# EBRD INSOLVENCY ASSESSMENT ON REORGANISATION PROCEDURES

## Preliminary Assessment Report[1]

**April 2021**

European Bank
for Reconstruction and Development

[1] The final results of the Assessment will be presented in a more detailed online report, supplemented by an analysis of best practice and profiles for each of the EBRD economies of operations covered by the Assessment.

# I. INTRODUCTION

**In response to the Covid-19 generated economic crisis, the EBRD is carrying out an accelerated insolvency assessment of national insolvency frameworks. The assessment aims to provide the EBRD, its economies of operations, investors, and other stakeholders with an up-to-date overview of business reorganisation tools and to propose any areas where further development of national legislation is needed (the "Assessment").[2]**

The first part of the Assessment was conducted through a questionnaire made publicly available in September 2020 and which was also sent to key stakeholders in all 38 economies where the EBRD operates (the "Questionnaire"). For benchmarking purposes, stakeholders from outside the EBRD's regions were invited to participate, including from BRICS and Western European countries. The Questionnaire officially closed on 7 November 2020. A total of 493 completed Questionnaires were submitted. The high response rate was supported by institutional partnerships with UNCITRAL, IDLO, INSOL Europe and INSOL International, and cooperation with the European Commission, as well as the depth and extensiveness of EBRD local contacts.

The structure of the Questionnaire largely followed the sequential steps that businesses take when faced with financial distress and when they embark on a reorganisation exercise. It was divided into five key sections, with the final section focusing on other general aspects of domestic insolvency laws 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; and,
5. Other Relevant Aspects.

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.

In order to assess the effectiveness and extensiveness of the national insolvency laws and to rank the participating economies, the Assessment incorporates a scoring system. In this respect, 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] This is the first insolvency specific assessment carried out by the EBRD since the insolvency office holder assessment in 2014 and is focused only on reorganisation procedures. Therefore, the results in this assessment are not comparable to the results of any previous assessments. Given the scale of the Covid-19 economic crisis and likelihood of legislative changes, the EBRD plans to repeat the assessment in a few years' time.

**(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 a necessary 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.

The scoring questions are the basis for assessing the quality of reorganisation procedures and were assigned weights ranging from -0.333 to 1. The weighting categories are: -0.333, 0, 0.25, 0.333, 0.5, 0.666 and 1 for each of the possible answers. Each of the five sections is weighted equally (20 marks) totalling a maximum possible score of 100. The weighted questions were converted into scores based on a pre-agreed conversion table (see Annex 1 for the Conversion Table for weighted question in each section).

In addition, 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 (Preliminary) 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 Annex 2 for a detailed description of the Benchmarks, their indicators, and the relevant questions from the Business Reorganisation Questionnaire.

The Assessment is, therefore, conducted on the following three levels:

1. Overall score per economy.
2. Score per section of the Questionnaire and per economy.
3. Score per Assessment benchmark and per economy.

The Preliminary Assessment Report provides an initial analysis of the responses across the EBRD regions and does not cover other participating economies that were included for benchmarking purposes. It provides an overview of the overall results per economy as well as of the results for each of the five sections (Part II. Overall Assessment Scores). The results per Assessment benchmark are presented in the fourth section (Part IV. Results per Assessment Benchmarks), which focuses on specific issues identified as key areas of business reorganisation. The Report is based on the unverified data received from 1 September to 7 November 2020 when the Questionnaire was open to responses. The reference to 'EBRD region' or 'EBRD economies of operations' in this report includes economies where the EBRD invests.

With regard to economies that have amended their insolvency legislation and/or adopted new insolvency legislation[3] between 1 September (opening date of the Questionnaire) and 7 November 2020 (closing date of the Questionnaire), the analysis of the insolvency framework and the ranking of the respective economy will be conducted in the following manner: (1) the (Preliminary) Assessment Report, including the evaluation of the law and the ranking of the respective country, will reflect the responses received which, in turn, are based on the then existing law and practice. Therefore, the (Preliminary) Assessment Report and the economy rankings reflect the law that was in effect at the time (the "old" law) and domestic practice as of the cut-off date of the Questionnaire; and (2) New legislation will be taken into account and analysed in the specific country profiles and country reports that the Assessment Team is drafting for each of the participating economies.

