmark although neither of these economies showed good results in either the overall ranking or in the two other benchmark rankings. It should also be noted that neither of the two economies obtained any scores for the Data Transparency Factor. At the end of the scale are Lebanon with 23.4%, Hungary with 24.1% and West Bank and Gaza with 26%, as economies with the least efficient insolvency framework. All three economies showed similarly low performances based on the overall assessment scores. Bulgaria, Bosnia and Herzegovina (Republic Srpska) and Mongolia are other economies evidencing a low efficiency of the insolvency law and practice.

[11] These two principles were reviewed when analysing the responses to Section 5 of the questionnaire **above**.

Figure 6.26 Overall score for Efficiency benchmark



Source: Business Reorganisation Assessment, EBRD

Note: This graph represents the performance of the Efficiency benchmark of each EBRD economy. The maximum possible 100 points signals the existence of a domestic insolvency law that is efficient from a procedural and economic point of view. For more information, see the **Section II Methodology**. The horizontal line across the columns represents the average score for all represented economies.

a. How long does a reorganisation procedure take?

The amount of time spent on a reorganisation is a sound indicator of the efficiency of the procedure. The question on how long it usually takes to conduct the reorganisation, from presentation of the plan to the creditors (excluding any preparatory time by the debtor) to receiving the court or administrative authority's approval, provided five possible answers: less than 3 months, 3 to 6 months, 6 to 9 months, 6 to 9 months and more than 12 months. In most of the participating jurisdictions, the assessment received diverging answers based on a different perception of the contributors regarding the time required to conduct a reorganisation procedure.

It should also be noted that in jurisdictions where there is little practice of reorganisations, the respondents may have indicated the procedural deadlines rather than the average timing. Only in Jordan did all respondents indicate the same answer, namely a duration of 3 to 6 months. For all other economies, the Assessment Team kept the diverging responses received and calculated the average time indicated by the respondents within each jurisdiction.

The results are presented in Figure 6.27. This Figure groups economies in accordance with the average estimated time provided by respondents.

Albania

Figure 6.27 Average duration of business reorganisation in the EBRD regions

Source: Business Reorganisation Assessment, EBRD

0-3 months	3-6 months	6-9 months	9-12 months	12+ months
	Lithuania	Montenegro	Hungary	Croatia
	Jordan	Moldova	Turkmenistan	Kyrgyzstan
	Estonia	Armenia	West Bank and Gaza	Georgia
	Latvia	Cyprus	Ukraine	Morocco
	Romania	Belarus	Slovak Republic	Turkey
		Bulgaria	Azerbaijan	BiH (RS)
		Tajikistan	Egypt	Tunisia
		Uzbekistan	Mongolia	BiH (Fed.)
		Russia	N. Macedonia	
		Slovenia	Serbia	
		Kazakhstan	Albania	
			Lebanon	
			Poland	
			Kosovo	
			Greece	

Note: This arrow represents the respondents' estimates on how long it usually takes to conduct a reorganisation from presentation of the plan to the creditors (excluding any preparatory time by the debtor) to receiving the court or administrative authority's approval. Shorter duration of business reorganisation is an indicator of procedural efficiency.

Lithuania, which leads in the Efficiency ranking as well as in the overall ranking, stands out with the shortest period that is needed to conduct a reorganisation, which is between 3 to 6 months. Other economies that fall under this category are Estonia, Latvia, Romania and Jordan. It is a regrettable trend that, in the opinion of the respondents, in none of the EBRD jurisdictions can a reorganisation be conducted in less than 3 months and only in five economies can it be achieved in 3 to 6 months. In the majority of the participating jurisdictions, the debtor would need either 6 to 9 months or 9 to 12 months, both of which are considerably long periods as time is of essence when dealing with financial difficulties.

The EBRD Core Insolvency Principles, guiding documents of other international institutions, as well as recent legislative developments such as the EU Restructuring Directive all highlight that the best results can be achieved when the financial distress is addressed as early as possible and is overcome as fast as possible. These findings are mainly based on the assumption that the distressed business usually loses both value and the chances of restoring stability as time passes, since the debt accumulates further, creditors seek enforcement of their claims, and the market value deteriorates. Also, being stuck in a reorganisation process for a long period of time discourages the creditors from collaboration as they usually have to tolerate the payment arrears and will want the debtor's business to continue trading and repay the debt as soon as possible.

Croatia, Bosnia and Herzegovina (Federation), Bosnia and Herzegovina (Republic Srpska), Georgia, Morocco, Kyrgyz Republic, Tunisia, and Turkey are the only eight economies where the reorganisation takes, on average, longer than 12 months (based on the opinion of the insolvency law users in these jurisdictions). Notably, most of these jurisdictions do not provide for hybrid procedures.

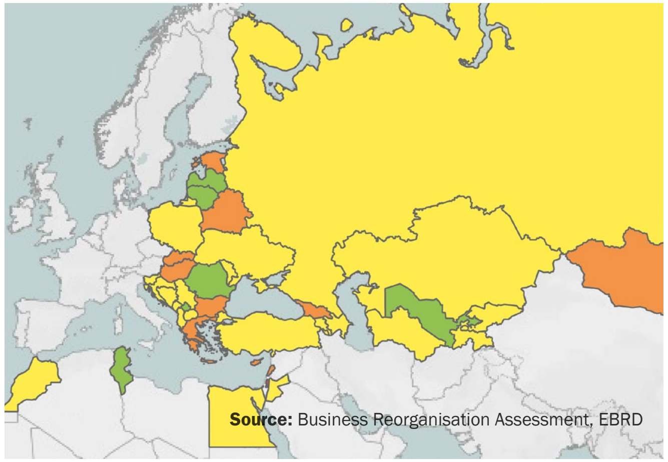
Several reasons may amount to this lengthy duration of the procedures. In any case, setting clear and shorter deadlines for the court actions as well as for the actions of the insolvency practitioner and the creditors' assembly might be a good starting point to assist in finding a solution to this problem. This has been attempted, for example, with the latest insolvency law reforms in Georgia, where the new legislation provides for strict deadlines for each procedural step to be conducted. Shortening the time limits for a possible moratorium and narrowing the grounds on which such a moratorium can be prolonged are further considerable options. This approach is also enshrined in the EU Restructuring Directive which provides for an initial standstill period of four months, only extendable under certain restrictive circumstances, particularly if considerable progress has been made on the negotiation of the restructuring. A reorganisation procedure that can be employed for an inappropriately long period of time and also provides for a moratorium during this time is likely to be misused as a 'protection' from creditors that, however, does not lead to a successful rehabilitation. In other words, as a means to avoid the unavoidable.

b. Economic efficiency

When asked whether the insolvency laws in the respective jurisdiction were efficient from the procedural points of view, the contributors in most economies could neither agree nor disagree with the question. In many of the economies the insolvency laws are not positively regarded as procedurally efficient. Positive answers to this question were only obtained in Kosovo Latvia, Lithuania, Romania, Tunisia and Uzbekistan – 6 out of 40 jurisdictions. Therefore, procedural efficiency seems to be a major weakness in the EBRD regions and constitutes a field that needs further development in terms of law reform as well as capacity building. The answers per economy are shown in the traffic light map below (Figure 6.28).

The assessment also considered the economic efficiency of the insolvency laws. The results on this aspect were even more negative than those on procedural efficiency. Only in Egypt and Kosovo did the respondents consider the insolvency laws efficient from an economic point of view.[13] In all other economies, no positive answer could be obtained. Many of the respondents even indicated that in their opinion, the respective insolvency law is inefficient from economic point of view, which is a significant deficiency in the EBRD regions. Economic inefficiency may be linked to the lengthiness of the procedures which leads to a depreciation in the value of the debtor's assets and a decrease in creditors' recovery rates. As highlighted, the lengthy duration of the reorganisation procedures is a problem in many jurisdictions. Other factors leading to economic inefficiency may be high cost of the procedures, particularly due to the judicial intervention, or involvement of insolvency practitioners, but also for the professional advisory services. This is in line with the responses to section 5 of the **Assessment questionnaire** regarding the principles lacking in the EBRD regions where value maximisation was selected as lacking in 21 of the EBRD economies of operations by respondents. The answers per economy for economic efficiency are presented in Figure 6.29.

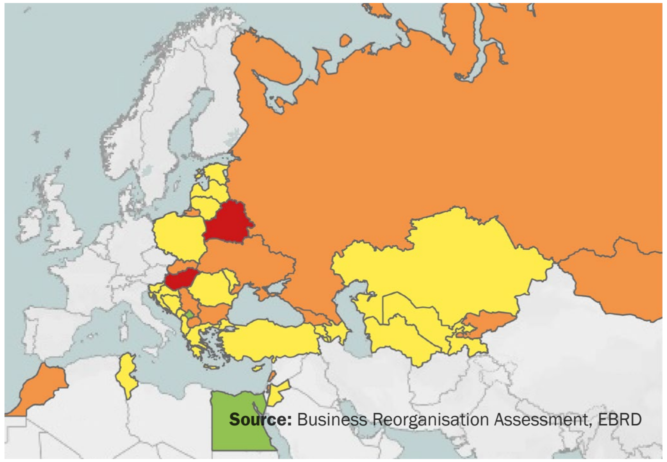
Figure 6.28 Procedural efficiency of insolvency laws needs improvement in most EBRD regions



Strongly Disagree
Disagree
Neither Agree nor Disagree
Agree
Strongly Agree

Note: This map displays respondents' level of agreement with the following question: "Do you consider that the insolvency law in your jurisdiction is efficient from a procedural point of view?" Respondents from most countries could neither agree nor disagree with the question.

Figure 6.29 Economic efficiency of insolvency laws needs improvement in most EBRD regions



Strongly Disagree
Disagree
Neither Agree nor Disagree
Agree
Strongly Agree

Note: This map displays respondents' level of agreement with the following question: "Do you consider that the insolvency law in your jurisdiction is efficient from an economic point of view?" Respondents from most countries disagreed with the statement.

[13] This is a perception-based question and the answers reflect the opinion of the respondents.

c. Ethical and professional standards

Similar results were revealed when considering, in the opinion of the respondents, whether the procedures under the insolvency laws are conducted with high ethical and professional standards. The assessment identified a clear agreement with the question in only a few economies: Egypt, Kosovo, Lithuania, Romania, Tunisia and Turkmenistan. In all other economies, the respondents either indicated that high ethical and professional standards were not maintained during the insolvency procedures or did not take a clear position. Negligence towards ethical and professional standards, in turn, fuels procedural and economic inefficiency, which consequently results in generally ineffective insolvency and reorganisation procedures. The need for necessary expertise of insolvency office holders as well as judges overseeing the insolvency cases has also been highlighted in the **EBRD Core Insolvency Principles** and the **EBRD Office Holder Principles**. Furthermore, the EU Restructuring Directive puts a special emphasis on the suitable training and necessary expertise for the responsibilities of judges and insolvency office holders with a view to the expeditious treatment of procedures. The **Annex Insolvency Courts, Regulators and Practitioners** to this report includes information on the availability of commercial and insolvency courts and whether insolvency office holders need special authorisation to act.

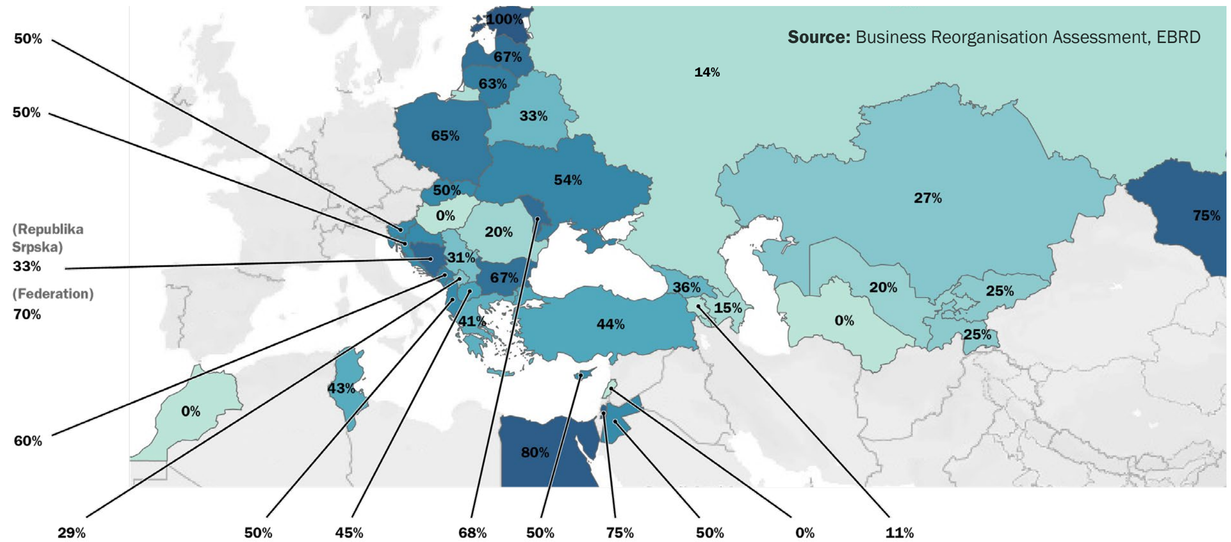
Overall, the results together with the findings for section 5 of the **questionnaire analysed above** evidence that the current practice around reorganisation procedures is not as effective and efficient in the EBRD regions as is desired by its users. In most of the questions where the respondents were asked about their opinion on the practical application of these procedures, responses were not very positive. Also, the scores were comparably lower for both the Efficiency benchmark as well as for Section 5 of the questionnaire compared to any other ranking. The Flexibility and Effectiveness benchmarks, which refer more to the available tools as per the 'law on the books', collected significantly higher scores than the Efficiency benchmark.

The procedural and economic inefficiency, lack of professional and ethical standards, negative stigma, lack of application of reorganisation procedures and occasional misuse to delay the liquidation were identified as essential deficiencies. If not addressed properly, these issues will lead the market participants and stakeholders to lose confidence in the available insolvency procedures.

Lastly, the Efficiency benchmark considered the design of the national tax regime. The assessment explored whether the national tax regime supports both the debtor which is reorganising its liabilities and the creditors which are consenting to the reduction of their claims. The questionnaire asked whether debt write-offs are considered as a taxable benefit for the debtor.

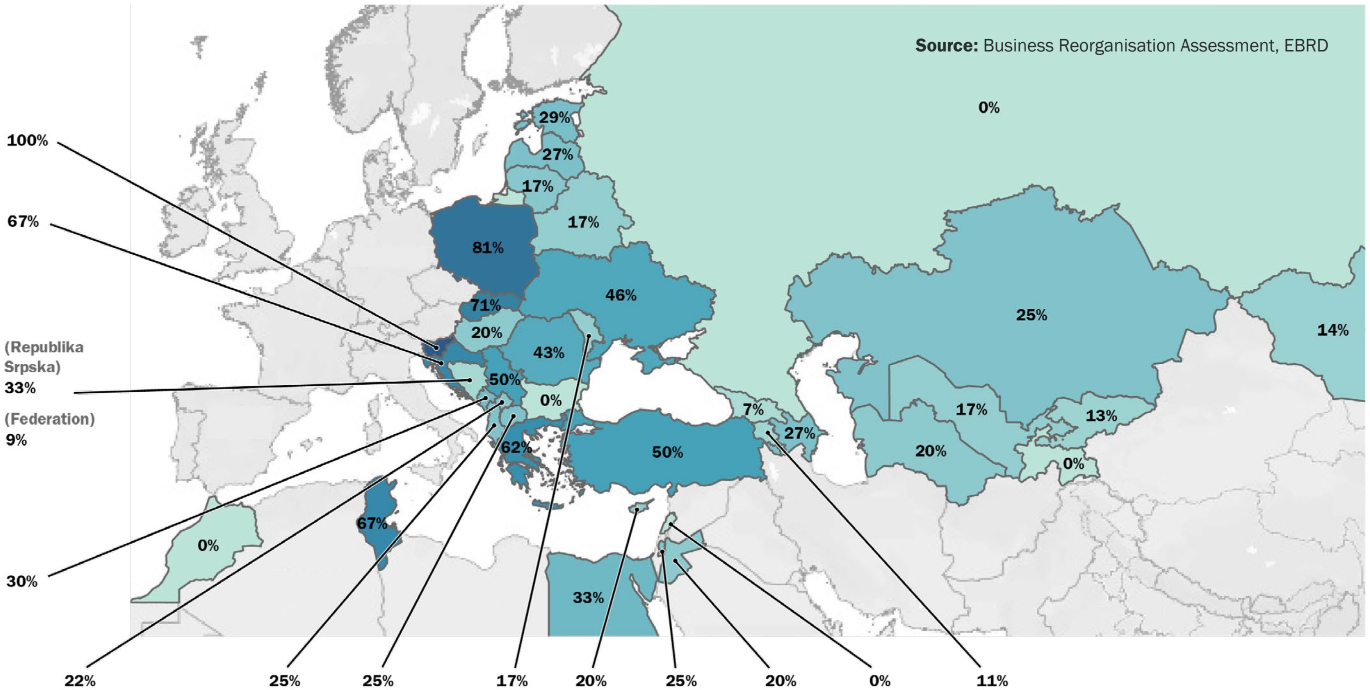
Also, on the creditors' side, the assessment sought to identify whether creditors receive a tax relief if they agree to the reduction of the face value of their claim. The results for these two tax-related aspects were not validated to obtain a clear view on the accuracy of the respondents' perceptions. The Assessment Team instead kept the diverging responses received: that is, some respondents within the same jurisdiction agreed with the question and some disagreed. In order to reflect the responses received correctly and precisely, the team calculated the level of agreement among the respondents within each jurisdiction by calculating the percentage of received 'yes' answers out of the number of all obtained questionnaires in that jurisdiction. The respondents' level of agreement regarding the debtors' tax treatment of the reorganised debts is shown in Figure 6.30.

Figure 6.30 Debtors' tax treatment of the reorganised debts is generally perceived as unfavourable in most EBRD economies



Note: This map shows respondents' level of agreement with the question: "Would a debtor be taxed if, as a result of a reorganisation, the debtor receives an indirect benefit due to write-down (cancellation) of a debt obligation owed to one of its creditors?" The darker the shade of blue is, the more respondents responded 'Yes'.

Figure 6.31 Creditors' tax treatment regarding reorganised debts is generally perceived as unfavourable in most EBRD economies



Note: This map shows respondents' level of agreement with the question "Would a creditor obtain some kind of tax relief if, as result of a reorganisation, the creditor decides to write down (cancel) a debt obligation partially or in its entirety?" The darker the shade of blue is, the more respondents responded "Yes".

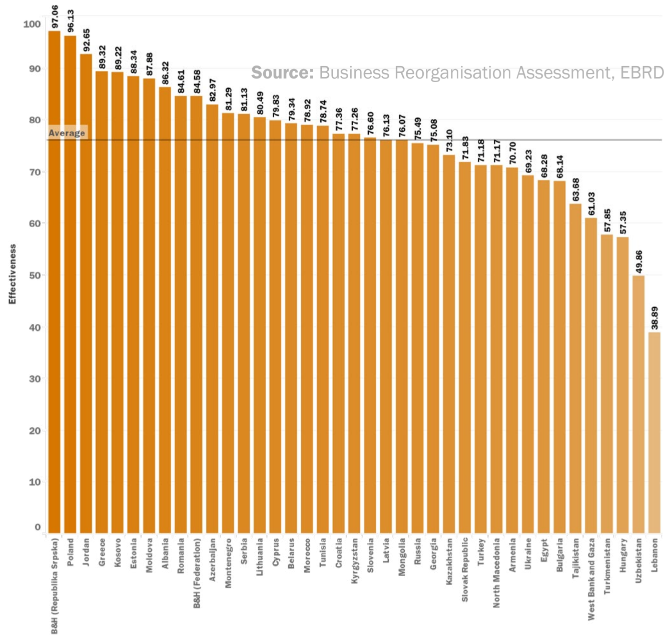
Figure 6.30 presents the responses on an aggregated basis for both questions, therefore indicating the overall level of support of the tax regime. Figure 6.31 contains responses for each of the two questions per economy. As described above, the scores represent the percentages or the level of agreement, of positive answers out of all answers. In many jurisdictions, such as Mongolia, Egypt, Estonia, Bulgaria and Kosovo (economies marked as dark blue in Figure 6.30) the high level of respondents' agreement indicates that the debtor might be taxed on the benefit obtained through the cancellation of claims. Creditors, on the other hand, seem not to obtain any kind of tax relief upon accepting a debt write-off in many jurisdictions, as Figure 6.31 shows (economies marked in light blue).

Only in Slovenia, Poland and Tunisia does the level of respondents' agreement show that creditors would obtain some tax relief. Furthermore, for example, in Armenia, Hungary, Kyrgyzstan, Russia, Tajikistan and Turkmenistan, according to respondents' level of agreement, neither the debtor nor the creditor seem to benefit from a tax incentive to favour a reorganisation. In most economies, at least the debtor or the creditors seem to be supported by the tax regime. Overall, the assessment results on this aspect show that the legislators and regulators could pay more attention to this subject and consider creating specific tax benefits (or if already available, create greater awareness) to encourage restructurings.

3. Effectiveness

All EBRD economies of operations showed a good performance when assessed against the Effectiveness benchmark regarding the availability of tools for business reorganisation. Compared to the other two benchmarks, the scores are, on average, higher across all economies. In this regard, the questionnaire aimed to evaluate whether the insolvency law of the participating economies contains the necessary tools – such as moratoriums, protection of new financing, cram-down provisions – to facilitate a successful reorganisation compared against what are considered best international practices or reference benchmarks in this area, including the EU Restructuring Directive, the US Chapter 11 and the new UK Restructuring Plan and Schemes of Arrangement.[14] Most of the questions presented in this section were checked by the Assessment Team against the national law and verified with local counsel. Figure 6.32 shows the scores per economy for the Effectiveness benchmark.

Figure 6.32 Overall score for Effectiveness benchmark



Note: This table represents performance of Effectiveness benchmark of each EBRD economy. The maximum possible 100 points signals a good availability of tools for business reorganisation. For more information, see **Section II Methodology**. The horizontal line across the columns represents the average score for all represented economies.

Bosnia and Herzegovina (Republic Srpska), Poland and Jordan are leading the ranking with a score of 97%, 96.1% and 92.7%, respectively, showing a very high level of effectiveness. Greece follows as the fourth best performer. Poland and Greece also dominate the overall performance ranking results as well as the results for the Flexibility benchmark (the top five performers) but showed medium results in terms of the Efficiency benchmark. Good performance of these economies in most of the rankings indicates an overall well-developed reorganisation framework and practice. Interestingly, Republic Srpska ranked among the least good performers in the other Flexibility and Efficiency benchmarks and only showed a medium performance according to the overall assessment.