The Assessment Team is currently completing a validation process of questions that deal with factual or a legislative position as per the laws on the books and that received diverging responses within an economy. Regarding these so-called factual questions, there is a risk that the respondents might have misinterpreted the question. The verification process applies only to responses that did not produce a 75% agreement among respondents. The process aims to produce a definitive "Yes" or "No" answer for the respective question and will, in addition, enable the Assessment Team to identify the areas where the domestic practice seems to be inconsistent. The validation of responses is being undertaken by the Assessment Team through a combination of: (1) desktop research reviewing underlying legislation and the practices disclosed by the main law firms and, where possible, other relevant stakeholders through the Questionnaire; and (2) confirmation of the factual position in the pertinent jurisdiction with at least two leading law firms. Answers received by respondents that are not grounded by specific references to legislation or consistent with disclosed practices on factual matters will not be validated. **Therefore, the results presented in this report are not final and may change during the validation process.**

[3] This applies to Greece where the new insolvency law (Law No. 4738/2020 on Debt Settlement and Second Chance Arrangement and Other Provisions) was adopted on 27 October 2020 and partially came into force on 1 March 2021, and to Georgia where the new insolvency law (Law of Georgia on Rehabilitation and Collective Satisfaction of Creditors) was adopted on 18 September 2020 and is expected to come into force in May 2021.

## II. GENERAL OBSERVATIONS

***A number of countries, i.e., Egypt, Mongolia, Poland, Serbia and Ukraine, were selected in order to corroborate and test in-depth the preliminary Assessment results with government authorities and local stakeholders across the EBRD sub-regions. These economies had significantly diverging overall preliminary Assessment results, with Poland coming first and Mongolia in second to last place. The analysis of the responses received and the discussions with local law firms in some of these participating economies revealed a number of important findings that are presented in this section.***

The formal (or court-supervised) insolvency procedures, including the reorganisation procedures, often carry a high level of stigma for the debtor and are negatively perceived by creditors, as well as by the general public. As a result, a general trend seems to be for the debtor to either completely avoid the use of these procedures or to delay their application as much as possible. On the creditors' side, another aspect to consider is insolvency proceedings of a reorganisation nature are often initiated by the debtor too late and there are few successful precedents. Furthermore, certain public or quasi-public entities, including state owned banks, may be unable to agree to any restructuring measures that can result in a reduction of their claim. All of these factors contribute to a low number of reorganisation type 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 development of these procedures i.e., there is insufficient practice and poses difficulties to establishment of domestic best practices. In addition, official data on insolvency procedures, such as the number of applications for the opening of proceedings or the outcome of proceedings, are not recorded and/or made publicly available in all economies e.g., Egypt and Mongolia. In contrast, Serbia has a well-developed system for collection of insolvency-related data, which is centralised within the country's Bankruptcy Supervision Agency that may act as a model for other jurisdictions.

Vagueness of the relevant provisions and the lack of secondary legislation were identified as indicators of an underdeveloped insolvency framework. In some jurisdictions, judges have significant discretion in interpreting and applying the insolvency laws, which may reduce the predictability of and reliability of the law. Furthermore, certain economies do not provide for a commercial court system or commercial divisions and specialised judges for insolvency matters e.g. Mongolia[4]. A less developed institutional framework was also recorded in Mongolia regarding the insolvency practitioners, who are not regulated. In Egypt the regulation of such practitioners is relatively recent.

The discussions around the small and medium-sized enterprises (SMEs) and the differences in definition and categorisation of such enterprises showed that a one-size-fits-all approach may not be appropriate. A country's insolvency legislation should take into account the specificities of its major market participants which, besides or instead of SMEs, may be micro or nano-sized enterprises. In any case, a simplified reorganisation procedure should be available to companies that do not have a complex capital structure. There was general interest from a number of government authorities consulted in tailoring the insolvency regime to better serve smaller enterprises.

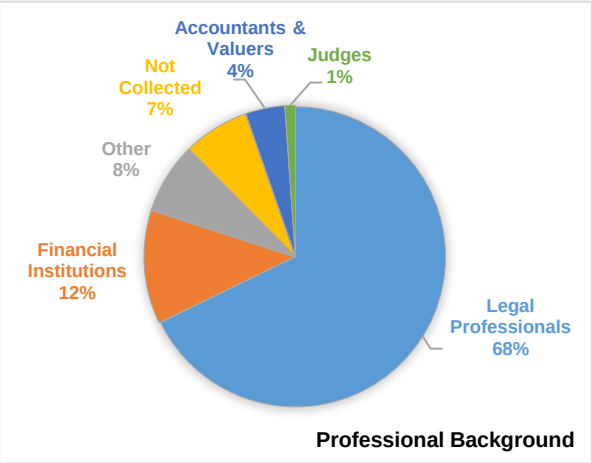
In addition, when establishing more than one reorganisation option the legislators should ensure that these procedures provide for clear access requirements and eligibility criteria, as well as serve different objectives to avoid creation of a menu of options that could end up being too complex (e.g., Poland) and consequently deter their use. It is noted that Poland, the highest performer according to the preliminary Assessment results, has recorded a high number of cases of a reorganisation nature, particularly in relation to a temporary Covid-19 related reorganisation procedure. This is in contrast to other countries, such as Egypt, Mongolia and Ukraine where the overall number of reorganisation cases is relatively low. There is scant information available on the success of these reorganisation cases.

Another important point relates to new financing and its classification for purposes of capital adequacy. It was observed that jurisdictions might penalise lenders that provide new credit to distressed businesses from an accounting point of view, as a greater accounting provision is sometimes required (e.g., Serbia). 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.

Finally, when identifying the areas where further legal reform and development is needed, the course of recent legislative amendments should also be taken into account. There are economies where the insolvency legislation has been successively amended over a short period of time, often in response to benchmarking initiatives such as the World Bank Doing Business Report (e.g., Serbia). This has led to a generalized 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.

[4] Egypt, Serbia and Ukraine have specialised commercial courts and Poland has a commercial division within the common courts system.

# III. OVERALL ASSESSMENT SCORES



**Professional Background**

The Assessment received in total 450 responses within the EBRD region[5]. 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 accountants (19 responses) was relatively low.

The Assessment introduces a scoring framework for comparability, to identify the jurisdictions where the EBRD should focus its legal reform efforts and to highlight to authorities in the jurisdictions covered where performance in respect of business reorganisation systems may be lagging behind. However, many questions are non-scoring (i.e. 30.8%) and the overall aim of the Assessment is to collect as much relevant information as possible to support gradual reforms.

Based on the indicative scores, the overall performance of EBRD economies of operations seems to be sufficient and shows positive trends in many areas. Although none of the surveyed economies reached the maximum possible score of 100, the top five performers scored similarly with a close range between 67.3 and 71.9 points, which indicates a good level in the quality of the business reorganisation framework. Poland, Romania, Greece, Lithuania, and Kosovo scored the highest. Moldova scored only 2 points lower than the top five performers and Latvia only 3 points lower compared to Kosovo. Cyprus, Slovakia, and Jordan were among the ten best performers and fell slightly behind Latvia with 64.4, 64.3 and 63.9 points, respectively. The average overall score of all assessed economies is 59.1. The overall Assessment scores are shown in Figure 3.1 below.

Poland as the best performer and Greece as the third best performer achieved 71.9 points and 68.2 points, respectively, but scored very low in the last section (section 5) of the Questionnaire, which asks about other relevant aspects of insolvency laws (8.6 points and 8.3 points, respectively). 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, section 5 only includes questions that ask for the opinion of respondents and therefore provides for fully perception-based information. Lower scores in the section 5 may also indicate that, despite having a well-developed reorganisation framework, the available procedures are not efficiently employed. Good performance in the first four sections indicates that the general approach to the reorganisation as well as its conduct and approval phases may be regarded as effective and extensive. However, neither in Poland nor in Greece do the respondents consider the insolvency laws efficient from a procedural and economic point of view, which are additional factors important for the reorganisation framework. 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.

[5] A further 48 completed questionnaires were received from respondents outside the region.

Most assessed economies revealed a medium performance, scoring between 55 and 63 points. A positive trend is that the majority of the economies located in the middle of the scale show a balanced distribution of scores per the first four sections. This trend is particularly true for the Slovak Republic, Serbia, Kazakhstan, North Macedonia, and Morocco, all of which achieved very 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. Remarkable exceptions are Egypt, Turkmenistan, and Tunisia where the third section on the reorganisation plan collected comparably low scores.

Among the least good performers are Hungary (44.1 points), Mongolia (48.1 points), West Bank and Gaza (49.9 points), Tajikistan (51.6 points) and Georgia (51.9 points), however, still reaching about half of the maximum possible score. None of the sections could be identified as a particular weakness of these economies, except the fifth section, which, as already stated, seems to be the outlier throughout the Questionnaire. Regarding Hungary, Mongolia, and Georgia, it should also be noted that these economies are currently reforming their insolvency legislation or have done so during the past months (e.g., Georgia). These reforms have not been reflected in the overall ranking of the economies.