As with the overall scores and the other two benchmark rankings, towards the end of the scale in terms of the degree of effectiveness of the insolvency law, we find Lebanon, Uzbekistan, West Bank and Gaza, Turkmenistan and Hungary, among other economies, which also showed low performance in most of the other rankings. Most of the economies located in the middle of the scale collected scores between 70% and 85%. The average score for the effectiveness benchmark in the EBRD regions is 76%, evidencing an overall good level of effectiveness. This means that most of the participating economies do contain the necessary statutory tools to conduct successful reorganisations.

a. New financing

The provisions of new financing and its protection under the national insolvency laws is a critical aspect of the effective reorganisation frameworks. Any financing provided by an existing or a new creditor to enable the debtor to continue operating its business during the reorganisation procedure, to preserve or enhance the value of the assets of the estate, or to implement the reorganisation plan is considered as new

[14] These international benchmarks and others are analysed in **Section V** of the Assessment Report.

financing for purposes of the assessment. The protection of new credit obtained during the reorganisation process or for the implementation of the plan has also been part of the recent development in international best practices. The EU Restructuring Directive expressly provides that the new credit should be protected from avoidance actions should the debtor file for a liquidation after the reorganisation. This is to provide safety for the lenders and thereby incentivise them to invest money in the distressed business and enhance the chances of a successful reorganisation.

Lenders, at the same time, are protected from avoidance actions and can obtain some kind of payment priority. For this purpose, they may be granted security created on unencumbered assets. Certain jurisdictions, such as the US, even allow for the new financing to rank above the administrative expenses or obtain super-priority equal to or senior to the existing secured creditors. Regarding the priority of new financing, the EU Restructuring Directive, for example, left it to the discretion of the Member States to implement such an option. Overall, the above statutory treatment aims to incentivise the provision of new financing by providing safety and benefits to the new lenders. A comparative review summarising the express legislative protections for new financing across the different reorganisation procedures in all EBRD economies of operations is available in the **Annex Protection of New Financing**.

In this regard, the assessment revealed that in most of the EBRD economies of operations, new financing benefits from some form of protection. This is a positive trend as this is a necessary feature to facilitate corporate rescue. Only in Bulgaria, Kazakhstan, Lebanon, Mongolia, Tajikistan, Turkmenistan, Ukraine and West Bank and Gaza could no protection be identified. Further review and analysis of the legislation evidenced that in some economies, when new money is provided during the procedure, it sometimes requires the approval of the insolvency practitioner (Jordan) or is obtained with the insolvency practitioner's own efforts (Croatia). In certain jurisdictions, obtaining credit for the duration of the reorganisation procedure also requires the creditors' consent (Croatia, North Macedonia and Romania). Obtaining financing is especially important where the reorganisation takes a long time to be approved and implemented. Another configuration is to include the provision of new money in the reorganisation plan and have it approved by the court. Usually, this type of new money is aimed at enabling the implementation of the plan and the confirmation of the court may in certain jurisdictions prevent declaring the transaction subsequently void or unenforceable.

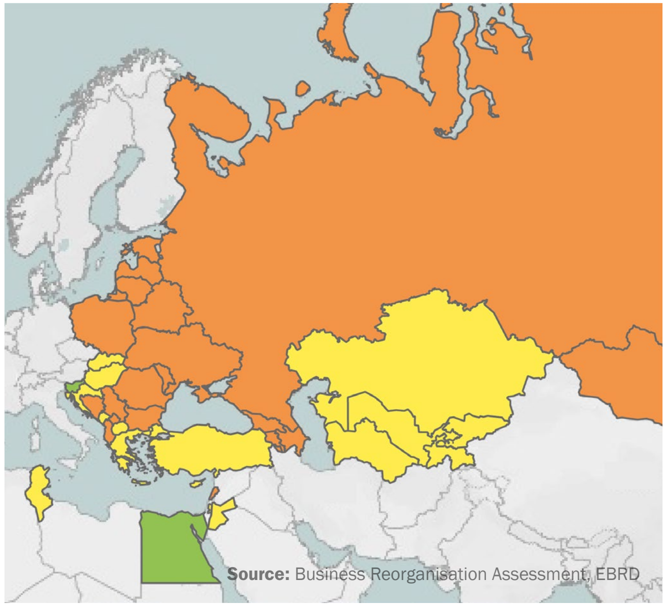
It is important to protect new financing from being voided or declared unenforceable after the reorganisation has been conducted and the plan has been approved. To this end, the assessment and subsequent verification process showed that in approximately half of the economies, for at least one available procedure, new financing seems to be protected from subsequent avoidance actions. However, the review of the insolvency legislations of these economies did not identify express provisions providing for such protection. In further 18 jurisdictions, which are Armenia, Azerbaijan, Cyprus, Kazakhstan, Latvia, Lebanon, Morocco, North Macedonia, Romania, Russia, the Slovak Republic, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan and West Bank and Gaza, the validation process revealed that new financing is not protected in any available procedure in this regard, and therefore may be voided. As mentioned, benchmarked against the international best practices, new lenders should have the guarantee that their agreement will not be declared void subsequently, should the debtor end up filing for insolvency. Therefore, protection of new financing for subsequent avoidance constitutes an area that needs more attention from legislators.

Better results were obtained regarding the priority in repayment of new creditors. As the questionnaire did not expressly ask about the priority over secured and/or unsecured creditors, the Assessment Team sought to identify any type of priority that was enshrined in the law. As a positive trend, in two-thirds of the participating economies, new creditors are able to obtain some form of priority. In most cases, they rank higher than ordinary unsecured creditors (Belarus, Latvia and Lithuania). In certain jurisdictions the incentive is created by granting the new claims a status higher than or equal to administrative expenses, which ranks higher than the unsecured creditors, and in certain jurisdictions also higher than certain types of preferred and/or secured creditors. The jurisdictions where this level of protection is expressly provided in the legislations are Armenia, Bosnia and Herzegovina (Republic Srpska), Egypt, Cyprus, Kosovo, Kyrgyz Republic, Moldova and North Macedonia. However in some jurisdictions, such as Cyprus, Kosovo and Turkey, no priority can be obtained over existing secured creditors. This super-priority seems to be only possible in Romania, Russia, Serbia, Slovenia, and Uzbekistan.

Furthermore, Morocco and Tunisia grant super priority of any new financing over existing secured creditors, with the exception of creditors which provided super priority financing in a prior reorganisation procedure, given that the legislation envisages a continuity between the different procedures depending on the severity of the financial distress of the debtor. See **Annex Protection of New Financing**.

These findings are confirmed by the perception of the respondents in a traffic light map (Figure 6.33).

Figure 6.33 New financing is not frequently used in most EBRD regions



Strongly Disagree
Disagree
Neither Agree nor Disagree
Agree
Strongly Agree

Note: This map displays respondents' level of agreement with the following question: "Is the provision of new financing a used practice in your jurisdiction?" Respondents from most countries disagreed.

b. Protection from third-party termination

The Effectiveness benchmark further examined whether the reorganisation framework supports the continuation of the debtor's business by preventing third parties from termination of the contracts with the debtor. Some private agreements contain clauses that allow a party to a contract to terminate its outstanding arrangements or obligations if the other party (usually the debtor) becomes insolvent or files for insolvency or reorganisation procedures. In cases where the debtor files for reorganisation but still continues trading, it is important that the counterparties cannot refuse the performance or terminate the agreements, particularly for essential goods and services, such as electricity, gas, internet services, etc. In the UK, for example, the new insolvency reforms introduced the ban on termination clauses in supply contracts solely on the grounds of the debtor becoming insolvent (known as 'ipso facto' clauses). In the US, in contrast, the Bankruptcy Code prevents utility services providers from modifying or terminating the services exclusively on the grounds that a bankruptcy related procedure has been commenced. The EU Restructuring Directive differentiates between 'essential' executory contracts and 'simple' executory contracts and requires Member States to protect at least the former from being amended on the grounds that the debtor applied for a moratorium or a restructuring procedure because these are necessary for the continuation of the day-to-day operations of the business. Member States are also expressly allowed to extend this protection to simple executory contracts as well.

In the EBRD regions, only few economies provide for comprehensive protection against third -party contract termination. In Albania, Hungary, Jordan, Kosovo, Morocco, Romania, the Slovak Republic and Turkey, the legislation bans the application of such clauses in at least one of the available reorganisation procedures. Other economies allow for limited protection against third party termination, whereas usually the protection is limited to essential contracts only (Armenia, Azerbaijan, Cyprus, Kyrgyz Republic, Lithuania, Moldova, Mongolia, Montenegro and Turkey). Another sub-group of limited protection exists in Bosnia and Herzegovina (Federation), Bosnia and Herzegovina (Republic Srpska), Croatia, Egypt, North Macedonia and Serbia, where the legislator mainly banned the cancellation of lease contracts and in some instances some other specified contracts. In all other economies, no provisions dealing with such contractual clauses were identified.

A summary of protection options against third party termination within the EBRD regions is included in the **Annex Impact of Business Reorganisation on Third-Party Contracts** of the Assessment Report.

c. How are reorganisation plans adopted?

Lastly, the assessment studied the reorganisation plan approval process. In all participating economies, the reorganisation plan needs to be accepted by creditors, which in most economies is accomplished by voting on the plan. For voting purposes, the best practice is to create several creditors' classes based on their similarity of economic or legal interests and enable these classes to vote separately on the proposed plan. The rationale behind this approach is to consider the different interests and standing of creditors: for example, creditors with a security interest, unsecured creditors, as well as creditors that are prioritised by the law, such as preferred creditors, would need to vote separately as they will usually be treated differently by the reorganisation plan. Overall, the aim of any insolvency law regarding the reorganisation plan approval should be to design effective tools that help the debtor to put through the plan but also protect the interests of creditors in recovering their outstanding claims. Further information is contained in the **Annex Class Formation in Business Reorganisation Procedures** of the Assessment Report.

In most of the jurisdictions, the debtor does not have the freedom to select which creditors will be affected by the plan, leaving some of them unaffected (unaffected creditors). This is an important aspect in many restructurings where the debtor needs to reorganise the liabilities owed to a certain type of creditors only – for example, to secured creditors – and leave other claims intact. In many economies, a formal reorganisation procedure must encompass all creditors, even if their claims are not compromised as part of the plan. However, the possibility of conducting a reorganisation where only some creditors can be affected results – in certain instances – is a more flexible and effective solution. Also, this may also save time as less creditors need to be organised for participation in the procedure. In the EBRD regions, this is only available in Azerbaijan, Bosnia and Herzegovina (Federation), Cyprus, Estonia, Greece, Jordan, Kosovo, Poland, Turkey and Ukraine. Other economies should consider allowing the reorganisation procedures to be limited to affected creditors only.

An important strength of most of the EBRD economies of operations is that the creditors are organised in groups or classes for voting purposes in at least one of the available procedures. As mentioned, this is essentially considering the different interests of different types of creditors and grouping them in a manner, which enables them to vote as a one class. Only few economies – Armenia, Belarus, Kyrgyz Republic, Lebanon, Russia, Tajikistan, Turkmenistan and West Bank and Gaza – do not provide for creditors to vote in separate classes. Most of these jurisdictions foresee the voting process to be done in the creditors' meeting where all creditors vote, in essence, as one group.[15] An exception was observed in Egypt during the restructuring procedure, where the plan is only ratified by the court without obtaining the creditors' consent. Also, Morocco and Tunisia do not provide for a voting process: instead the plan is agreed between the debtor and the creditors on a consent basis.

It should be noted that grouping creditors for voting purposes is an essential part of the guiding principles of the EBRD as well other international organisations and advanced jurisdictions, such as France, Germany, the UK and the US. Legislators would be well advised to consider this option within the insolvency law reform proposals.

Furthermore, most of the EBRD economies of operations provide for some mandatory classes that are prescribed by law. The review of the relevant legislation revealed that, usually, the law requires secured and unsecured creditors to be grouped separately. This is the case, for example, in Croatia, Greece, Latvia, the Slovak Republic, Slovenia, Turkey and Ukraine. Further examples of pre-established classes in some jurisdictions are preferred creditors such as tax authorities or employees of the debtor (for example, Bulgaria). Interestingly, certain jurisdictions allow for additional classes to be created on top of the statutory required groups. This has been observed in Albania, Bosnia and Herzegovina (Federation), Bosnia and Herzegovina (Republic Srpska), Estonia, Jordan, Poland and in Kosovo, where unsecured creditors can be divided into several classes subject to business sense justification.

From those jurisdictions that generally require separate classes to be created for voting purposes, only in Cyprus, Egypt, Estonia, Kazakhstan, Poland and Serbia does the law not provide for pre-established classes in any available procedure. It rather leaves it up to the discretion of the debtor (for example, Poland) or of the insolvency practitioner (for example, Cyprus and Montenegro) to propose the classes. Poland, for example, allows for as many classes to be created as the debtor wishes as long as the proposed division is fair, which is then assessed by the court. In Montenegro and Serbia, the insolvency court can propose or allow for additional classes to be created. From these two different approaches towards class formation, (which are: a) only prescribed creditors' classes can be created; or b) absolute freedom to group creditors in classes as deemed more convenient), perhaps a combination of these options would be most useful. Whereas it is helpful to have statutory guidance on class formation and also fair to treat secured and unsecured creditors in separate classes, the debtor should have the freedom to propose additional classes for other types of creditors such as preferred creditors or shareholders should they participate and there is a business sense for their creation. It is also advisable to allow for sub-groups within the secured and unsecured creditors to be created as, for example, trade creditors and employees, while both typically being unsecured creditors, would have different interests which would, therefore, justify dividing them into groups or subgroups, depending on the creditor composition. However, the legislators should also consider that the more classes participate in the restructuring, the more difficult it might become for the debtor to put through the plan without the special mechanism of cross-class cram down that allows the objection of an entire class of creditors to be overruled. This point is further discussed below in this section.

Another interesting aspect of the voting procedure is the establishment of voting rights. The assessment showed that in certain jurisdictions, the insolvency frameworks are sufficiently flexible to permit only those creditors whose rights are affected by the plan to vote on the plan, which is a good practice as creditors whose claims will not be compromised as part of the plan do not have a legal interest in approving or rejecting the plan. Furthermore, it is important to assess if certain creditors are precluded to vote. This is particularly the case for shareholders who are entitled to a distribution after all creditors have been paid, since they might want to block a viable restructuring, and whose interest are sometimes not necessarily aligned with those of creditors. It is a positive trend that in 24 jurisdictions representing about half of the EBRD economies,

[15] See the Business Reorganisation Assessment overview of **Morocco** describing the slightly different voting procedures.

shareholders do not have voting rights on the proposed plan in at least one reorganisation procedure. Furthermore, many jurisdictions also restrict the rights of connected parties regarding the adoption of the plan. A connected party is a person or entity which is directly or indirectly related to the debtor company performing the reorganisation (for example, the parent company or a shareholder). There are cases where the interest of such connected party might be contrary to the interests of creditors. An informative overview on affected creditors, class formation and certain aspects of voting rights, in business reorganisation procedures in the EBRD economies is provided in the **Annex Voting on Business Reorganisation Plans**.

d. Majorities for plan approval and cross-class cram down

Lastly, the insolvency laws usually set out the required majorities for the approval of the plan. Different approaches exist regarding these majorities. Whereas some restructuring tools, such as Schemes of Arrangement in the UK, require the majority in number of voting creditors and 75% in value of creditors in each voting class, the UK's new Restructuring Plan only sets out a single majority threshold of 75% in value. The EU Restructuring Directive considers that a majority by value threshold is required and leaves it up to the Member States to choose whether to include a majority by number. It also stipulates that those majorities should not be higher than 75% by value or, where applicable, of the number of creditors in each class. For the EBRD regions, the Assessment Team prepared the **Annex Voting on Business Reorganisation Plans** of the Assessment Report summarising the results obtained regarding approval requirements.

In all 39 jurisdictions covered by the assessment, there is at least one reorganisation procedure that requires the approval of a majority of creditors by value. In Tunisia and Morocco such approval is indirect.

In Tunisia an amicable settlement agreement requires ratification by at least two thirds by value by creditors and a judicial settlement plan by at least one half of creditors by value, whereas in Morocco, in respect of the judicial rehabilitation procedure only, the plan is deemed to be approved if creditors holding 50% or more of the total amount of claims held by participating creditors present vote in favour. However, presiding judges in both countries have strong powers, based on French legislation, to impose a rescheduling of debts on non-consenting or participating creditors.

In about one-third of the economies (14 jurisdictions), the law prescribes the approval by: the majority or two-thirds in value of claims (that is, creditors holding more than 50% or 66% (2/3) of the value of claims); and the majority in number of creditors in each class, where such classes exist, for at least one available reorganisation procedure. In other words, the legal framework provides for a double majority system, by value and number of creditors (numerosity). In a few economies, such as Morocco and Tunisia, creditors do not vote directly on a reorganisation plan, but are invited to sign a plan. In some jurisdictions there are reorganisation options which are fully consensual and require all participating (or affected) creditors to approve a reorganisation plan. These include some of the former Soviet Union economies which include sanation or amicable settlement as options within reorganisation procedures, Egypt in respect of its restructuring procedure, and Uzbekistan in respect of its pre-trial rehabilitation procedure. In Morocco's safeguard procedure, the insolvency practitioner needs to seek the consent of all creditors, although consent is deemed to be given in the case of non-reply and is subject to the judge's ability to impose a debt rescheduling. As a minimum requirement, it should be a majority in value, and if the legislative approach is to be more protective, a double majority (in both value and number of participants) can be established.

Setting out the approval requirements for each of the voting classes also means that the dissenting creditors within each class can be crammed down, since the law usually prescribes that the plan needs to be approved by a required majority in each class (in other words, there are pre-established class approval majorities). Subsequently, this leads to the approval of the plan, which usually makes the plan binding on all participating (or affected) creditors, including the dissenting minority.

Besides the intra-class cram down, some jurisdictions also provide for the cram down across classes. The so called cross-class cram down is a powerful and effective mechanism that has been at the centre of interest of recent legislative proposals and international best practices. The cross-class cram down means that the reorganisation plan can be confirmed by the court even if not all voting classes have supported it by the required majorities. Where in one or more classes the debtor does not receive the approval of the statutory necessary number of creditors or creditors holding a certain amount of debt, the plan can still be 'rescued' by the court by means of the cross-class cram down. This feature originates in the US Chapter 11 procedure and is part of the insolvency laws in Germany and the UK. It has also been introduced by the EU Restructuring Directive and will be available in all EU Member States after the transposition of the directive.

It is a very positive trend that almost half assessment economies (17 jurisdictions): Albania, Bosnia and Herzegovina (Federation), Bosnia and Herzegovina (Republic Srpska), Croatia, Estonia (on application to the court by the debtor), Georgia (new insolvency legislation), Greece (new insolvency legislation), Hungary (new insolvency legislation), Jordan, Kosovo, Moldova, Mongolia, Montenegro, North Macedonia, Poland, Romania and the Slovak Republic, all include a cross-class cram down feature in their legislation. The specific advantage of this tool is to enable the debtor and the court to overcome entire classes of creditors blocking a viable restructuring.

However, advanced protection of dissenting creditors should be provided by the law, as an entire class of creditors is being bound by the decision of the majority in other classes. Many jurisdictions provide in this regard for the 'no worse off' or 'best interest of creditors' principle which means that the dissenting class should receive at least as much as they would otherwise receive in the case of liquidation of the debtor or any other alternative. Also, the consent of the majority of classes may also be required (see, for example, the EU Restructuring Directive). Furthermore, the so-called absolute priority rule for creditor satisfaction is provided for in the US Bankruptcy Code and the relative priority and absolute priority rules in the EU Restructuring Directive.

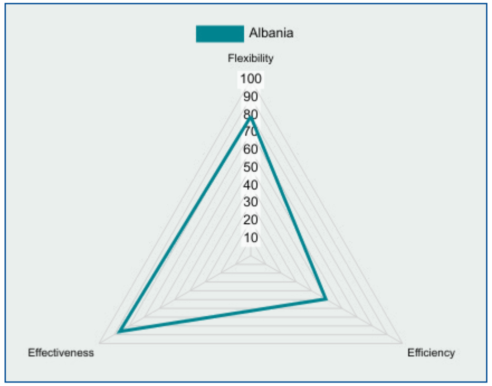
The absolute priority rule establishes that a dissenting class must be paid in full before a more junior class is able to receive any distribution or keep any interest under the restructuring plan. The relative priority rule, in contrast, provides that the restructuring plan shall ensure that dissenting voting classes are treated at least as favourably as any other class of the same rank and more favourably than any lower priority class. The legislators in the EU Member States only need to choose one of the two main priority rules in order to accommodate their legislative preference taking into account the entirety of their legal framework. The EU legislator further considered in the EU Restructuring Directive that the court should also review whether the class formation has been done in accordance with the similarity of interests of creditors.

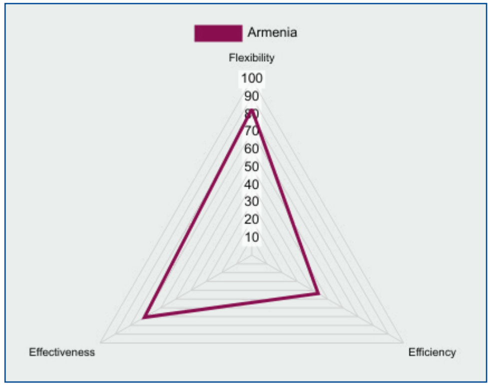
Generally, the reorganisation procedures should aim to provide for a compromise between the debtor and creditors, meaning that the consent of all creditors is not required according to the current best practices.

Overall, the configuration of the cross-class cram down, the requisite safeguards for creditors, including the priority rules and other requirements, is a complex task and should be considered carefully bearing in mind the idiosyncratic aspects of each economy. However, it is a necessary feature, particularly in cases of large restructurings with many voting classes. Each economy should assess the available options and design the reorganisation plan approval process according to the needs of its market participants. This assessment should also be linked to the available judicial expertise in the relevant jurisdictions.

The following pages show the performance of each EBRD economy against the three assessment Benchmarks of Effectiveness, Efficiency and Flexibility, illustrated by diagonal axes. The maximum possible for each Benchmark is 100 points. For more information, see **Section II Methodology**.

Tunisia


Albania
Flexibility
Effectiveness
Efficiency


Armenia
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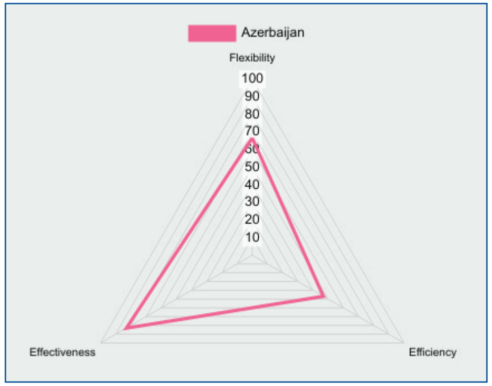
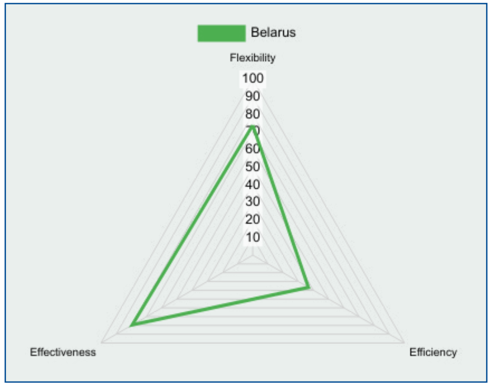
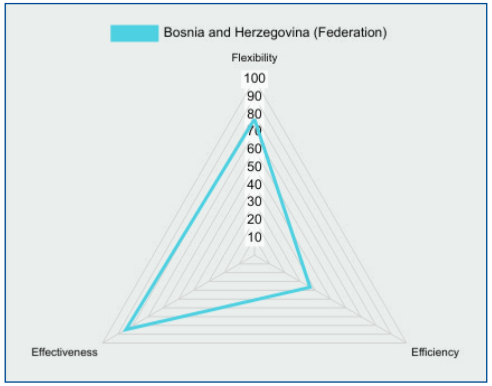
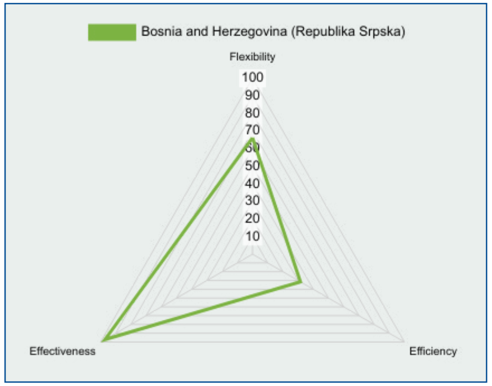
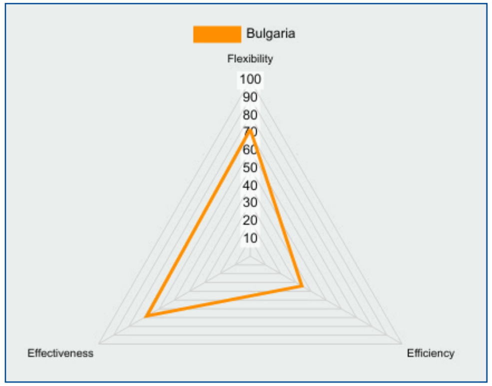
Effectiveness
Efficiency

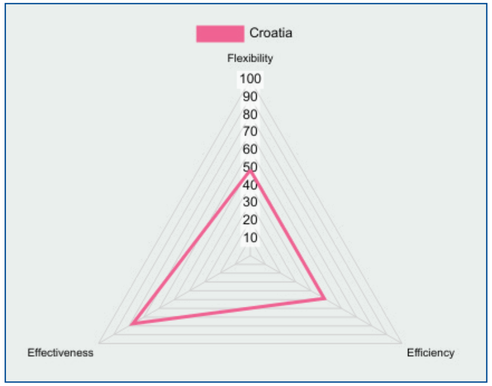

Azerbaijan
Flexibility
Effectiveness
Efficiency

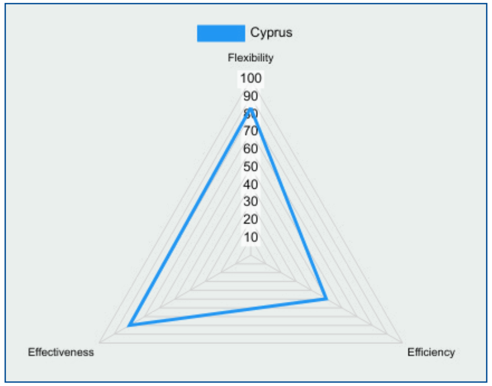

Belarus
Flexibility
Effectiveness
Efficiency


Bosnia and Herzegovina (Federation)
Flexibility
Effectiveness
Efficiency


Bosnia and Herzegovina (Republika Srpska)
Flexibility
Effectiveness
Efficiency


Bulgaria
Flexibility
Effectiveness
Efficiency


Croatia
Flexibility
Effectiveness
Efficiency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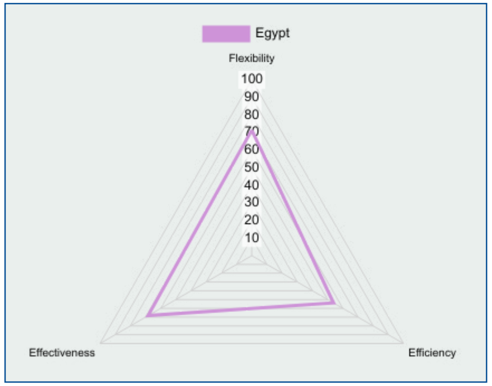
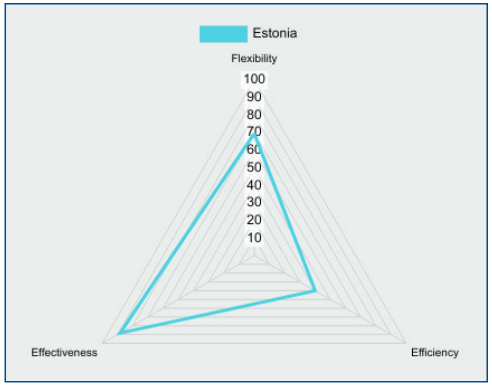
Flexibility
Effectiveness
Efficiency


Egypt
Flexibility
Effectiveness
Efficiency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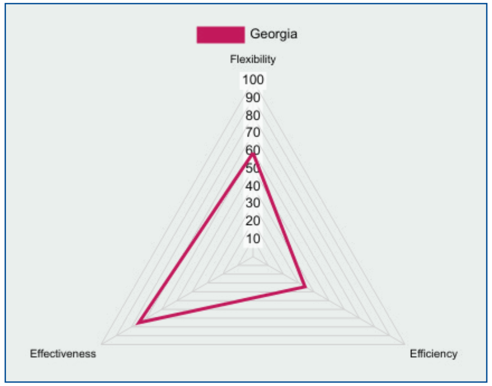
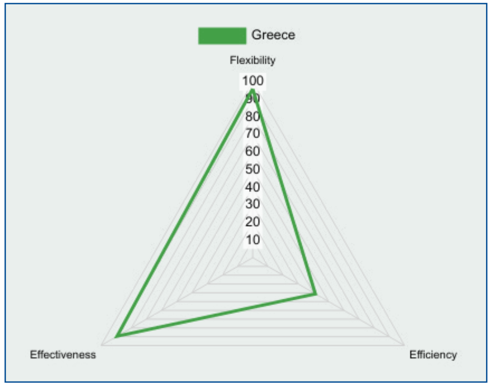
Efficiency


Georgia
Flexibility
Effectiveness
Efficiency


Greece
Flexibility
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90
80
70
60
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40
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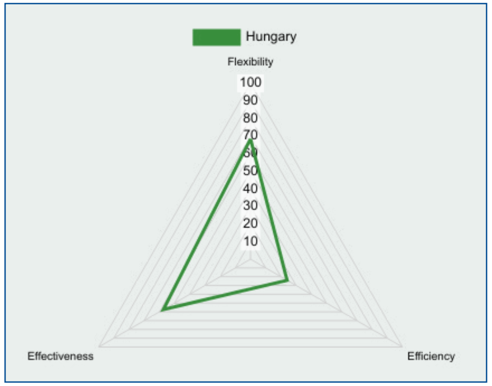
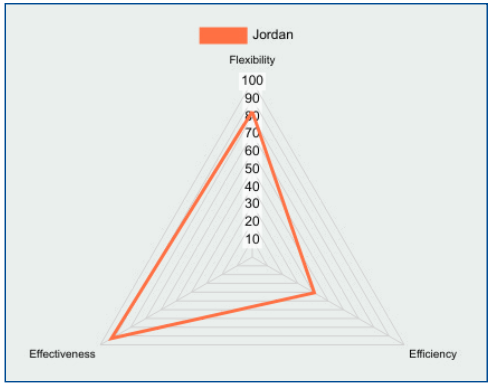
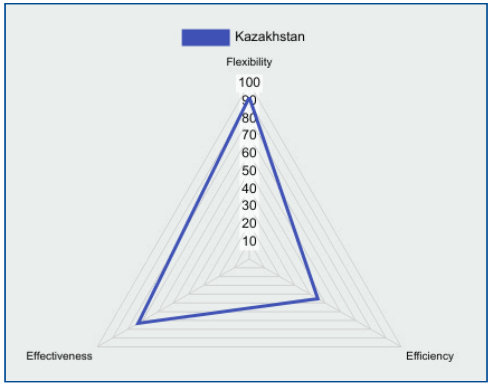
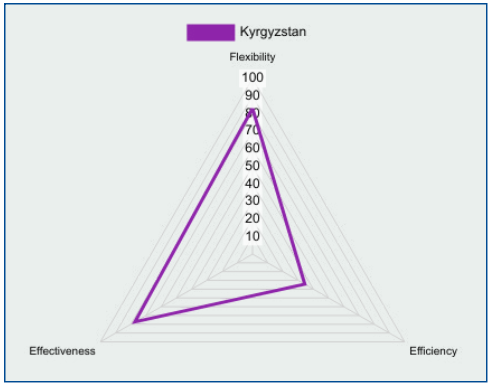
20
10
Effectiveness
Efficiency

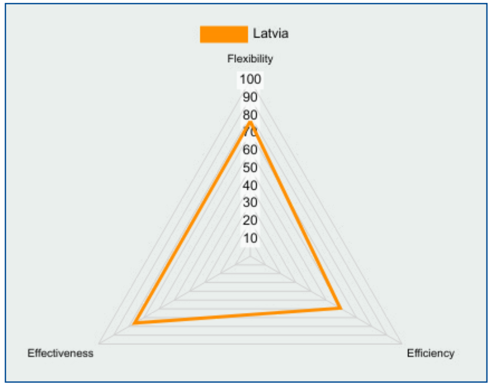

Hungary
Flexibility
Effectiveness
Efficiency


Jordan
Flexibility
Effectiveness
Efficiency


Kazakhstan
Flexibility
Effectiveness
Efficiency


Kosovo
Flexibility
Effectiveness
Efficiency


Kyrgyzstan
Flexibility
Effectiveness
Efficiency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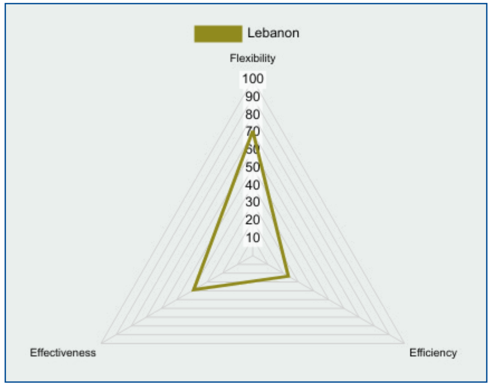
Flexibility
Effectiveness
Efficiency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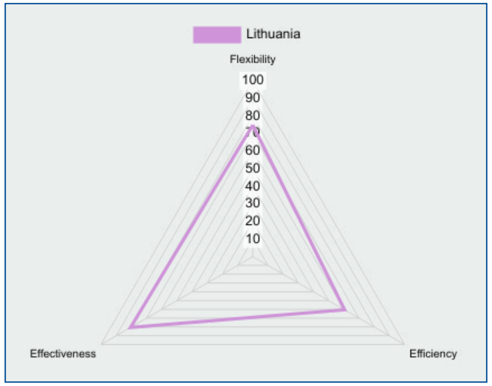
Effectiveness
Efficiency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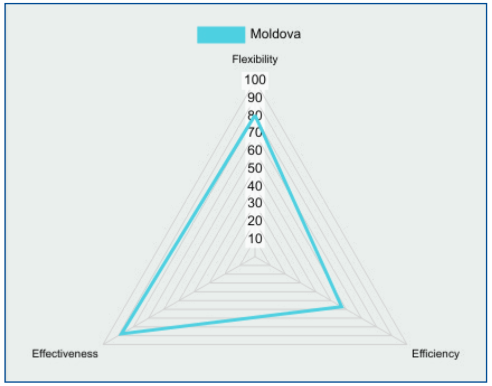
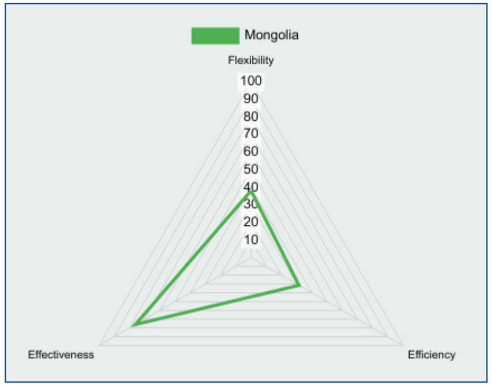
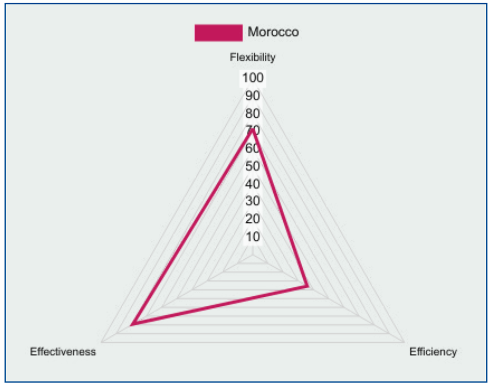
Efficiency


Moldova
Flexibility
Effectiveness
Efficiency


Mongolia
Flexibility
Effectiveness
Efficiency


Montenegro
Flexibility
Effectiveness
Efficiency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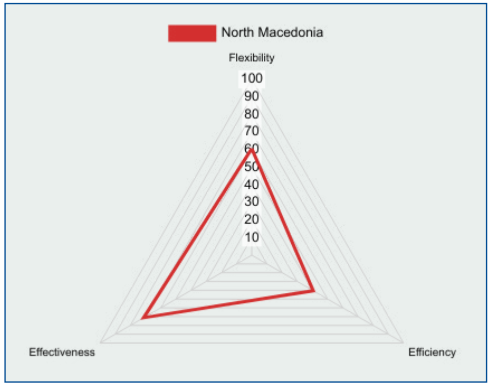
Effectiveness
Efficiency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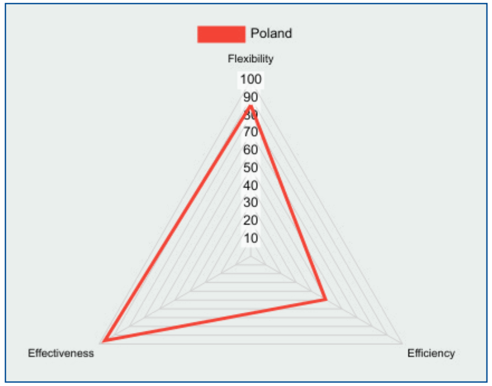
Effectiveness
Efficiency


Poland
Flexibility
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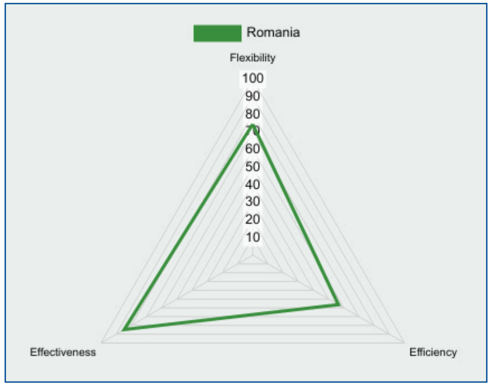
Effectiveness
Efficiency


Romania
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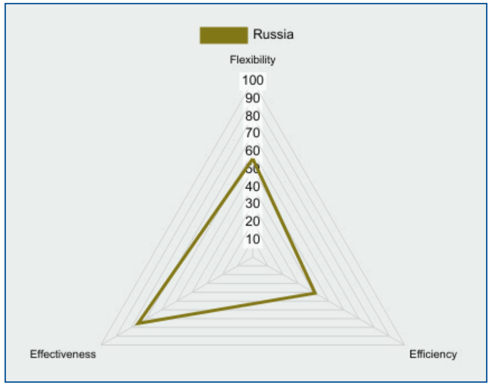
Effectiveness
Efficiency


Russia
Flexibility
100
90
80
70
60
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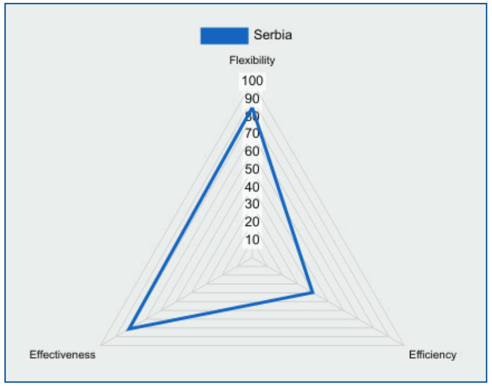
40
30
20
10
Effectiveness
Efficiency


Serbia
Flexibility
100
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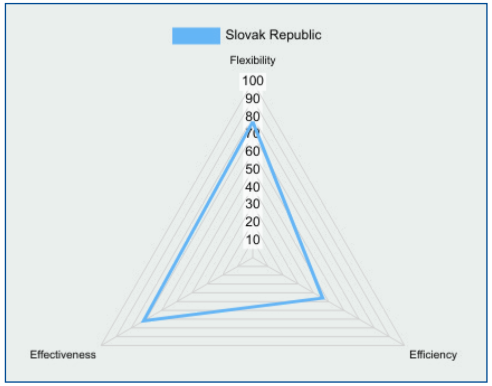
Effectiveness
Efficiency


Slovak Republic
Flexibility
100
90
80
70
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40
30
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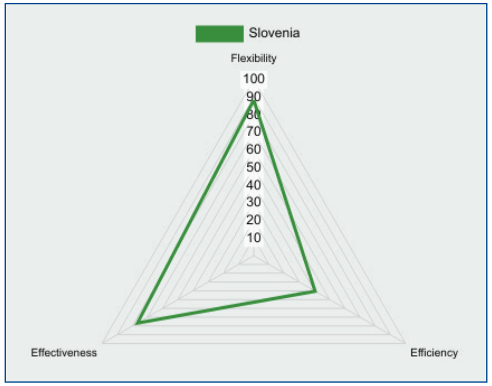
Effectiveness
Efficiency


Slovenia
Flexibility
100
90
80
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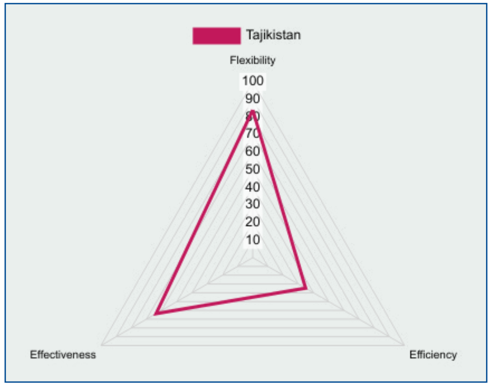
Effectiveness
Efficiency


Tajikistan
Flexibility
100
90
80
70
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50
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30
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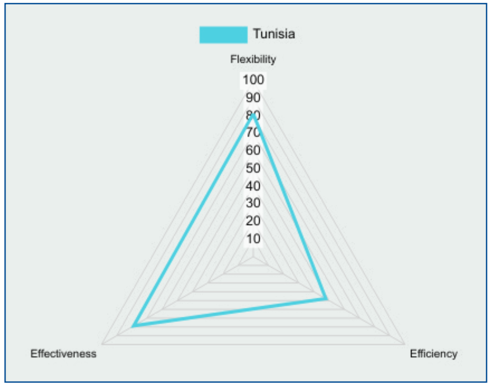
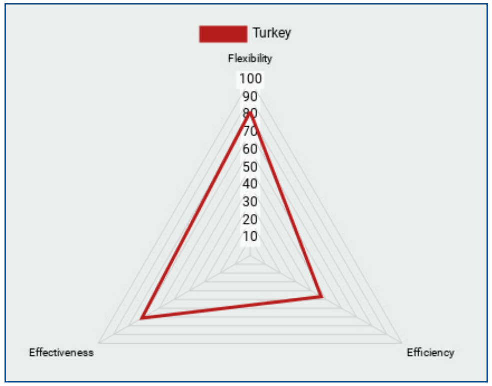
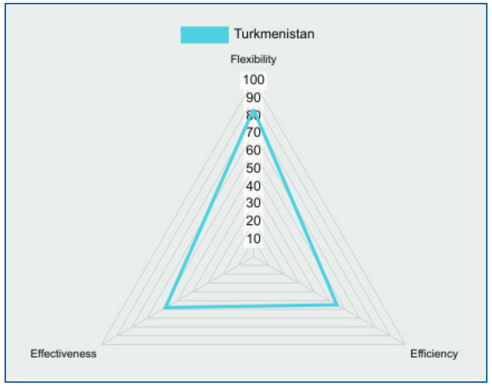
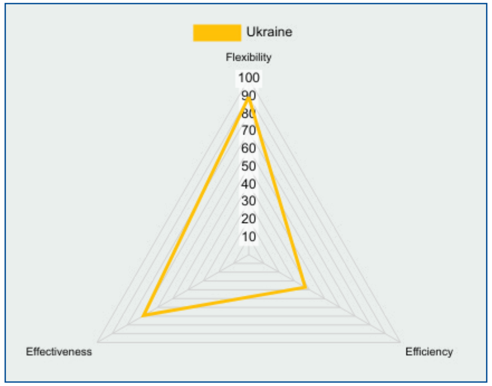
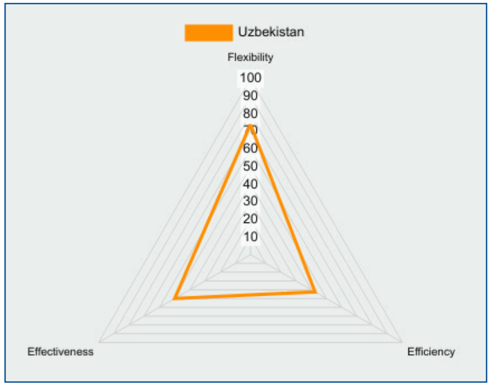
10
Effectiveness
Efficiency


Tunisia
Flexibility
100
90
80
70
60
50
40
30
20
10
Effectiveness
Efficiency


Turkey
Flexibility
100
90
80
70
60
50
40
30
20
10
Effectiveness
Efficiency


Turkmenistan
Flexibility
100
90
80
70
60
50
40
30
20
10
Effectiveness
Efficiency


Ukraine
Flexibility
100
90
80
70
60
50
40
30
20
10
Effectiveness
Efficiency


Uzbekistan
Flexibility
100
90
80
70
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30
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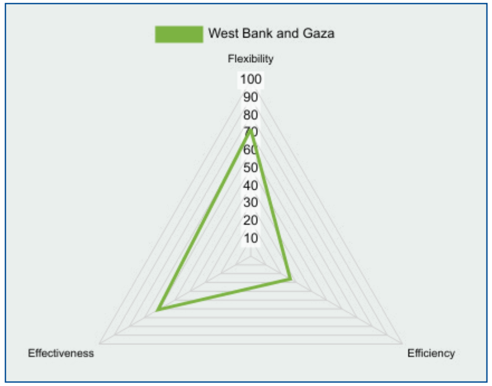
10
Effectiveness
Efficiency


West Bank and Gaza
Flexibility
100
90
80
70
60
50
40
30
20
10
Effectiveness
Efficiency

D. Performance in the groupings of subregions

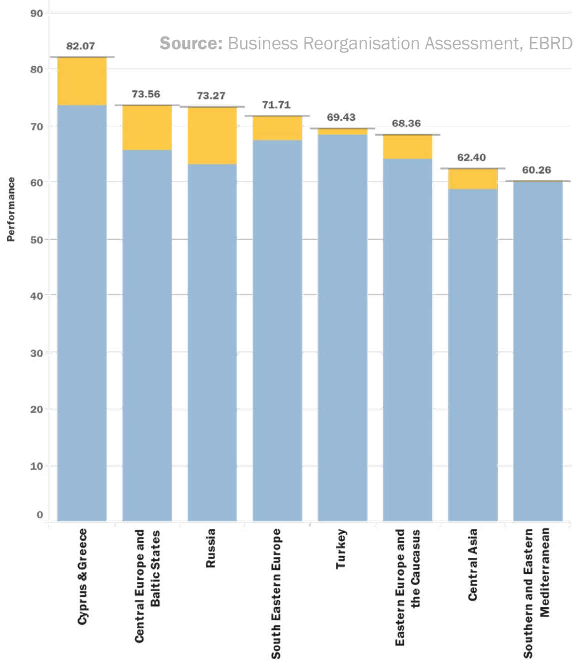
This last section of the Assessment Report refers to the performance of the economies grouped by and assessed in the context of the EBRD subregion to which they belong. The EBRD economies of operations are grouped in eight subregions based on their geographical location and idiosyncratic similarities. These subregions are:

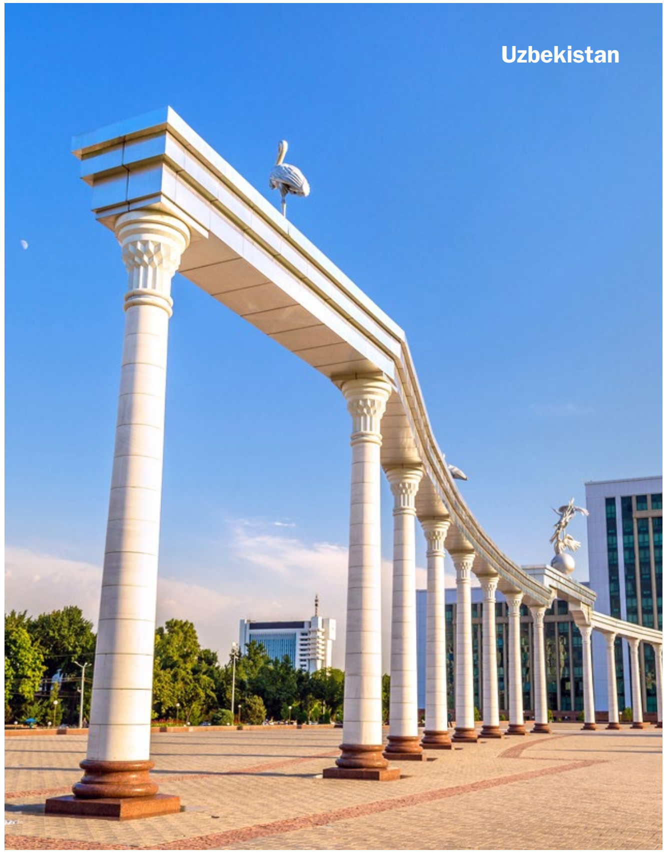
1. Central Asia
2. Central Europe and Baltic States
3. Cyprus and Greece
4. Eastern Europe and the Caucasus
5. South Eastern Europe
6. Southern and Eastern Mediterranean
7. Russia
8. Turkey

Figure 6.34 compares the performance of economies within each of the subregions by highlighting the best performers by regions. This is followed by a region by region perspective and comparison of the strengths and weaknesses of regional economies and highlighting any matters specific to a region. In case of Russia and Turkey, the analysis discusses individually the performance of each of these economies.

As can be seen from Figure 6.34, the Cyprus and Greece subregion achieved the highest overall score, including for the Data Transparency Factor, among all eight EBRD subregions. These were followed by the Central Europe and the Baltic States subregions, which ranked second with a solid gap of more than eight points. It is worth stressing that all Central Europe and the Baltic States subregion economies are EU Member States, as are Greece and Cyprus. Russia sits in third place in the cross-subregion ranking with a very slim – almost negligible – difference with the Central Europe and the Baltic States subregions. In fourth place, we find South Eastern Europe, which still falls above average, jointly with the previous three subregions. The average performance score was above 70 points. The last four – and below average performers – are, in descending order, Turkey, Eastern Europe and the Caucasus, Central Asia and Southern and Eastern Mediterranean. The lowest subregional performer scored 10 points below the average performance of all subregions.

Figure 6.34 Overall business reorganisation assessment score including the Data Transparency Factor across EBRD subregions





Note: This chart illustrates the average performance (in descending order) of each EBRD subregion on an aggregate basis with respect to each of the five sections of the questionnaire, as well as the Data Transparency Factor (highlighted in yellow). Each section of the questionnaire has a maximum score of 20 points, and the Data Transparency Factor has a maximum score of 10 points. The maximum possible 110 points signals the existence of optimal legal and regulatory frameworks, as well as comprehensive and available data on such procedures.

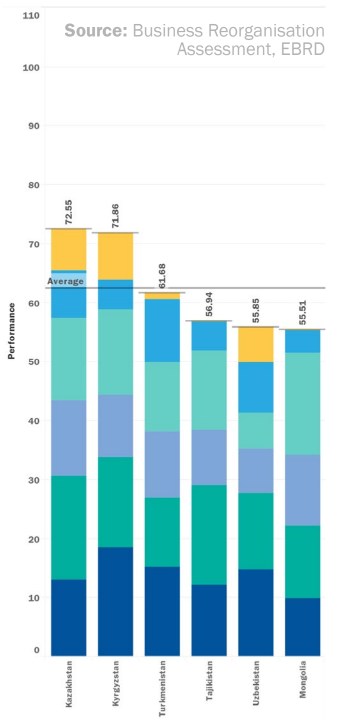
1. Central Asia

The Central Asian subregion consists of Kazakhstan, Kyrgyz Republic, Mongolia, Tajikistan, Turkmenistan and Uzbekistan. Out of the six economies, only Kazakhstan shows a good level of quality in its reorganisation framework by collecting an overall score of 72.6 points. Kyrgyz Republic denotes a medium level of performance with 71.9 points, whereas Mongolia, Tajikistan, Turkmenistan and Uzbekistan ranked within the ten least good performers in the overall ranking. In some countries, this may be correlated with a reportedly low use of reorganisation procedures.

The average score collected in Central Asia was 62.4 points, including the Data Transparency Factor. It is a positive trend that four out of six Central Asian economies collected a bonus for availability of insolvency-related data. Kyrgyz Republic achieved the highest score of 8 points in the group, followed by Kazakhstan and Uzbekistan with 7 and 6 points, respectively. Turkmenistan only scored 1 point for the Data Transparency bonus due to the fact that only some statistical data on insolvency proceedings (such as the number of insolvency liquidations) is collected by the Agency for State Registration of Legal Entities and Investment Projects, which is overseen by the Ministry of Finance and Economy of Turkmenistan. Mongolia and Tajikistan scored zero for data transparency. The overall assessment scores for Central Asia are shown in Figure 6.35. In the Central Asian subregion, Mongolia presents a less well-developed business reorganisation framework with an overall score of 55.5, just above half of the maximum possible score. It is notable that within the Central Asian subregion the difference between the best performer (Kazakhstan, 72.6 points) and the least good performer (Mongolia, 55.5 points) is about 17 points, which shows a significant disparity in the quality of the business reorganisation framework between these two economies within the same subregion.

The fact that four out of six Central Asian economies were among the least good assessment performers also indicates the need for further development and legal reform in this region. However, as mentioned above, Kazakhstan, Kyrgyz Republic and Uzbekistan and have been awarded points for transparency in insolvency data.

Figure 6.35 Overall business reorganisation assessment score including the Data Transparency Factor by subregion – Central Asia

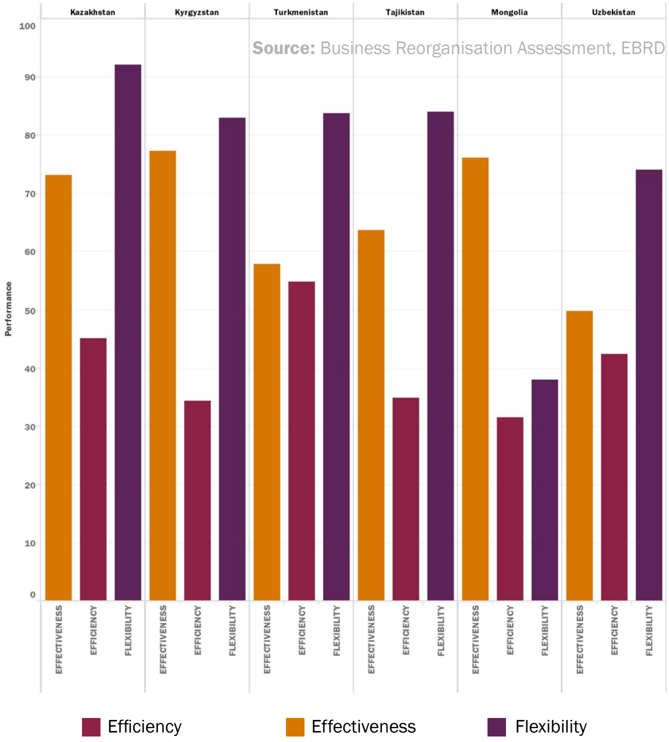


Note: This chart illustrates the performance (in descending order) of each EBRD economy in Central Asia on an aggregate basis with respect to each of the five sections of the questionnaire, as well as the Data Transparency Factor. Each section of the questionnaire has a maximum score of 20 points, and the Data Transparency Factor has a maximum score of 10 points. The maximum possible 110 points signals the existence of optimal legal and regulatory frameworks, as well as comprehensive and available data on such procedures.

The analysis of the responses received and the desktop review of the legislation in Mongolia and Turkmenistan, for example, showed that the insolvency and reorganisation tools are not frequently applied in practice and that the legislation has not been reformed in the last few decades (although it should be noted that Mongolia is currently in the process of drafting new insolvency legislation). The insolvency laws in Tajikistan lack the concept of separate creditors' classes for voting on the reorganisation plan, notwithstanding that secured creditors can also participate in voting alongside unsecured creditors, whereas the Uzbek law does not foresee the review of the reorganisation plan in the judicial rehabilitation procedure by the court after the approval by creditors. These are only few examples of identified weaknesses in these economies. A more detailed analysis is available under performance per section and performance per benchmark.

The Central Asian economies present slightly different trends in the benchmarks' rankings than in the overall ranking. Whereas five out of six economies performed well in the Flexibility benchmark, collecting scores between 74.1% (Uzbekistan) and 92.1% (Kazakhstan), Mongolia collected only 38.1% and ranked last in terms of the flexibility of its insolvency framework. The Effectiveness benchmark showed lower results than the Flexibility benchmark, however, still presenting satisfactory scores for all economies, except Uzbekistan that collected only 49.9%. Interestingly, Mongolia achieved 76.1% and fell significantly behind the best performer in this benchmark, which was Kyrgyz Republic with 77.3%. Lastly, all six Central Asian economies showed similarly low level of performance in the Efficiency benchmark. Generally, it can be said that the Efficiency benchmark revealed lower scores, on average, in all EBRD economies of operations than any other benchmark. The scores for the assessment benchmarks are presented in Figure 6.36.

Figure 6.36 Overall score for Effectiveness, Efficiency and Flexibility benchmarks by subregion – Central Asia



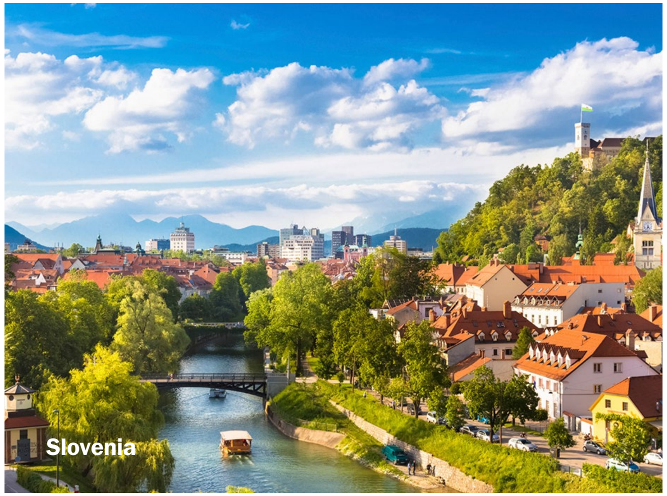
Note: This table represents performance (in descending order) of Effectiveness, Efficiency and Flexibility benchmarks of each EBRD economy in Central Asia. The maximum possible is 100 points. For more information, see **Section II Methodology**.

2. Central Europe and the Baltic States

Croatia, Estonia, Hungary, Latvia, Lithuania, Poland, the Slovak Republic, and Slovenia belong to the subregion of Central Europe and the Baltic States. All are EU Member States and are therefore undergoing in some cases significant reforms to transpose the EU Restructuring Directive, although in the final quarter of 2020 when the assessment questionnaire was open, none had fully aligned their legislation with the directive.[16] **Section IV The International Best Practices** contains a discussion of the EU Restructuring Directive. Within this subregion Poland achieved the highest results in the overall assessment scores by collecting 84.3 points and was followed by Lithuania with 83.2 points, in each case including the Data Transparency Factor. Both economies lead the overall ranking as the second- and third-best performers as can be seen in the Figure 6.37 where the overall performance ranking in the Central Europe and the Baltic States subregion is presented. Latvia ranked third in the subregion, and made it into the top ten performers according to the overall scores by reaching 77.2 points – three out of ten best performers in the overall assessment scores belong to the Central Europe and the Baltic States subregion, which is a very positive trend for the region. Croatia, Estonia, the Slovak Republic, and Slovenia, show similar results of medium overall performance. Only Hungary collected a comparably lower score of 56 points and was located at the lower end of the scale in the overall assessment ranking. The contrast between Poland (as the best performer) and Hungary (as the least good performer) within the subregion evidences a substantial gap of about 30 points. This is because the scores in the Central Europe and the Baltic States fluctuate the most as the subregion accommodates the second-best performer (Poland) and one of the least good performers (Hungary).

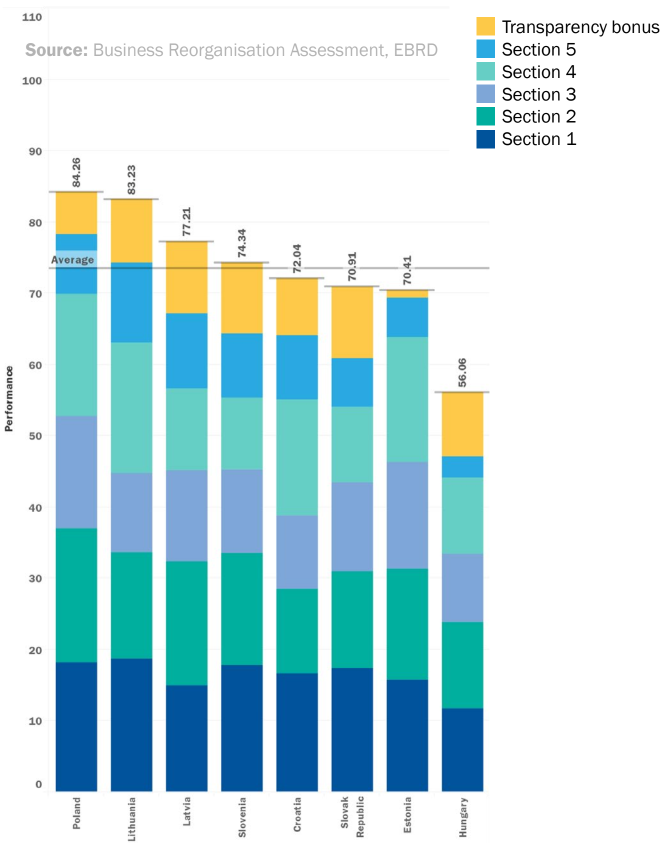
The average score collected in Central Europe and Baltic States is 73.6 points, including the Data Transparency Factor.

It is a positive trend that all eight economies collected a bonus for availability of insolvency-related data. Latvia, the Slovak Republic and Slovenia lead in terms of data transparency, with 10 points each, and are followed by Hungary and Lithuania (9 points), Croatia (8 points), Poland (6 points) and Estonia (1 point) for the Data Transparency Factor bonus. Following the transposition of the EU Directive, all eight economies are expected to achieve a noticeable improvement and will have more streamlined and modern early reorganisation frameworks, as well as better data transparency, as all economies are now moving to electronic registries. As of publication, only Hungary and Lithuania already enacted new legislation based on the EU Directive which, however, has not been considered for ranking purposes as the responses to the questionnaire were obtained during 1 September and 7 November 2020 when the economy was still in the process of drafting the new legislation.



[16] As at publication, Greece, Hungary and Lithuania were the only EU Member States among EBRD economies of operations to have transposed for the most part the provisions of the EU Restructuring Directive.

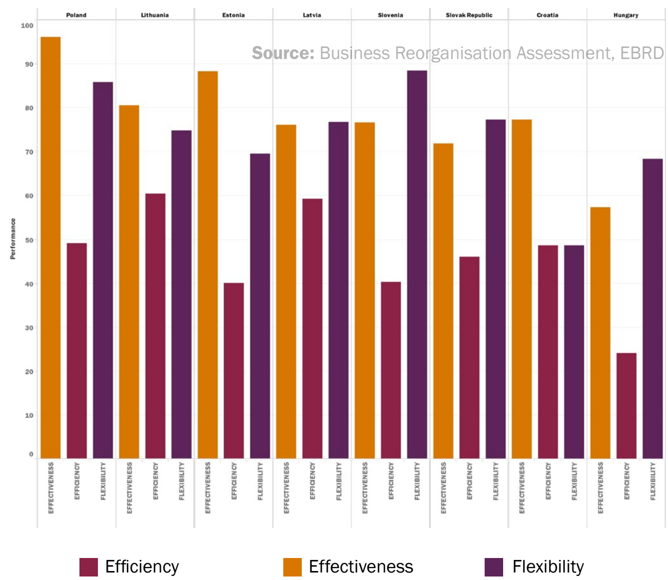
Figure 6.37 Overall business reorganisation assessment score including the Data Transparency Factor by subregion – Central Europe and the Baltic States



Note: This chart illustrates the performance (in descending order) of each EBRD economy in Central Europe and the Baltic States on an aggregate basis with respect to each of the five sections of the questionnaire, as well as the Data Transparency Factor. Each section of the questionnaire has a maximum of 20 points, and the Data Transparency Factor has a maximum of 10 points. The maximum possible 110 points signals the existence of optimal legal and regulatory frameworks, as well as comprehensive and available data on such procedures.

Similar to the overall results, all Central European and the Baltic economies, except Hungary, show medium to good performance in terms of the assessment benchmarks. Only Hungary and the Slovak Republic reached a score below the average score of 76% for the Effectiveness benchmark. Poland leads the ranking in terms of effective insolvency and reorganisation framework, followed by Estonia. Within the Flexibility benchmark, Poland ranks second-best within the subregion, falling slightly behind Slovenia. It is positive that Hungary collected almost 70% for the Flexibility benchmark and showed its best performance across all rankings. Lastly, the scores for the Efficiency benchmark were comparably lower among the Central European and the Baltic States. As already mentioned, the Efficiency benchmark reveals lower scores, on average, in all EBRD economies of operations than any other benchmark. Nevertheless, Latvia and Lithuania lead in this ranking and show higher efficiency than all other EBRD economies of operations. The scores for the assessment benchmarks are presented in Figure 6.38. Possible regional areas to focus on include time efficiency, such as working on reducing the lengthiness of the procedures, as well as enhancing practice standards of the professionals involved.

Figure 6.38 Overall score for Effectiveness, Efficiency and Flexibility benchmarks by subregion – Central Europe and the Baltic States



Note: This table represents performance (in descending order) of Effectiveness, Efficiency and Flexibility benchmarks of each EBRD economy in Central Europe and the Baltic States. The maximum possible is 100 points. For more information, see **Section II Methodology**.

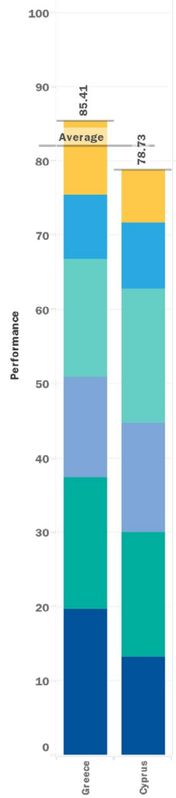
3. Cyprus and Greece

Cyprus and Greece constitute a separate subregion within the EBRD economies. Therefore, the following analysis only compares these two economies with each other. Both are EU Member States. Greece is the best performer in the overall assessment results with 85.4 points and Cyprus sixth with 78.7 points (including the Data Transparency Factor bonus). Both economies lead the ranking according to the overall scores, which denotes a high quality of their business reorganisation framework. Cyprus and Greece were both required to complete a significant overhaul of their personal and corporate insolvency from 2015 in return for financial assistance as part of a memorandum of understanding with the EU.

The average overall assessment score of the two economies is 82.1 points, including the Data Transparency Factor. Greece was awarded the maximum possible score of 10 points and Cyprus 7 points for the availability of insolvency-related data that has further improved the performance of these jurisdictions. In Cyprus, points were lost for the Data Transparency Factor due primarily to the lack of any published data on corporate reorganisation. As already mentioned, Greece's performance is based on the 'old' law and practice which was in force when collecting the responses to the questionnaire. Greece adopted a new insolvency legislation that came into force in March 2021, and which is reviewed under the Business Reorganisation Assessment overview of Greece. It is expected that the new legislative act provides for a more advanced and efficient reorganisation framework as it also implements the EU Restructuring Directive. Cyprus, on the other hand, has reformed its insolvency legislation earlier to introduce examinership, a procedure based on the Irish example. Examinership is reportedly not used in practice and is not included in the published insolvency data. Cyprus's reorganisation framework is expected to improve further following the recent introduction of a fully-fledged Insolvency Service and once the EU Restructuring Directive is implemented in the national legislation.

Similarly positive results were observed for the benchmarks' analysis. Both Greece and Cyprus collected above average scores in the Flexibility and Effectiveness benchmarks and showed good compliance when assessed against these benchmarks. Greece ranked first in terms of flexible insolvency frameworks, whereas Cyprus ranked ninth. Similarly, Greece leads the ranking in effectiveness of its reorganisation tools, being in the fourth position, and Cyprus follows on the fifteenth position. As expected, the results were less positive in terms of efficiency of the insolvency laws. In this regard, Cyprus achieved 49.7% and ranked higher than Greece, which collected 41.2%. The overall Assessment scores for Cyprus and Greece are presented in Figure 6.39 and the scores for the assessment benchmarks are presented in Figure 6.40. Areas for further reform and improvement in terms of efficiency should be the capacity building and specialised training for judges and insolvency office holders in order to enhance their expertise, particularly in reorganisation cases.

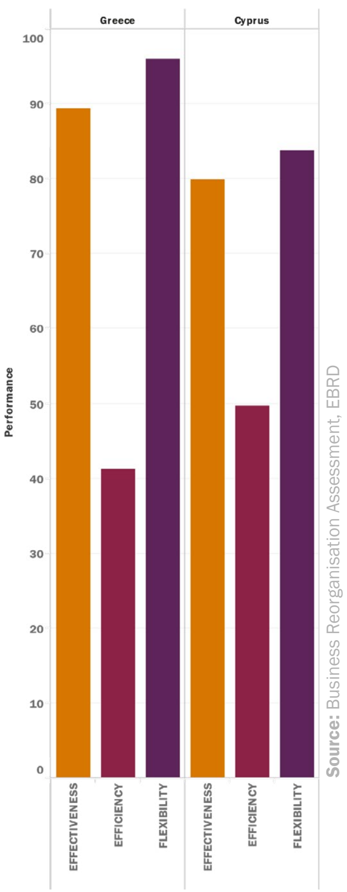
Figure 6.39 Overall business reorganisation assessment score including the Data Transparency Factor by subregion – Cyprus and Greece



Source: Business Reorganisation Assessment, EBRD

Note: This chart illustrates the performance (in descending order) of each EBRD economy in Greece and Cyprus on an aggregate basis with respect to each of the five sections of the questionnaire, as well as the Data Transparency Factor. Each section of the questionnaire has a maximum of 20 points, and the Data Transparency Factor has a maximum of 10 points. The maximum possible 110 points signals the existence of optimal legal and regulatory frameworks, as well as comprehensive and available data on such procedures.

Figure 6.40 Overall score for Effectiveness, Efficiency and Flexibility benchmarks by subregion – Cyprus and Greece



Efficiency
Effectiveness
Flexibility

Note: This table represents performance (in descending order) of Effectiveness, Efficiency and Flexibility benchmarks of Cyprus and Greece. The maximum possible is 100 points. For more information, see **Section II Methodology**.

4. Eastern Europe and the Caucasus

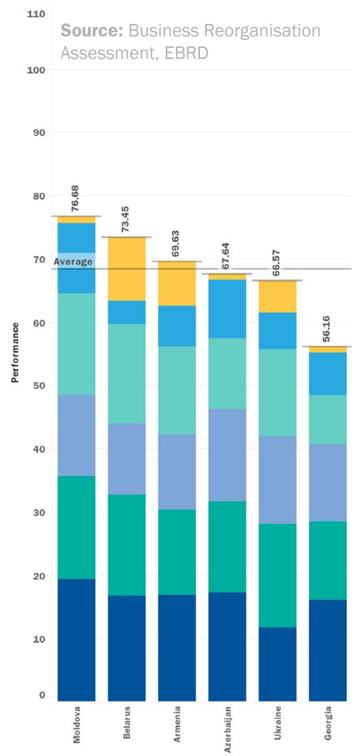
Eastern Europe and the Caucasus subregion consists of Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. Within this subregion, Moldova takes the leading position with 76.7 points, ranking eight in the overall assessment scores (including the Data Transparency Factor bonus). Belarus falls slightly behind Moldova by only 2 points and collects 73.5 points. Both Moldova and Belarus present overall a good proficiency in their business reorganisation frameworks. Armenia obtained 69.6 points, slightly less than the second-best performer in the region, Belarus. Azerbaijan and Ukraine achieved similar scores of 67.6 points and 66.6 points, respectively, and are in the middle of the scale in terms of the overall assessment scores. In contrast, Georgia collected only 56.2 points as the least good performer in the group, displaying a low quality of business reorganisation framework. Georgian performance, similar to the Greek case, is based on the 'old' insolvency law and domestic practice that was applied when collecting the responses for the questionnaire.

Meanwhile, Georgia has enacted a new insolvency code that is reviewed under the Business Reorganisation Assessment overview of Georgia and provides for a more modern and streamlined court-supervised reorganisation procedure and a more flexible and light-touch hybrid procedure. The ranking as shown in this section only represents the 'old' law and practice does not refer to the new procedures. It should be noted that the overall scores in Eastern Europe and the Caucasus fluctuate widely, ranging between 56.2 points (the lowest) and 76.7 points (the highest) as it accommodates one of the top ten (Moldova) and one of the least good performers (Georgia).

The average overall score in the Eastern Europe and Caucasus is 68.4 points, including the Data Transparency Factor. Belarus is the only country that collected the full score of 10 for the transparency of insolvency-related data, and was followed by Armenia and Ukraine with 7 and 5 points, respectively.

Figure 6.41 shows the comparison of scores in Eastern Europe and the Caucasus. A possible area of improvement is on transparency as Azerbaijan, Georgia and Moldova each score 1 point as they have an identifiable central authority for insolvency data but no data is published.

Figure 6.41 Overall business reorganisation assessment score including the Data Transparency Factor by subregion – Eastern Europe and the Caucasus

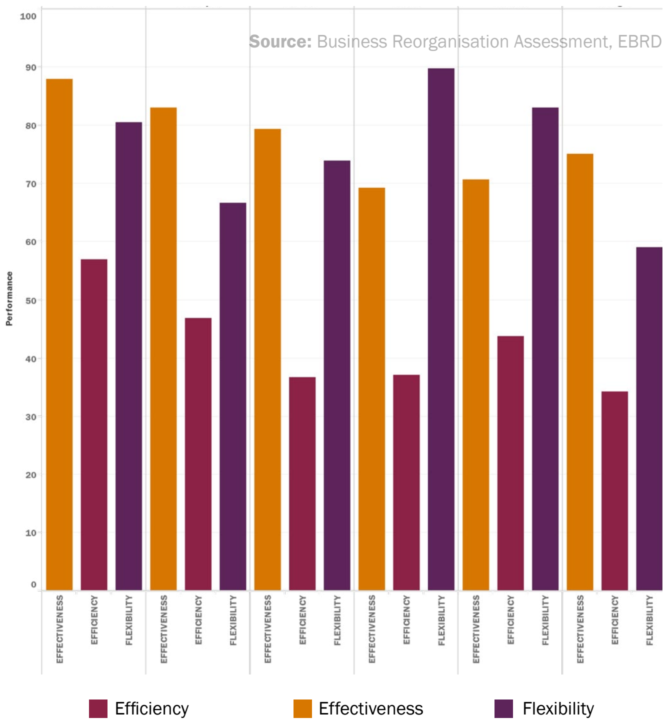


Transparency bonus
Section 5
Section 4
Section 3
Section 2
Section 1

Note: This chart illustrates the performance (in descending order) of each EBRD economy in Eastern Europe and the Caucasus on an aggregate basis with respect to each of the five sections of the questionnaire, as well as the Data Transparency Factor. Each section of the questionnaire has a maximum of 20 points, and the Data Transparency Factor has a maximum of 10 points. The maximum possible score 110 points signals the existence of optimal legal and regulatory frameworks, together with comprehensive and available data on such procedures.

All economies belonging to the Eastern Europe and the Caucasus subregion showed medium to good performance when assessed against the Effectiveness benchmark. Ukraine collected the lowest score of 69.2%, falling slightly behind the average score for this benchmark, which was 76%. It is a positive trend that Georgia achieved an above-average score of 75.1% and showed its best performance across all rankings. Similar to the overall results, Moldova leads the ranking for the Effectiveness benchmark with 87.9%. The Flexibility benchmark results fluctuate more and range between 59% (Georgia) and 89.7% (Ukraine) which evidences a significant gap between the best and worst performer in terms of flexibility within Eastern Europe and the Caucasus subregion. It should be noted that Ukraine achieved its highest score in the Flexibility benchmark and ranked fourth in the EBRD regions. Similar to all other subregions discussed in this section, the scores were lower for the Efficiency benchmark. Even the best performer, Moldova, only achieved 56.9%, which is slightly more than the half of the possible score. However, as the results were low in all participating economies, Moldova still ranked third within Efficiency results. Generally, for improvement on the Efficiency benchmark, economies would be well advised to invest in capacity building and strengthening the regulatory framework as well as the practical expertise of judges and insolvency office holders dealing with insolvency cases. Armenia and Belarus have been commended on the transparency and availability of their insolvency-related data and have collected 7 and 10 points out of a maximum possible score of 10. Figure 6.42 presents the comparison of the benchmark scores in Eastern Europe and the Caucasus.

Figure 6.42 Overall score for Effectiveness, Efficiency and Flexibility benchmarks by subregion – Eastern Europe and the Caucasus

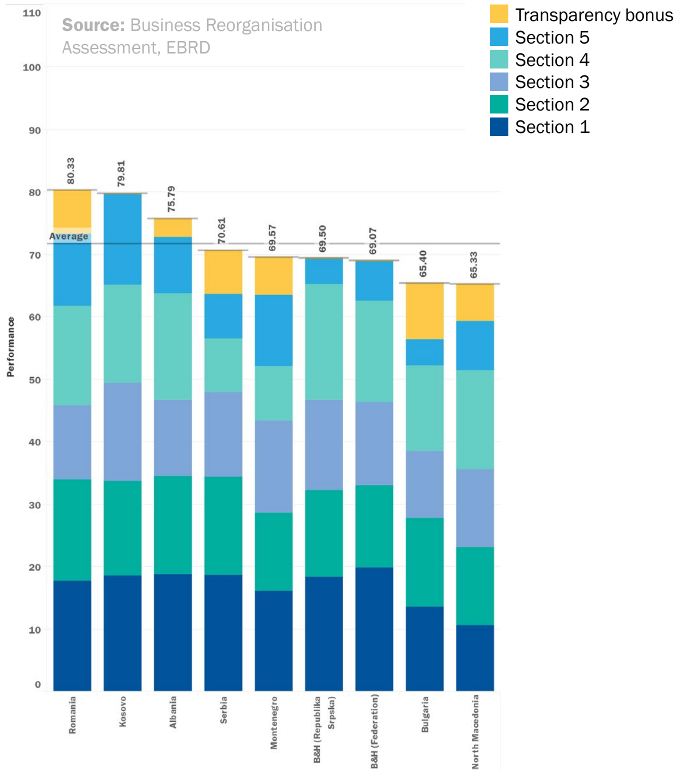


Note: This table represents performance (in descending order) of Effectiveness, Efficiency and Flexibility benchmarks of each EBRD economy in Eastern Europe and the Caucasus. The maximum possible is 100 points. For more information, see **Section II Methodology.**

5. South Eastern Europe

The South Eastern Europe economies, namely, Albania, Bosnia and Herzegovina (Federation), Bosnia and Herzegovina (Republic Srpska), Bulgaria, Kosovo, Montenegro, North Macedonia, Romania, and Serbia constitute another subregion within EBRD economies of operations. The best performers in this group are Romania with 80.3 points and Kosovo with 79.8 points, ranking fourth and fifth, respectively, in the overall assessment scores, including the Data Transparency Factor. Albania follows as the 9th performer with 75.8 points. Serbia ranks ahead of Bosnia and Herzegovina (Federation) and Bosnia and Herzegovina (Republic Srpska) which both show similar results evidencing a medium quality in their business reorganisation framework. North Macedonia and Bulgaria performed least well in the South Eastern European subregion, falling significantly behind Romania and Kosovo. Overall, the scores in this subregion also fluctuate within a large range as the group accommodates one of the top five performers (Romania) and – at the other end – Bulgaria. The average overall score in the South Eastern Europe is 71.7 points, including the Data Transparency Factor. Notably, none of the nine economies achieved a full score of 10 for data transparency. Bulgaria was, however, close with 9 points, followed by Romania and Serbia on 7 points, Montenegro and North Macedonia on 6 points each, and Albania on 3 points. Bosnia and Herzegovina (Federation), Bosnia and Herzegovina (Republic Srpska) and Kosovo scored 0 for data transparency, indicating that this is especially an area for improvement in these jurisdictions. Figure 6.43 presents the overall scores in the South Eastern Europe subregion.

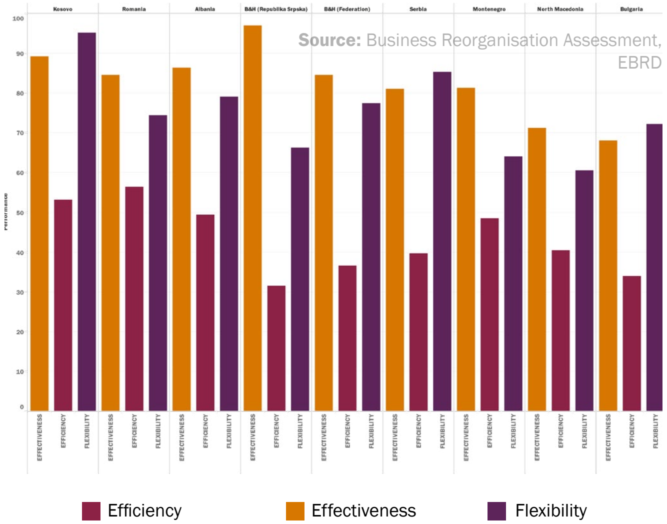
Figure 6.43 Overall business reorganisation assessment score including the Data Transparency Factor by subregion – South Eastern Europe



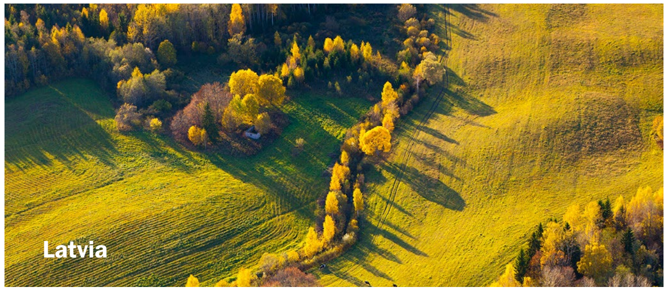
Note: This chart illustrates the performance (in descending order) of each EBRD economy in South Eastern Europe on an aggregate basis with respect to each of the five sections of the questionnaire, as well as the Data Transparency Factor. Each section of the questionnaire has a maximum of 20 points, and the Data Transparency Factor has a maximum of 10 points. The maximum possible score 110 points signals the existence of optimal legal and regulatory frameworks, together with comprehensive and available data on such procedures.

The results for the assessment benchmarks follow similar trends as those of the overall assessment scores. Kosovo and Romania show a good performance in terms of effectiveness and flexibility of their insolvency laws. Kosovo, with its modern insolvency law, even leads the ranking of the Flexibility benchmark and ranks second in the subregion according to the Effectiveness benchmark scores. The highest results for effectiveness were noted in Bosnia and Herzegovina (Republic Srpska) which constitutes the best performance for this economy. Except North Macedonia and Bulgaria, all economies belonging to this subregion showed good compliance regarding the Effectiveness benchmark. The scores for the Flexibility benchmark fluctuate the most in the South Eastern European region, ranging between 60.6% (North Macedonia) and 95.1% (Kosovo), evidencing an exceptionally large gap of 35%. In terms of efficiency of the insolvency laws, Romania, once again, leads the ranking with 56.5% and obtained about 25 percentage points more than the least good performer in this subregion Bosnia and Herzegovina (Republic Srpska) with 31.5%. Generally, for improvement on the Efficiency benchmark, economies would be well advised to invest in capacity building and strengthening the regulatory framework as well as the practical expertise of judges and insolvency office holders dealing with insolvency cases. The scores for the assessment benchmarks in the South Eastern Europe subregion are shown in Figure 6.44 on the following page.

Figure 6.44 Overall score for Effectiveness, Efficiency and Flexibility benchmarks by subregion – South Eastern Europe



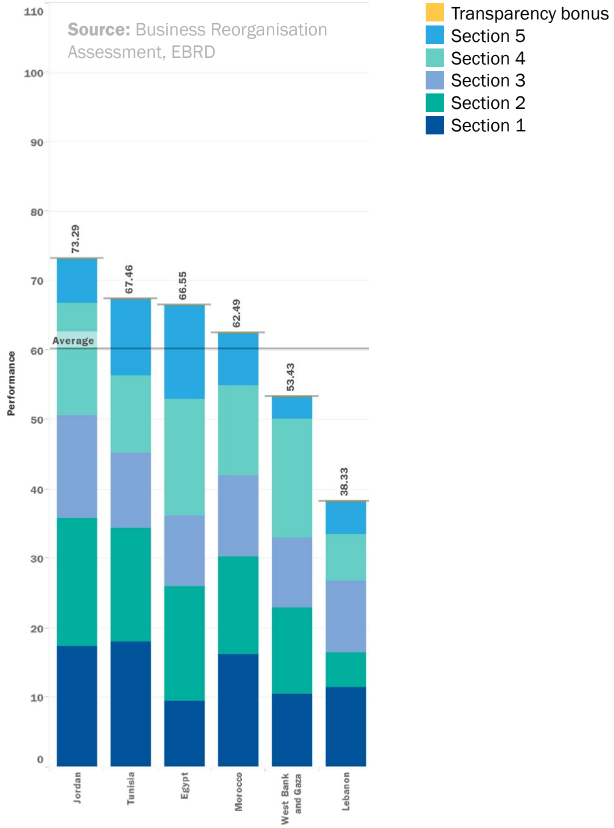
Note: This table represents performance (in descending order) of Effectiveness, Efficiency and Flexibility benchmarks of each EBRD economy in South Eastern Europe. The maximum possible is 100 points. For more information, see **Section II Methodology.**



6. Southern and Eastern Mediterranean

The Southern and Eastern Mediterranean (SEMED) subregion comprises Egypt, Jordan, Lebanon, Morocco, Tunisia and West Bank and Gaza.[17] Within the SEMED subregion, Jordan, with its relatively new 2018 insolvency legislation, shows a good level of quality in its business reorganisation framework collecting 73.3 points. Tunisia ranks second within the subregion but collects a relatively lower score of 67.5 points. The lowest scores in the SEMED region were obtained by West Bank and Gaza (53.4 points in total) and by Lebanon (38.3 points in total), which ranked as one of the least good performers according to the overall assessment scores. Accordingly, the scores within the SEMED region are spread across a wide range as the group accommodates Jordan (12th performer in the overall assessment results) while Egypt, Morocco and Tunisia, show similar levels of performance at 66.6, 62.5, 67.5 respectively, and an overall medium-low quality of their business reorganisation law and practice, while West Bank and Gaza and Lebanon come in penultimate place. The average overall score in the SEMED region is 60.2 points, including the Data Transparency Factor. Unfortunately, SEMED is the one and only region where none of the participating economies collected any score for the Data Transparency Factor. The overall assessment scores for the SEMED subregion are shown in Figure 6.45.

Figure 6.45 Overall business reorganisation assessment score including the Data Transparency Factor by subregion – Southern and Eastern Mediterranean



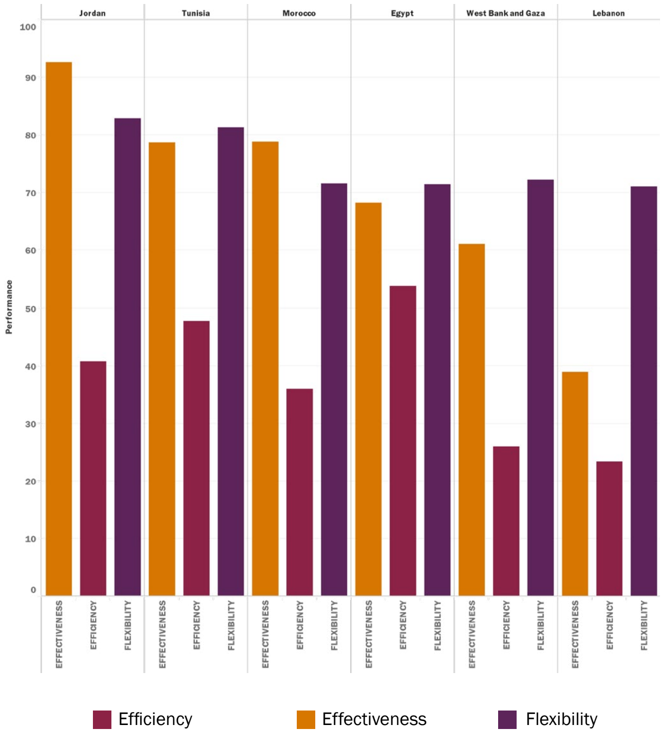
Note: This chart illustrates the performance (in descending order) of each EBRD economy in Southern and Eastern Mediterranean on an aggregate basis with respect to each of the five sections of the questionnaire, as well as the Data Transparency Factor. Each section of the questionnaire has a maximum score of 20 points, and the Data Transparency Factor has a maximum of 10 points. The maximum possible 110 points signals the existence of optimal legal and regulatory frameworks, as well as comprehensive and available data on such procedures. No scores were recorded for the Data Transparency Factor in the region.

[17] Gaza has been an officially distinct legal system from the West Bank since 2006, but Gaza legislation is substantially similar to the West Bank. For the purpose of the questionnaire responses, West Bank and Gaza were grouped together, but in the Business Reorganisation Assessments, we analyse the two jurisdictions separately.

Within the SEMED subregion, Jordan dominates the ranking in the Effectiveness and Flexibility benchmarks and is followed by Tunisia as the second-best performer in these two benchmarks. Morocco shows a medium compliance on both benchmarks, whereas Egypt remarkably collects lower points in the Effectiveness benchmark. It is notable that Egypt reached the highest score for the Efficiency benchmark (53.9%) and showed its best performance across all rankings. All other economies within the SEMED region showed lower scores in terms of Efficiency of their insolvency laws. In order to improve the results on Efficiency benchmark, measures to shorten the reorganisations procedures, enhance the expertise and professional standards of the judges and insolvency holders, as well as specific events to boost the confidence of stakeholders in reorganisation procedures would be required. The scores for the assessment benchmarks in the SEMED region are shown in Figure 6.46.

Hungary

Figure 6.46 Overall score for Effectiveness, Efficiency and Flexibility benchmarks by subregion – Southern and Eastern Mediterranean



Note: This table represents performance (in descending order) of Effectiveness, Efficiency and Flexibility benchmarks of each EBRD economy in Southern and Eastern Mediterranean. The maximum possible is 100 points. For more information, see **Section II Methodology.**

7. Russia

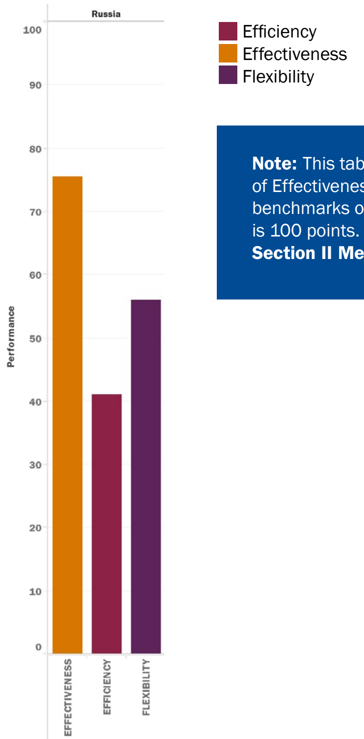
Russia is a stand-alone economy among the EBRD subregions and is therefore reviewed separately. Russia collected 73.3 points in the overall assessment scores (including the Data Transparency Factor) and ranked 13th in the overall assessment rankings. Russia is one of the few economies that collected the full score of 10 points for the transparency of its insolvency-related data. Russia's overall performance compared to all other participating jurisdictions can be seen under the overall performance analysis for the Assessment participating jurisdictions in **Figure 6.3**. This economy denotes a medium quality of business reorganisation law and practice, ranking fourteenth in the EBRD region.

The Russian insolvency laws contains three different procedures for restoring the debtor's solvency, one of which is the Settlement Agreement that, as discussed under the Conceptual Framework, is a special regime characteristic of the former USSR economies. A major weakness of the Russian insolvency law is that access to a reorganisation procedure requires a debtor business to undergo a long observation period of up to seven months for the court to decide if solvency can be restored. Furthermore it does not provide for creditors to be grouped in classes for voting purposes, since secured creditors are not formally defined as a class and do not vote as a general rule, subject to certain exceptions or specific conditions. Neither does Russian legislation protect the new financing for the reorganisation of the business. A further analysis of these points is contained under the Effectiveness benchmark in **section 3**.

When measured against the assessment benchmarks, Russia showed a medium compliance in the Effectiveness and Efficiency benchmarks but ranked as one of the least good performers in terms of the Flexibility of its insolvency laws. The highest score was collected for the Effectiveness benchmark with 75.5% and the lowest Efficiency benchmark with 41% (which is slightly below the average).

The comparably low score of 55.9% for the Flexibility benchmark is related mainly to two deficiencies: (1) the application of private workouts is not frequent according to insolvency law users in Russia; and (2) there is no hybrid or accelerated reorganisation procedure contemplated under the legislative framework. These two areas, together with the issue of the existing inability to compromise of secured creditors, seem to require further development and possibly a legislative reform. The scores for the assessment benchmarks in Russia are shown in Figure 6.47.

Figure 6.47 Overall score for Effectiveness, Efficiency and Flexibility benchmarks by subregion – Russia



Note: This table represents performance of Effectiveness, Efficiency and Flexibility benchmarks of Russia. The maximum possible is 100 points. For more information, see **Section II Methodology**.

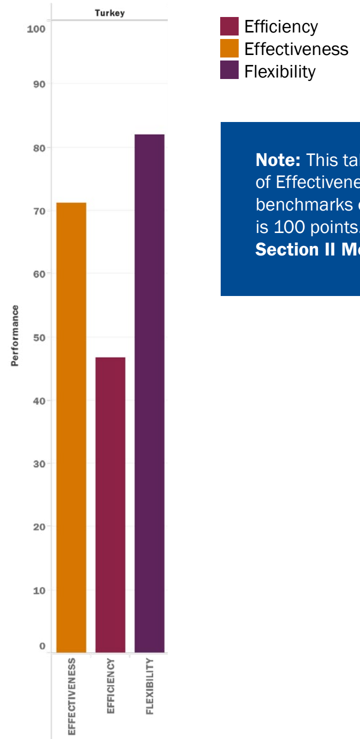
8. Turkey

Turkey is another stand-alone economy in the EBRD subregion classification. The economy collected an overall 69.4 points (including the Data Transparency Factor) and ranked 23rd in the overall assessment ranking, exactly ten places behind Russia. This indicates a medium to low quality of business reorganisation framework in Turkey. Turkey collected 1 point for the transparency of its insolvency-related data, as while the Ministry of Justice appears to be the overall authority in charge of insolvency data, it does not publish any comprehensive insolvency data related to judicial procedures. The positive trend is that the Turkish insolvency framework contains two different procedures for reorganisation, including the concordat and restructuring upon settlement procedures. However, the restructuring upon settlement procedure is not used in practice. Private workouts between businesses and their banking creditors are supported by the restructuring mechanisms under the Framework Agreements for large and smaller exposures, introduced in 2019 on a temporary two-year basis and renewed until 2023. Workouts concluded under the Framework Agreements benefit from temporary tax-deductible write-off of certain non-performing loans, greater flexibility on the transfer of non-performing loans, and the avoidance of any embezzlement risks under the Turkish Banking Law.

Turkey also shows a medium compliance against all three benchmarks applied in the assessment. The highest score was collected for the Flexibility benchmark with 81.9%, followed by Effectiveness benchmark with 71.2%. The Efficiency benchmark revealed the lowest score of all three benchmarks at 46.7%. As already mentioned, all economies evidenced, on average, lower scores for this benchmark. A major weakness of the Turkish reorganisation laws is that like Russia, the voting and approval procedure of the reorganisation plan in concordat does not fully integrate secured creditors in order to achieve a comprehensive restructuring of the debtor's liabilities.

There is also under the concordat procedure a lack of flexibility to choose which creditors are affected by the restructuring, as well as the inability offer different payment terms to different creditor groups. Despite the existence of the restructuring upon settlement procedure, which allows for a pre-packaged reorganisation plan, there are no hybrid or pre-packaged reorganisation plans in practice, an area that merits further consideration by legislators. Further analysis of these aspects is contained under the Effectiveness benchmark under **section 3**. The scores for the assessment benchmarks in Turkey are shown in Figure 6.48.

Figure 6.48 Overall score for Effectiveness, Efficiency and Flexibility benchmarks by subregion – Turkey



Note: This table represents performance of Effectiveness, Efficiency and Flexibility benchmarks of Turkey. The maximum possible is 100 points. For more information, see **Section II Methodology**.

VII. General Observations and Recommendations

Kazakhstan

General Observations and Recommendations

A. Data gathering and analysis of data (investors and transparency)

The assessment highlighted the importance of collecting and analysing data related to business distress as well as specific insolvency-related data. For this reason, the Assessment Team introduced the Data Transparency Factor that provides for a bonus of a maximum of 10 points for disclosure of the data. Six economies scored an optimal total of 10 points. Regrettably, 11 scored zero points, evidencing that there is no reporting of insolvency data at all and no clearly identifiable centralised authority responsible for the collection of insolvency data.

Official information on insolvency procedures, such as the number of applications, the outcome of the procedures and the recovery rates of creditors, are not centralised by an official authority in 12 (out of 38) economies. Insolvency data is published online and is searchable in a database or register in only seven economies, whereas an additional 16 economies publish data as reports (that is, in an unstructured or non-searchable format). The Data Transparency Factor also revealed that the insolvency data is updated regularly at least on an annual basis in only about half of the EBRD economies of operations. Lastly, most economies do not provide for the published data to be disaggregated for all insolvency procedures at a national level for each available procedure.[1] The latter is a significant weakness as the information available is not detailed enough to be analysed efficiently and therefore the quality of data is negatively affected.

A uniform approach should be followed when collecting and maintaining information on business distress. Greater transparency and a breakdown of analytical data per procedure would be useful not only to assist the general insolvency system but also for potential investors. The latter, with the necessary information, can acquire distressed assets and would, therefore, also facilitate the resolution of non-performing-loans (NPLs). Transparency and data-gathering also facilitates well-informed policymaking and insolvency law reforms.

B. Digitalisation of courts (including certain procedural aspects)

For more transparency and efficiency but mostly expediency in the application of the law, an emphasis should be placed on the digitalisation of the insolvency and pre-insolvency processes and the courts. The Covid-19 pandemic and the 'new normal' have also highlighted the increased need for electronic means of communication and the advantages of embracing remote access tools. Particularly given the mobility restrictions and physical court closures due to the pandemic, which in some economies has led to case overloads, it is essential to employ digital tools for certain aspects of the judicial procedure. These aspects could be the submission of the filing for insolvency as well as communicating other relevant documents in electronic format. The assessment and the country missions also revealed that courts would benefit from an online case management system as well as from introducing electronic platforms for sales of assets in insolvency (such as Ukraine).

This is already underway in Serbia. Furthermore, court hearings and voting procedures may also be conducted remotely.


Georgia

[1] For a detailed overview, presenting the Data Transparency findings in each economy, please see the **Annex Data Transparency Factor**.

C. Specialised courts and judges

The assessment identified that in about half of the EBRD jurisdictions, the insolvency and reorganisation cases are handled by the courts of general civil jurisdiction. Other economies follow the so-called commercial court system, meaning that cases on commercial matters, which usually also includes insolvency, are reviewed by commercial or economic courts.

Only in Armenia did we find a single specialist insolvency court that has an exclusive jurisdiction on insolvency cases, and in Egypt the economic courts have a dedicated insolvency department. For further details, see the **Annex Insolvency Courts, Regulatory Authorities and Practitioners**, which presents a detailed overview on competent courts in insolvency cases in the EBRD regions.

Regardless of whether or not the jurisdiction follows the commercial court system, it is advisable to establish a specialised division and/or provide for specialised judges for insolvency and restructuring cases, with appropriate safeguards to ensure judicial independence. Given the importance of timeliness in insolvency and restructuring procedures, specialised judges who have the necessary expertise to deal with businesses in distress are critical for further development of insolvency law and its practice.

Moreover, in some jurisdictions, judges have significant discretion in interpreting and applying the insolvency laws, which may further reduce the predictability of and reliability on the law. This can be problematic in instances where non-specialised courts are granted such discretion, leading in some instances to conflictive outcomes which can, in turn, undermine the reliability on the insolvency law.

D. Specialised insolvency office holders

Insolvency office holders play an important role in facilitating successful insolvency and reorganisation procedures. They have significant influence on the outcome of the procedure as they facilitate the negotiations between the debtor and creditors (for example, in the reorganisation) and they may eventually decide on the realisation of assets (for example, in the liquidation). Therefore, a well-developed insolvency system should provide for an institutional framework regulating the profession of insolvency office holders.

The Assessment showed that in Azerbaijan, Mongolia, Turkmenistan and West Bank and Gaza, insolvency office holders do not require a formal authorisation to act in insolvency procedures which, is an indication that the regulatory framework for the profession is not yet well-developed. Insolvency office holders should be required to obtain a licence, registration, or any other form of authorisation to act, and should attend regular professional training programmes to keep their licence up to date. The regulatory framework should furthermore include an efficient appointment system as well as supervision and assessment of the work of insolvency office holders.

This is particularly important, as in many jurisdictions there is lack of practice of reorganisation procedures, which creates a gap in the skill set of the insolvency office holders.

Needless to say, insolvency office holders should be held to an enhanced code of professional ethics and practice. Furthermore, properly qualified and authorised insolvency office holders should be required in most reorganisation procedures. In a minority of economies, there was one or more reorganisation procedures where no insolvency practitioner was required to be appointed. This is the case in Morocco during the conciliation procedure and Tunisia during the amicable settlement procedure, where a conciliator is appointed to facilitate negotiations with the creditors, and in Romania during the early preventive mandate ad hoc procedure where an ad hoc agent is appointed. However in Latvia, in both legal protection proceedings and extrajudicial legal protection proceedings (the main reorganisation proceedings), a supervisor, who is not necessarily an insolvency practitioner, is appointed.

Only in few economies did the assessment identify a clear agreement among the respondents that procedures under the insolvency laws are conducted with high ethical and professional standards. In all other economies, the respondents either indicated that the high ethical and professional standards were not maintained during the insolvency procedures or did not take a clear position. For the review on this matter, see **Section VI. Overall Results; 2. Efficiency Benchmark.**

E. Incentives (regulatory/taxation) or penalties

Another important point relates to the regulatory incentives for conducting a business reorganisation as well as to certain undesired outcomes that might even amount to 'penalties' that may apply in these situations. In some economies (for example, Ukraine), the national framework for voluntarily out-of-court restructuring (the Law on Financial Restructuring) and related provisions in the Tax Code provide for a wide range of special benefits that apply to financial restructuring transactions. These include tax exceptions on restructured debt and asset sales, restructuring of tax claims (write-offs, deferrals, etc.), VAT exemption on asset sales and supplies of goods, as well as special transaction safeguards to protect the parties against challenges after the restructuring agreement has been executed.

Overall, the Assessment Team observed that debt write-offs should not be considered as a taxable benefit for the debtor as otherwise the debtor's efforts to ease the debt burden would lose its purpose. Similarly, creditors should receive a tax relief if they agree to the reduction of the face value of their claim to incentivise an agreement. Both combined can be a booster for the reorganisation culture in any economy, as they provide incentives for both parties to reach an agreement.

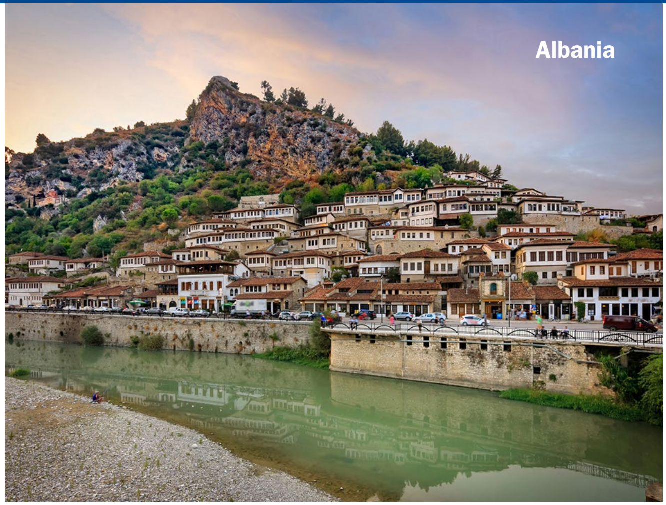
On a different note, the counter side of incentives are regulatory situations that can resemble a penalty. For example, in the context of business reorganisation, in some economies, new financing provided during the course of a restructuring may be 'penalised' from a regulatory perspective and for capital requirement purposes not be taken at 100% of its face value. It was observed that in certain jurisdictions (such as Serbia) lenders that provide new credit to distressed businesses may be required to provision for such new financing. The link between new money and its treatment for regulatory purposes will need to be further analysed in some jurisdictions to effectively incentivise such financing.

F. SMEs

All jurisdictions should adopt a simplified procedure with shorter timeframes and less formal requirements to facilitate the cost-effective resolution of the SMEs (or micro and nano enterprises, as this will be dependent on the peculiarities of each economy). Simplified reorganisation procedures for SMEs are important, as SMEs usually lack the resources to conduct a successful reorganisation and are often liquidated rather than restructured (or in some extreme instances, even left dormant until the registration is struck off). Within the EBRD regions, only Hungary and Kosovo have fully-fledged reorganisation regimes for SMEs. In Kosovo, enterprises with an annual turnover of up to €1 million or up to 25 employees are eligible. The Kosovan regime stands out with reduced formal requirements (for example, different rules for plan confirmation), shorter procedural deadlines and limited involvement of insolvency practitioners. The same approach is followed by Hungary, where a simplified preventive restructuring procedure, including simplified preparation of the restructuring plan, lower amount of claims for the allocation of voting rights and lower thresholds for the approval of the restructuring plan, is available.

It is notable that a number of (other) countries, including Australia, Korea, and Singapore, have recently introduced amendments in favour of SMEs, albeit Singapore's amendments are on a temporary basis in response to the economic crisis generated by Covid 19. Common features of the new legislative initiatives include:

- a limited role of the insolvency practitioners/trustees
- a single majority threshold for plan approval
- a simplified plan confirmation procedure with fewer formal requirements
- debtor-in-possession
- the use of electronic means of communication/expression of will and electronic voting procedures.



The World Bank and more recently UNCITRAL have also adopted a draft text on a simplified insolvency regime for SMEs which has been discussed under **Section IV International Best Practices**. The definition or categorisation of SMEs differs among jurisdictions and is usually established based on: number of employees; annual turnover; and/or value of assets. Interestingly, both Singapore and Australia linked the eligibility criteria for access to the procedure to, among other things, the amount of liabilities of the applying debtor.

Overall, an SME-specific procedure should have the primarily aim to reduce the time and cost required for the reorganisation. In addition, appropriate safeguards should be put in place to prevent the misuse of the procedure. The discussions around SMEs and the differences in definition and categorisation of such enterprises also showed that a one-size-fits-all approach may not be appropriate as besides or instead of SMEs, there may be micro or nano enterprises. In any case, a simplified reorganisation procedure should be available to companies that do not have a broad and complex capital structure. When asked whether SMEs should benefit from a less burdensome and faster procedures provided that the minimum standards and requirements are observed, most of the respondents in the EBRD regions agreed. **Figure 6.7: SMEs could benefit from faster business reorganisation** shows the responses for each economy.

G. New financing

The provision of new money to the business in distress is critical and may have decisive importance in the successful rescue and continuation of the business. New credit may be injected for the purposes of: conducting the reorganisation itself to enable the company to continue its operations; preserving or enhancing the value of the assets of the estate; or implementing the reorganisation plan. For a successful reorganisation, the legislators should seek to protect the new financing provided during the procedure from avoidance actions should a liquidation procedure be commenced subsequently. The assessment identified 15 jurisdictions where new financing is not protected at all and may be voided should the debtor file for subsequent insolvency.

Another important aspect is to enable the new lenders to have super priority in repayment over the existing creditors, including the secured creditors. The super priority is a common practice in the US Chapter 11 reorganisation procedures and is followed by only a few economies in the EBRD region. In two-thirds of the participating economies, new creditors do obtain some form of priority, and in most cases this is the priority in repayment over ordinary unsecured creditors. In other instances, the law allows new credit to rank higher or equal to administrative expenses, whereas the super priority is only available in Moldova, North Macedonia, Russia, Slovenia, and Uzbekistan. Detailed information on new financing is provided in the **Annex Statutory Protection of New Financing**.

H. Continuation of essential contracts of the debtor

Once the business enters a reorganisation procedure, it is essential not only for its rescue but also for a successful sale of business, to continue operating and generating profit. For this reason, the business should have the possibility to maintain those contracts that are essential for its activities, particularly contracts regarding electricity, gas, water, and internet services as well as other essential services, which of course can vary according to the industry of the distressed debtor.

Many contractual arrangements allow the counterparty (the creditors) to terminate the relationship in case the debtor files for or requests a statutory moratorium (if any), or enters a reorganisation or any other insolvency-related procedure. However, only about 10 economies in the EBRD regions allow for a comprehensive protection from third-party terminations in at least one of the available reorganisation procedures. Most economies either protect only essential contracts or only lease or other specific types of contracts. Therefore, the assessment concludes that the insolvency laws should widely prohibit clauses that may be invoked solely on the above-mentioned grounds and would lead to the cancellation and/or withdrawal of these services due to their negative impact on the business.

I. Wide ranging moratorium

One of the most critical aspects when conducting a reorganisation is whether the debtor may be protected from enforcement actions of creditors. This is an essential feature to preserve the value of the debtor's estate and not allow the creditors to 'rush to the court', enforce their claims and therefore destroy the debtor's assets to the detriment of other creditors and the possibility of rescuing the business.

In all EBRD economies of operations, there is at least one reorganisation procedure that provides for a moratorium or stay and gives the debtor a "'breathing space' from enforcement actions to contemplate restructuring options and execute them as appropriate. However, there are differences as to the length, scope, and strength of the moratorium. In Croatia, North Macedonia, Turkey and West Bank and Gaza, secured creditors' enforcement rights are not suspended within certain procedures. A moratorium should cover secured as well as unsecured creditors to facilitate a fair distribution of the available value among all creditors.

In order to safeguard creditors' interests, the moratorium should have a limited period and may also be subject to court review as well as exceptions in certain circumstances. Another possibility could be to allow creditors to continue their actions in court but prevent any enforcement action. In other words, creditors would be able to advance their case until it is final, but they will not be able to collect until after the debtor has had the chance to reach an agreement.

J. Affected parties and the flexibility to choose restructuring creditors

The assessment and the country missions revealed that a debtor-friendly and rescue-oriented reorganisation framework should have the flexibility for the debtor to choose the creditors who will be affected by the reorganisation plan. In many economies, a formal reorganisation procedure encompasses all creditors, even if their claims are not compromised as part of the plan. A more efficient and flexible solution would be to allow the debtor from the outset to involve in the procedure only those creditors whose loans or assets will be subject to restructuring. The concept of affected parties (those parties that are affected by the restructuring plan) has also been introduced by the Restructuring Directive and therefore, will be available in all EU Member States after the implementation of the Directive. According to the assessment results, economies such as, for example, Cyprus, Estonia, Kosovo, Turkey and Ukraine, are among the few jurisdictions allowing for this concept.

K. Negative stigma

The formal (or court-supervised) insolvency procedures, including any reorganisation procedures, often carry a high level of stigma for the debtor and are negatively perceived by creditors, as well as by the public. As a result, a general trend seems to be for the debtor to either try to avoid the use of these procedures or to delay their application as much as possible (avoiding the unavoidable). In most participating economies, respondents think that the commencement of the reorganisation process has a negative reputation effect on the debtor company, as is evidenced by **Figure 6.22: Business reorganisation still carries negative stigma**. In some jurisdictions (such as Armenia, Belarus, Kosovo, Russia, and Turkmenistan) the respondents think that the reorganisation procedures are applied to delay the unavoidable, namely the liquidation of the

debtor.
Figure 6.21: Business reorganisation is often used to avoid liquidation presents the traffic light map on this question.

On the creditors' side, another aspect to consider is that certain public or quasi-public entities might be prohibited from foregoing or providing some kind of measures that can result in a reduction of their claim. This consequently results in a lower number of insolvency proceedings commenced as a percentage of overall insolvency cases in many jurisdictions. It should be recognised that limited demand for the statutory tools hinders further the development of these procedures, that is, there is insufficient practice and this poses difficulties for the establishment of domestic best practices.

Private workouts prevent the stigma associated with the procedure but as previously discussed are not always 'bullet proof' as the agreement of all affected creditors is required because, otherwise, a creditor (usually referred as a holdout creditor) can try to enforce through the courts and undermine any possible agreement. Therefore, hybrid mechanisms minimise this risk as most of the procedure takes place out of court (in less time, with less formal requirements and greater flexibility) and a plan is then filed to a court for approval, which will make it binding on all affected creditors (even by those that did not vote or rejected it). By the time that market participants realise the financial difficulties, these will be solved already, and the company will exit the formal procedure, thereby minimising any negative stigma.

L. More is not necessarily better

1. Too many procedures might create confusion

When establishing more than one reorganisation option, the legislators should ensure that these procedures provide for clear access requirements and eligibility criteria, as well as serve different objectives to avoid the creation of too many overlapping procedures. Such a menu of options, although well intended, might end up being too complex (see Poland, Kyrgyz Republic and Uzbekistan) and sometimes daunting for the end users, consequently discouraging their use. This is also important in the context of establishing any SME-specific reorganisation procedure, as this will also need to be easily kept apart from other available options and provide for clear access criteria. The law should also aim to set out the procedural priorities such as expediency, high professional and ethical standards, efficiency, equal treatment, value maximisation, transparency, and access to information, etc. For further details about the different available procedures, see the **Annex Business Reorganisation Procedures**.

2. Too many amendments might 'scare' end users

When identifying the areas where further legal reform and development is needed, the course of recent legislative amendments should also be considered. There are economies where the insolvency legislation has been successively amended over a short period of time, often in response to economic crises, benchmarking initiatives such as the World Bank Doing Business Report, or simply competition among economies (such as Armenia and Serbia). Although in certain instances this has improved the legislation overall, it has also led to a generalised sentiment of confusion, and capacity building is likely to be the area that needs special attention in these cases, as well as further due diligence prior to the introduction of new amendments to minimise the number of them.

M. Hybrid procedures and the importance of supporting out-of-court workouts

Besides the formal, court-supervised reorganisation procedures, the national legislators can provide for hybrid mechanisms and support out-of-court workouts to facilitate the reorganisation of businesses. Out-of-court or extra-judicial restructuring, also referred to as private workouts, are the result of private negotiations between the debtor and all or some of its creditors. As the procedure is completely informal and does not follow any set of rules, the parties are free to agree on the terms of the restructuring. In most EBRD economies, there is no established practice of frequent application of private workouts. Private workouts are usually not part of the insolvency laws; in some economies, however, there is a special framework governing voluntary extra-judicial reorganisation (for example, Ukraine and Serbia). The advantage of private workouts lies on the fact that the process is discrete, fast, and flexible, without the involvement of a court.

In contrast, the hybrid mechanisms combine the features of both private workouts and court-supervised reorganisation procedures. Most of the procedure is conducted privately, where the parties negotiate the reorganisation plan without the involvement of the court. Once the reorganisation plan has been arranged and/or pre-voted by the creditors, it is then submitted to the court for its confirmation. The court's confirmation makes the reorganisation plan binding to all parties, including the creditors who have abstained or objected the proposal. As a result of this hybrid approach, the negotiations are conducted in a fast and informal manner and the time spent in the court-supervised procedure is reduced to the minimum. Also, it reduces the burden of the courts, indirectly benefitting all court procedures.

In about half out of 38 EBRD economies of operations, the statutory framework foresees a hybrid approach.

This is mostly achieved by including certain provisions within the reorganisation procedure that provide for the reorganisation plan to be negotiated and/or arranged first and then submitted together with the application for the opening of the formal procedure. In fewer cases, (such as Latvia and Moldova) the legislation provides for an entire regime specifically designed as a hybrid procedure. Economies that do not allow for this option would be well-advised to consider it as part of their insolvency law reforms.

N. Cross-class cram down

Many of the surveyed economies, particularly in Central Asia and in the Southern and East Mediterranean region, do not provide for the cross-class cram down feature. This mechanism enables the reorganisation plan to be adopted despite the objection of an entire class of creditors. Therefore, it is an important tool to overcome creditors' classes not supporting the plan and blocking the proposed restructuring. The cross-class cram down has been recently introduced by the Restructuring Directive and will become part of the reorganisation frameworks in all EU Member States.[2] The insolvency reforms in the UK that took place in 2020 and introduced new restructuring procedure also sought to design a regime that is capable of binding dissenting creditors' classes as this has not been available within the 'old' restructuring tools such as the English company voluntary arrangements, schemes of arrangement or administration.

Some EBRD economies of operations that are not EU Member States have also followed suit and equipped their insolvency systems with cross-class cram down (see Albania, Bosnia and Herzegovina, Georgia, Jordan, Kosovo, Moldova, Montenegro and North Macedonia). Overall, in the EBRD regions, 17 economies have at least one procedure that permits cross-class cram down. In some economies, there are limitations on use of this mechanism. In Estonia, for example, it is not automatically available and can only be accessed on request by the debtor to the court. In Greece, only unsecured creditors can be subject to cross-class cram down. For further details see the **Annex Voting on Business Reorganisation Plans**.

[2] Although this is the general rule, the EU Restructuring Directive allows for SMEs debtors to treat all creditors in a single class.

O. Cross-border insolvency

Debtors often have assets and/or creditors in more than one jurisdiction or in places other than the centre of their main operations. Dealing with cross-border insolvency cases can be a challenging task for the courts and insolvency office holders but it also poses problems for the debtor as well since insolvency proceedings can be commenced by creditors in more than one jurisdiction. The assessment sought to identify whether the Model Law on Cross-border Insolvency that was published by UNCITRAL in 1997 has been adopted in the EBRD regions. The Model Law has the purpose of providing effective mechanisms for dealing with cases of cross-border insolvency. Only six economies in the EBRD regions (Greece, Montenegro, Poland, Romania, Serbia and Slovenia) have adopted the UNCITRAL Model Law.

However, EBRD economies that are EU Member States have another tool in place that facilitates the administration of cross-border cases: **Regulation (EU) 2015/848** on insolvency proceedings, which is directly applicable within the EU and provides for cooperation between courts and other authorities involved in insolvency cases as well as automatic recognition of judgements on insolvency matters in all EU Member States. The Assessment further revealed that some non-EU economies in the EBRD regions (such as Albania, Jordan, Morocco, North Macedonia, Serbia and Ukraine) include specific provisions in their insolvency legislation dealing with the cooperation matters and/or recognition of foreign court judgements. Kosovan legislation also includes cross-border insolvency provisions, which are highly influenced by the UNCITRAL Model Law. The Annex Cross-border Insolvency Proceedings presents a detailed overview on the matter in each participating jurisdiction.

P. The role of reorganisation procedures in resolving NPLs

The accumulation of NPLs is a growing phenomenon affecting many economies. The sudden stop of flow of funds in businesses which was caused by the Covid-19 pandemic can have a detrimental effect on NPL levels. A short **NPL Survey** conducted by the EBRD which was linked to the questionnaire has revealed the following results:

1. Only in Kosovo and Morocco the respondents agree that the reorganisation tools that are available in their jurisdictions efficiently facilitate the resolution of NPLs; in the majority of economies the respondents either could not take a position or disagreed with the statement.

2. In contrast, in eight of the participating economies, the respondents agree that the security and debt enforcement tools provided in the general legislation (other than insolvency) efficiently facilitate the resolution of NPLs.

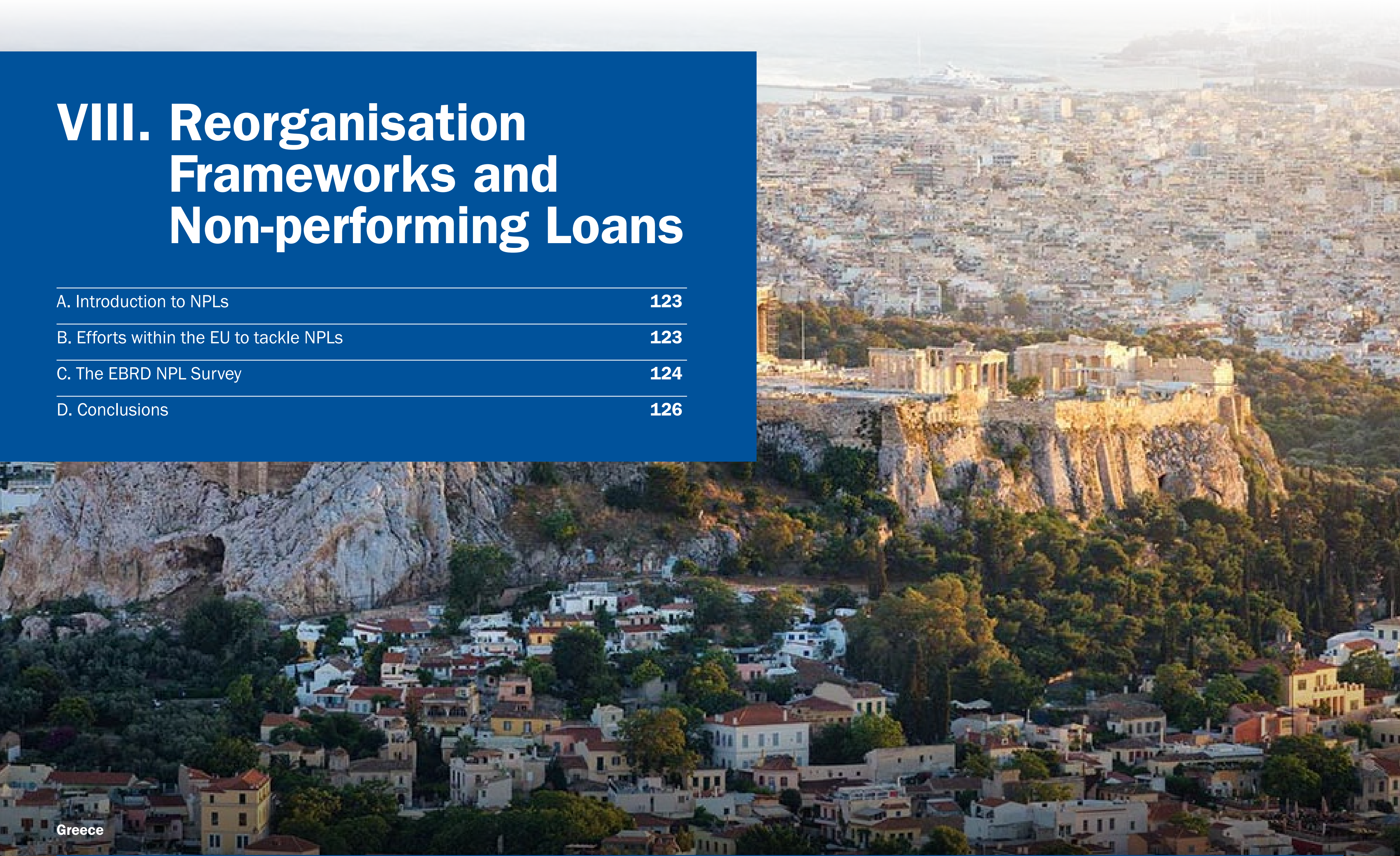
3. The following three issues were identified as main impediments to the resolution of NPLs in the survey:
   i. weakness in the enforcement regime to collect on debts
   ii. lack of a secondary market for NPLs
   iii. inadequate environment for multi-creditor out-of-court restructuring.

4) Most importantly, better insolvency and enforcement regimes were identified as the most important area for facilitating the resolution of NPLs, followed by better out-of-court restructuring practices and a more developed secondary market for NPLs.

An important aspect in resolving the rising level of NPLs is an expedited approach to the reorganisation of businesses. This can be facilitated and enhanced through proper reorganisation tools, particularly hybrid mechanisms that contribute to a swift restructuring, be it operational or financial, the latter being particularly relevant for purposes of NPLs. See **Section VIII Reorganisation Frameworks and Non-Performing Loans** for further analysis.

As indicated before, greater access to more detailed and disaggregated data can facilitate the understanding of the business environment and a better and more analytical know-how of the outcome of the different reorganisation procedures. These are essential elements to favour the creation of a secondary market for NPLs.

VIII. Reorganisation Frameworks and Non-performing Loans



Greece

General Observations and Recommendations

Insolvency systems and non-performing loans (NPLs) are closely connected, since inefficient insolvency tools directly affect bank resolution and recovery of distressed loans, increase the levels of NPLs, and influence banks' strategies in dealing with such loans.

Weaknesses in legal frameworks can exacerbate the NPL issue, particularly when combined with weaknesses in regulatory and supervisory frameworks. This in turn may lead to limitations on available funding for businesses, including businesses in financial distress. In this section, we examine findings from an NPL Survey that was run in parallel with the Assessment questionnaire.

Tajikistan

A. Introduction to NPLs

In the build-up to, during the course of, and in the aftermath of a crisis, there tends to be many businesses defaulting on their loans, both from domestic banks and from foreign creditors, which can render large segments of the corporate sector insolvent. This often leads to corporate restructuring on a large scale becoming necessary due to the impaired ability of businesses to function, which has a large and adverse effect on the economy. Non-performing loans (NPLs) have a serious effect on parties at both ends of the deal: borrowers (domestic corporations) and lenders (domestic and international banks).

According to the Basel Committee on Banking Supervision, an NPL is defined as a loan that is more than 90 days past due, thus making it eligible for termination. Within the NPL category, we find: bad loans; defaulted loans; and distressed debt. The classification depends on several factors and varies across countries. This is aggravated by the fact that there are significant differences among countries as to how many days a payment should be in arrears before past due status is triggered. Nevertheless, a rather common feature of non-performing loans appears to be that a payment is "more than 90 days" past due, especially for retail loans.

Improving the resolution of NPLs is a priority for governments and policymakers committed to tackling the accumulation of NPLs in the banking sector. The EBRD has been involved, together with other international financial institutions, in NPL resolution strategies and policy dialogue through the Vienna Initiative 2.0, launched in January 2012, with the aim of avoiding disorderly deleveraging following the 2011 Eurozone sovereign debt crisis.[1] The initiative focuses on achieving concrete progress in regulatory reform in key countries to enhance transparency and facilitate capacity building and knowledge sharing on NPL management.

B. Efforts within the EU to tackle NPLs

Efforts at the EU level to tackle NPLs include the 2017 European Commission impact assessment in relation to the development of secondary markets for NPLs,[2] followed by a second impact assessment focused on out-of-court enforcement mechanisms to enhance the ability of banks as secured creditors to enforce assets granted as collateral. These assessments resulted in 2018 in a number of measures to tackle NPLs, which included:

- a proposal for a directive on credit servicers, credit purchasers and the recovery of collateral
- a proposal for a regulation amending the capital requirement regulation
- a non-binding guidance document to national authorities on how they can set up asset management companies (AMCs) dealing with NPLs.[3]

[1] The Vienna Initiative is a framework for safeguarding the financial stability of emerging Europe and Vienna 1.0 was launched during the 2008 crisis. For more information, visit: **www.npl.vienna-initiative.com/about-us/**

[2] Commission Staff Working Document, Impact Assessment "The development of secondary markets for non-performing loans by removing undue impediments to loan servicing by third parties and the transfer of loans" (Part 1/2) and "Accelerated Extrajudicial Collateral Enforcement" (Part 2/2), 14 March 2018.

[3] European Commission, Documents to address the risks related to NPLs, available at: **www.ec.europa.eu/info/publications/180314-proposal-non-performing-loans_en**

C. The EBRD NPL Survey

Following the Covid-19 crisis, the European Commission presented a new strategy to prevent a future wave of NPLs across the EU.[4] The new strategy has four main goals:

- to develop secondary markets for distressed assets, including the creation of a central electronic data hub at EU level to facilitate the exchange of information between all actors involved
- to reform the EU's corporate insolvency and debt recovery legislation to tackle the divergence issue mentioned above
- to support the establishment and cooperation of national asset management companies (AMCs)
- to focus on precautionary measures to ensure the continued funding of the real economy.

The accumulation of NPLs is a growing phenomenon affecting many economies, particularly in the Eastern European region. The assumption is that the Covid-19 pandemic caused a sudden stop of funds flow in businesses which will negatively affect banks' loan portfolios and cause higher levels of NPLs.

NPLs can pose a significant burden on the banking sector, highlighting even further the importance of their effective resolution. If such loans remain on the balance sheet of the lender and continue building up, new lending will be restricted and this can eventually trigger a new dimension of problems stemming from the financial institutions granting the loans. This can turn into a vicious cycle.

The EBRD NPL Survey consisted of six perception-based questions addressed to leading accounting firms, legal professionals, and domestic banks in the EBRD regions, but also open to respondents outside. The survey does not include any scoring questions and thus will result in no ranking of the participating economies and was only for gathering perception-based data. A total of 331 surveys were collected from 48 different jurisdictions. Of these, 315 surveys were collected from the EBRD regions. The survey aims to analyse the effectiveness and extensiveness of NPL resolution tools in the EBRD regions. For certain questions, the team assigned values to each of the available possible answers to aggregate the answers of each economy and produce average values for all participating economies. For the purposes of the analysis, the Assessment Team only considered economies in which we obtained three or more answers to get a representative stakeholder view.

1. Do reorganisation tools facilitate NPL resolution?

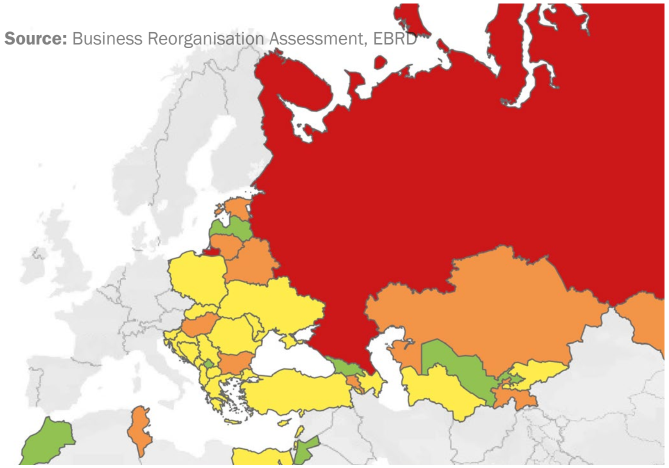
The NPL Survey has revealed that only in Kosovo and Morocco did the respondents agree that the reorganisation tools under the insolvency laws that are available in their jurisdictions efficiently facilitate the resolution of NPLs. In many economies, the respondents either could not take a position or disagreed with the statement, within the context of the Business Reorganisation Assessment. This is perhaps the most important finding in relation to NPLs. Restructuring due debts, including the deferral of maturity, reduction of interest, partial debt cancellation and, more generally, the re-negotiation of debt terms, should be pursued to resolve NPLs. The fact that in the absolute majority of the jurisdictions, the respondents did not consider that the reorganisation tools help NPL resolution indicates the unsuitability and low usage of these tools. This finding was also confirmed by the analysis under several sub-sections in **Section VI Overall Results** of this report.

Of particular relevance is **Section VI Other Relevant Aspects** relating to the procedural and economic efficiency of procedures under insolvency laws (or their lack thereof) and lack of common application of reorganisation procedures on common application of reorganisation procedures.

Figure 8.1 below presents a traffic light map on the level of agreement among stakeholders in all participating jurisdictions as to whether reorganisation tools facilitate NPL resolution.

Figure 8.1 Reorganisation tools do not efficiently facilitate NPL resolution

Source: Business Reorganisation Assessment, EBRD



Strongly Disagree
Disagree
Neither Agree nor Disagree
Agree
Strongly Agree

Note: This map displays respondents' level of agreement with the following question: "Do the reorganisation tools provided in the insolvency law in your jurisdiction efficiently facilitate the resolution of NPLs?" Respondents from most economies disagreed.

[4] European Commission, Action Plan: Tackling non-performing loans (NPLs) in the aftermath of the COVID-19 pandemic, 16 December 2020, available at: **www.ec.europa.eu/info/publications/201216-non-performing-loans-action-plan_en**

In contrast, in only eight of the participating economies (Estonia, Hungary, Kosovo, Lithuania, Moldova, Slovakia, Slovenia and Turkmenistan) did the respondents agree that the security and debt enforcement tools provided in the general legislation (other than under insolvency laws) efficiently facilitate the resolution of NPLs. In all other economies, most respondents either disagreed or were not able to take a clear position. Whereas the findings in this question are slightly more positive than for reorganisation tools within national insolvency frameworks, it seems that the tools outside of insolvency laws are not or not efficiently applied for NPL resolution either.

2. Main impediments to NPL resolution

The NPL Survey identified the following issues as the main impediments to the resolution of NPLs:

i. weakness in the enforcement regime for debt collection

ii. lack of a secondary market for NPLs

iii. an inadequate environment for multi-creditor out-of-court restructuring (workouts).

Weakness in the insolvency regime came in fourth place which, together with the weakness in the enforcement regime to collect on debts as the most frequently marked issue, confirms the above conclusions: insolvency and debt enforcement regimes are vital for NPL resolution.

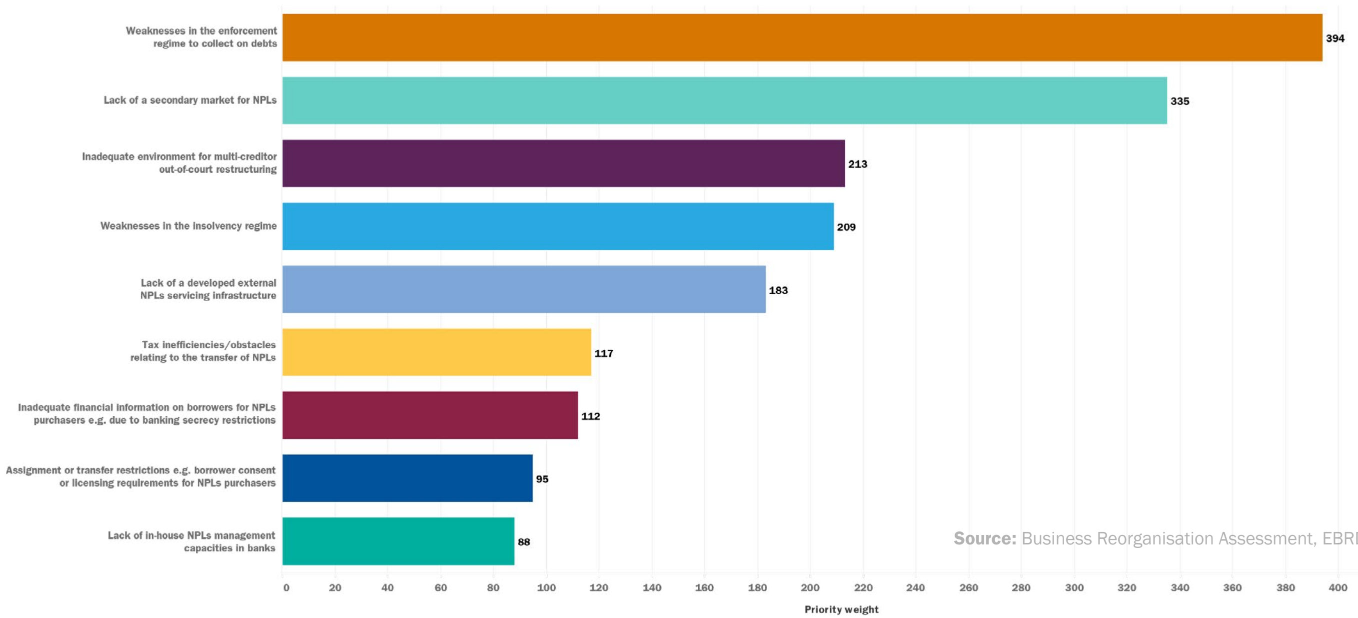
The third-ranking impediment, or the inadequate environment for multi-creditor out-of-court restructuring, means, in other words, that private workouts are neither promoted or supported in certain jurisdictions and are not applied frequently. This correlates with the findings of a recent survey on awareness of the **INSOL International Statement of Principles for a Global Approach to Multi-Creditor Workouts II** (INSOL Principles) in 46 selected emerging markets, including some EBRD economies of operations.[5]

The INSOL Principles are familiar to corporate recovery professionals all over the world and considered a leading statement of best practice on workouts. However, the survey concluded that in many emerging markets, the INSOL Principles were either not known, not customarily used in practice, or both. The importance of private workouts and its advantages have been highlighted at many places in this report. **Section VI Overall Results** also observed the lack of application of private workouts across the EBRD regions, which further corresponds with the findings of the survey.

Figure 8.2 below presents all nine possible answers regarding main impediments to NPL resolution that could be selected by respondents to the NPL Survey. The respondents could select up to three responses in order of priority.

Note: This chart shows respondents' responses in relation to the aspects of NPL resolution they consider can be further strengthened in the EBRD regions. All answers were weighted to reflect the order of priority of issues selected by respondents.

Figure 8.2 Main impediments to NPL resolution in order of priority in the EBRD regions



Source: Business Reorganisation Assessment, EBRD

[5] Marney R. and Stubbs T, Corporate Debt Restructuring in Emerging Markets, Palgrave Macmillan, 2021

Respondents were asked separately to consider which were the most important areas for facilitating NPL resolution in the future. Most importantly, better insolvency and enforcement regimes were identified by the respondents across the EBRD regions as the top priority. It was followed by improved out-of-court restructuring practices and a more developed secondary market for NPLs. Other highly ranked answers as areas that facilitate the resolution of NPLs included:

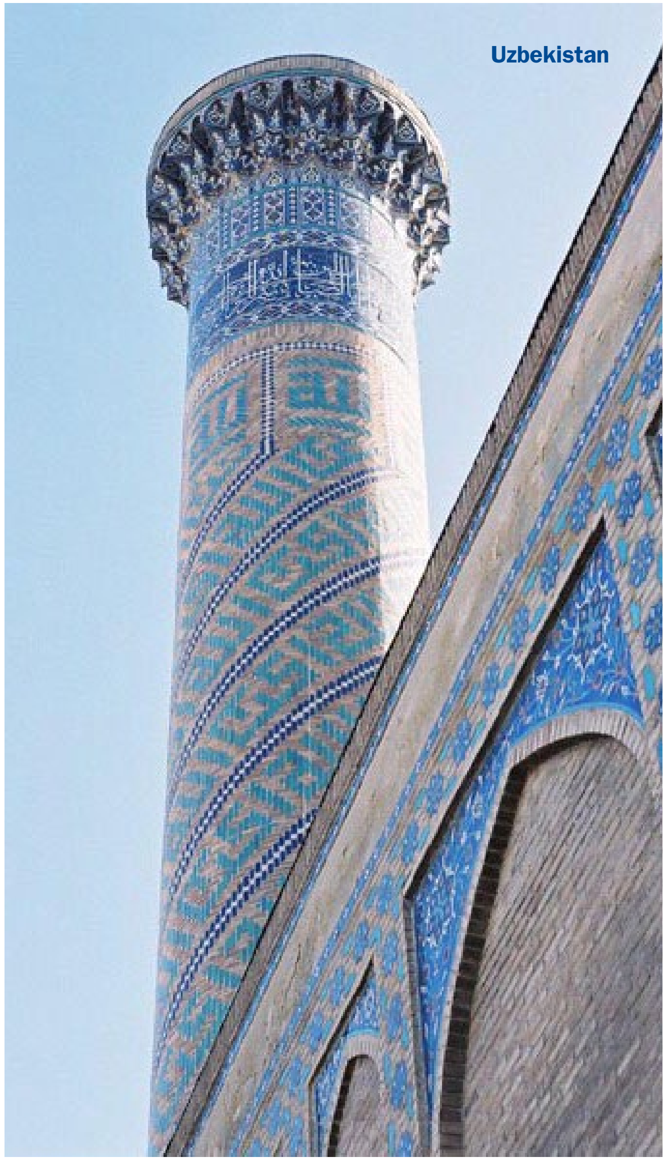
- more effective supervisory rules and/or practices
- fewer regulatory constraints on banks
- a more favourable tax regime for transfer and resolution of NPLs
- a more developed market for servicing NPLs.


Turkmenistan

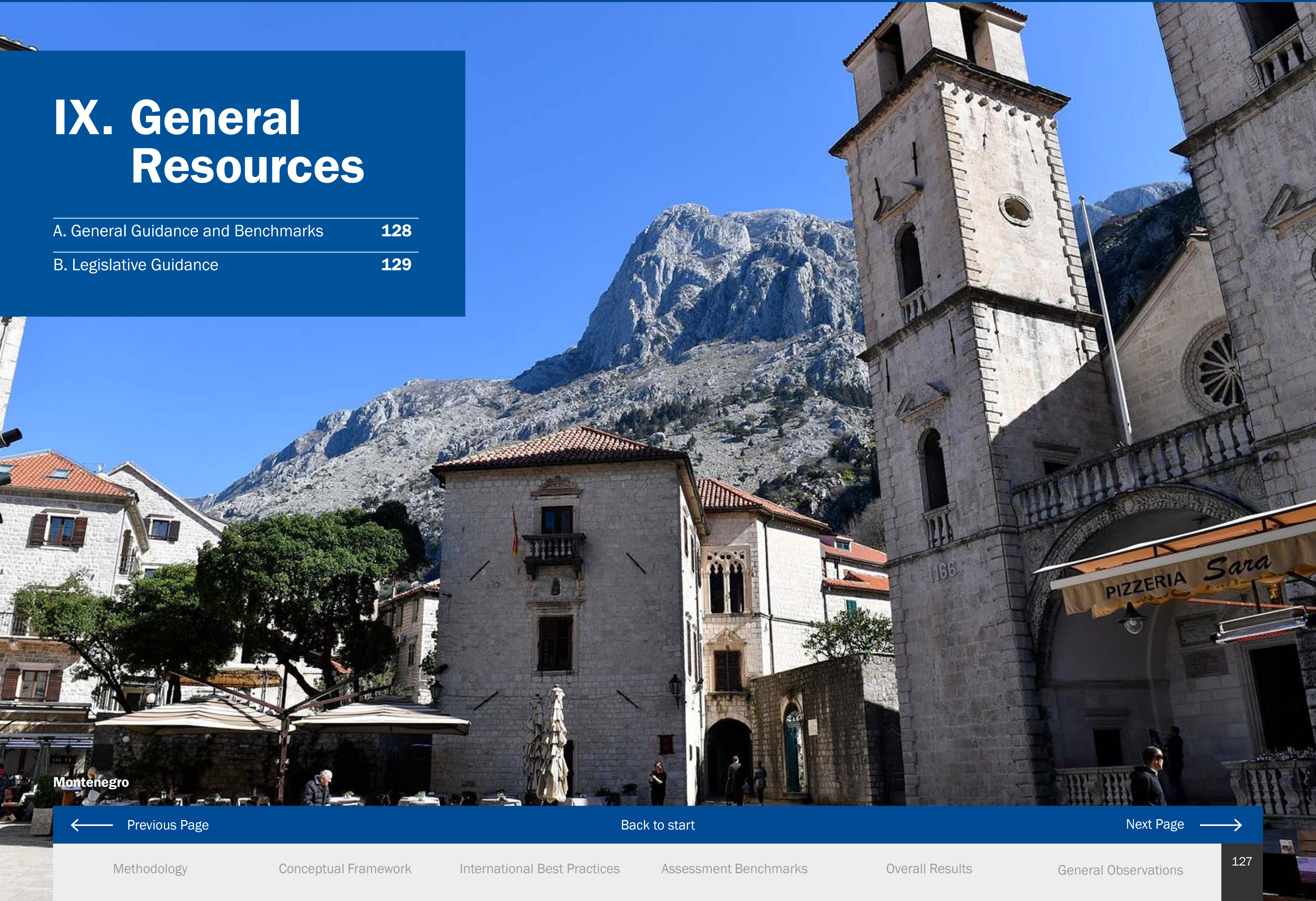
D. Conclusions

These results confirm that an important aspect in resolving the rising level of NPLs is an expedited approach to insolvency procedures. Reorganisation within insolvency is one of the potential strategies for NPL resolution and can be facilitated and enhanced through proper reorganisation tools, particularly hybrid approaches and out-of-court restructuring (workouts). These contribute to a swift restructuring, be it operational or financial, the latter being particularly relevant for the purposes of NPLs. This highlights the natural nexus linking insolvency-related reorganisation procedures and NPLs.

As indicated earlier in this report, greater access to more detailed and disaggregated data can facilitate the understanding of the business environment and a better and more analytical know-how regarding the outcome of the different reorganisation procedures. These are essential elements to favour the creation of a vibrant secondary market for NPLs. Although several changes are under way at national level among EBRD economies of operations, the Data Transparency Factor highlights the lack of relevant information and transparency for potential NPL investors, which are needed to create a secondary market and bring liquidity. To an extent, the Data Transparency Factor findings reveal why the market is not able to easily self-correct in certain economies. The access to accurate data is an essential starting point towards facilitating the resolution of NPLs.


Uzbekistan

IX. General Resources



Montenegro

A. General Guidance and Benchmarks

1. EBRD Core Principles of an Effective Insolvency System

Click here Click here

English – www.ebrd.com/legal-reform/ebrd-insolvency-coreprinciples.pdf
Russian – www.ebrd.com/legal-reform/ebrdinsolvency-coreprinciples-russian.pdf

The EBRD Core Principles are high-level guidance on key objectives and international best practices with respect to business insolvency. They reflect the most important developments in best practices of business insolvency, such as an increasing focus on the importance of statutory restructuring tools, consensual out-of-court restructuring solutions and early 'pre-insolvency' action, and increasing recognition by policymakers of the importance of tailoring insolvency systems to the needs of micro, small and medium-sized enterprises (MSMEs). The Core Principles aim to contribute to the further development and harmonisation of countries' insolvency legislation by clearly articulating the general objectives of any commercial insolvency law reform, which may be adapted to the specific national context.

2. EBRD Insolvency Office Holder Principles

Click here Click here

English – www.ebrd.com/legal-reform/insolvency/ioh_principles.pdf
Russian – www.ebrd.com/legal-reform/insolvency/ioh_principles-russian.pdf

The EBRD Insolvency Office Holder Principles articulate the core elements that should be considered by policymakers for the development of the profession of insolvency office holders; that is, those practitioners involved in liquidation or reorganisation procedures, including, without limitation, any administrators, liquidators, receivers, or trustees. More broadly, the principles seek to advance the integrity, fairness and efficiency of the insolvency law system by ensuring that appropriately qualified and regulated professionals take insolvency appointments.

3. EBRD Report on the Insolvency Office Holder Assessment

Click here

www.ebrd.com/cs/Satellite?c=Content&cid=1395252752246&d=&pagename=EBRD%2FContent%2FDownloadDocument

The report contains a detailed assessment of the insolvency office holder profession in 27 economies where the EBRD invests. It evaluates the profession's state of development and performance with the aim to identify any shortcomings within the existing statutory framework for insolvency office holders that need to be addressed.

4. The World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes

Click here

www.openknowledge.worldbank.org/handle/10986/35506

The principles are a distillation of international best practice on design aspects of creditor/debtor systems that have been designed as a broad-spectrum assessment tool to assist countries in their efforts to evaluate and improve core aspects of their commercial law systems.

5. The World Bank Group and UNCITRAL, Report on Treatment of MSME Insolvency

Click here

www.openknowledge.worldbank.org/handle/10986/26709

This report considers the specific challenges of insolvent MSMEs, reviews and analyses how legislation in different jurisdictions deals with the challenges of MSME insolvency and considers if existing international standards are sufficient to address MSME insolvency.

6. The World Bank Guide on Out-of-Court Debt Restructuring

Click here

www.documents1.worldbank.org/curated/en/417551468159322109/pdf/662320PUB0EPI00turing09780821389836.pdf

This study provides succinct guidance on topics in the field of debt restructuring, assisting in the identification of the different technical solutions that can be adopted for the treatment of corporate financial distress.

7. The International Monetary Fund, Orderly & Effective Insolvency Procedures

Click here

www.imf.org/external/pubs/ft/orderly/index.htm

This report discusses the major policy choices to be addressed by countries when designing an insolvency system, including the general objectives of insolvency procedures, the features of liquidation and rehabilitation procedures, the role of the court and the administrator and the issues raised by cross-border insolvencies.

8. INSOL Europe Statement of Principles and Guidelines for Insolvency Office Holders in Europe

Click here

www.insol-europe.org/download/resource/167

These principles and guidelines serve as a sound benchmark for the profession of insolvency office holders, as a means to strengthen public confidence in the profession and as a focus for debate on possible future binding rules for insolvency office holders on a European level.

9. INSOL Europe – Guidance Note No. 1 on the Implementation of Preventive Restructuring Frameworks Addressing Claims, Classes, Voting, Confirmation and the Cross-class Cram Down

Click here

www.insol-europe.org/publications/guidance-notes

This note identifies issues regarding implementing restructuring frameworks prescribed by the EU Restructuring Directive. The note offers technical insights and policy considerations on the key points of classification of claims, voting, and confirmation of restructuring plans, including by way of a cross-class cram down.

10. INSOL Europe – Guidance Note No. 2 on the Implementation of Preventive Restructuring Frameworks Addressing Stay of Individual Enforcement Actions

Click here

www.insol-europe.org/publications/guidance-notes

This note explains the stay of individual enforcement actions in the context of implementing the EU Restructuring Directive.

A. General Guidance and Benchmarks

11. INSOL Europe – Guidance Note No. 3 on the Implementation of Preventive Restructuring Frameworks Addressing Procedural Features

Click here

www.insol-europe.org/publications/guidance-notes

This note offers technical insights and policy considerations on: negotiating and confirming the reorganisation plan before the judicial or specialised administrative authority; appointing an insolvency practitioner to assist the debtor and creditors in negotiating and drafting the plan; imposing a test of the debtor's viability under national law; and the possibility for the competent authority to refuse to confirm restructuring plan where the debtor has no reasonable prospect of preventing insolvency or ensuring the viability of the business in the context of the implementation of Directive (EU) 2019/1023.

12. INSOL International – Statement of Principles for a Global Approach to Multi-creditor Workouts II

Click here

www.original.insol.org/_files/Publications/StatementOfPrinciples/Statement%20of%20Principles%20II%2018%20April%202017%20BML.pdf

The principles are intended to be statements of best practice for all multi-creditor workouts or restructurings in all jurisdictions which have developed insolvency laws.

B. Legislative Guidance

1. UNCITRAL Legislative Guide on Insolvency Law

Click here

www.uncitral.un.org/en/texts/insolvency/legislativeguides/insolvency_law

The UNCITRAL Legislative Guide is intended to inform and assist insolvency law reform around the world, providing a reference tool for national authorities and legislative bodies when preparing new laws and regulations or reviewing the adequacy of existing laws and regulations. The advice provided aims at: achieving a balance between the need to address a debtor's financial difficulty as quickly and efficiently as possible; the interests of the various parties directly concerned with that financial difficulty, principally creditors and other stakeholders in the debtor's business; and public policy concerns, such as employment and taxation.

- UNCITRAL Legislative Guide on Insolvency Law, Parts One and Two
  www.uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/05-80722_ebook.pdf

  The guide presents a comprehensive statement of key objectives and core features for a strong insolvency, debtor-creditor regime, including out-of-court restructuring, and a legislative guide containing flexible approaches to the implementation of such objectives and features, including a discussion of the alternative approaches possible and the perceived benefits and detriments of such approaches.

- UNCITRAL Legislative Guide on Insolvency Law, Part Three: Treatment of Enterprise Groups in Insolvency
  www.uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/leg-guide-insol-part3-ebook-e.pdf

  The purpose of Part Three is to develop and improve the administration of the insolvency of enterprise groups, both domestically and in the cross-border context.

- UNCITRAL Legislative Guide on Insolvency Law, Part Four: Directors' Obligations in the Period Approaching Insolvency (Second Edition)
  www.uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-11273_part_4_ebook.pdf

  The guide focuses on the obligations regarding management of an enterprise when it faces imminent insolvency or insolvency becomes unavoidable. This publication addresses the key elements of provisions imposing such obligations, as well as the nature of the obligations, the time at which the obligations should arise, the persons to whom the obligations would attach, along with liability for breach of the obligations and enforcement of those obligations – specifically applicable defences, remedies, the persons who may bring an action to enforce the obligations and how those actions might be funded.

2. UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation

Click here

www.uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/1997-model-law-insol-2013-guide-enactment-e.pdf

The UNCITRAL Model Law is designed to equip insolvency laws with a modern legal framework to more effectively address cross-border insolvency proceedings concerning debtors experiencing severe financial distress or insolvency. It focuses on authorising and encouraging cooperation and coordination between jurisdictions, rather than attempting the unification of substantive insolvency law, and respects the differences among national procedural laws.

Legislative Guidance

3. UNCITRAL Model Law on Recognition and Enforcement of Insolvency-related Judgments

Click here

www.uncitral.un.org/sites/uncitral.un.org/files/mediadocuments/uncitral/en/ml_recognition_gte_e.pdf

This model law is designed to provide a simple, straightforward and harmonised procedure for recognition and enforcement of insolvency-related judgments.

4. UNCITRAL Model Law on Enterprise Group Insolvency with Guide to Enactment

Click here

www.uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-11346_mloegi.pdf

This model law focuses on insolvency proceedings relating to multiple debtors that are members of the same enterprise group. It is designed with the aim of addressing the domestic and cross-border insolvency of enterprise groups, complementing the **UNCITRAL Model Law on Cross-Border Insolvency** and **Part Three of the UNCITRAL Legislative Guide on Insolvency Law**.

5. UNCITRAL Legislative Recommendations on Insolvency of Micro- and Small Enterprises

Click here

www.uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/part_5_en.pdf

These legislative recommendations were prepared to assist policy makers with establishing a simplified insolvency regime to address the insolvency of individual entrepreneurs and micro and small businesses of an essentially individual or family nature with intermingled business and personal debts. They offer simple, expeditious and low-cost mechanisms for liquidation of non-viable MSEs or reorganisation of viable MSEs, while providing safeguards against possible abuses.

6. Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt

Click here

www.eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1023

The objective of the EU Restructuring Directive is to ensure that: viable enterprises and entrepreneurs that are in financial difficulties have access to effective national preventive restructuring frameworks which enable them to continue operating; honest insolvent or over-indebted entrepreneurs can benefit from a full discharge of debt after a reasonable period of time, thereby allowing them a second chance; and that the effectiveness of procedures concerning restructuring, insolvency and discharge of debt is improved, in particular with a view to shortening their length.

7. Regulation (EU) 2015/848 of the European Parliament and of the Council 20 May 2015 on insolvency proceedings (recast)

Click here

www.eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R0848

The Recast Insolvency Regulation sets out conflicts of law rules for insolvency proceedings concerning debtors based in the EU with operations in more than one member state, giving particular prominence to insolvency proceedings begun in the member state in which a debtor has its centre of main interests.

VIIII. Links to Individual Economy Reports

- Albania
- Armenia
- Azerbaijan
- Belarus
- Bosnia and Herzegovina (Federation)
- Bosnia and Herzegovina (Republika Srpska)
- Bulgaria
- Croatia
- Cyprus
- Egypt
- Estonia
- Georgia
- Greece
- Hungary
- Jordan
- Kazakhstan
- Kosovo
- Kyrgyz Republic
- Latvia
- Lebanon
- Lithuania
- Moldova
- Mongolia
- Montenegro
- Morocco
- North Macedonia
- Poland
- Romania
- Russia
- Serbia
- Slovak Republic
- Slovenia
- Tajikistan
- Tunisia
- Turkey
- Turkmenistan
- Ukraine
- Uzbekistan
- West Bank Gaza

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