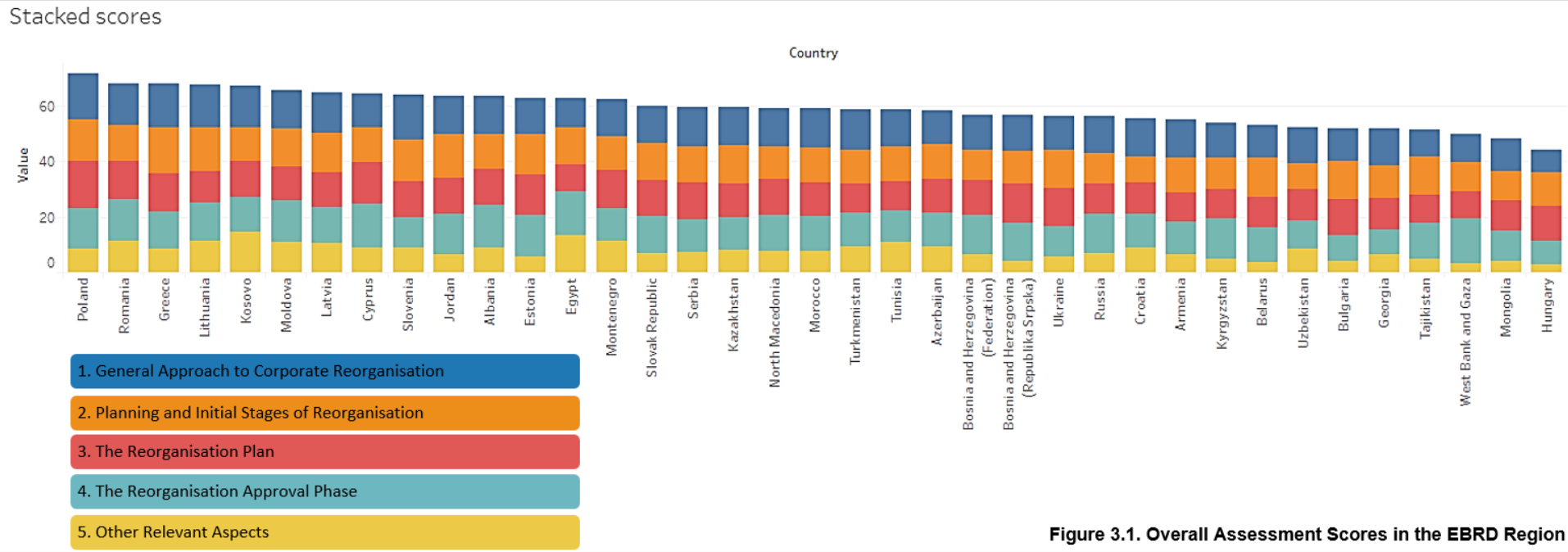



**Figure 3.1. Overall Assessment Scores in the EBRD Region**

# IV. RESULTS PER ASSESSMENT BENCHMARK

**The Assessment results per economy were, in addition to the overall scoring, evaluated according to the Flexibility, Efficiency and Effectiveness benchmarks. These three benchmarks were applied to conceptually guide the analysis of the responses and followed a slightly different scoring system. The total score for each benchmark in the below analysis and graphs are represented in percentages, with 100% as the maximum possible score under each benchmark.**

## 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 availaility 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. 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.

Among the best performers in terms of flexible insolvency frameworks are Slovenia, Poland and Greece, with a score of 90.2 per cent, 83.9 per cent and 83.5 per cent, respectively, followed by Kosovo, Lithuania and Jordan. As seen above, Poland, Greece and Kosovo also dominate the ranking according to the overall Assessment results as three out of top five economies. Major deficiencies are observed in Croatia, Mongolia and Republic Srpska, where the average score of all three economies is 49.5 per cent. Compared to Republic Sprska, the Federation of Bosnia and Herzegovina ranked three positions higher and performed slightly better with a score of 58.6 per cent. The average score of all assessed economies achieved for the Flexibility benchmark is 67.1 per cent.

Figure 4.1 presents the scores for the Flexibility benchmark in the EBRD region.

Almost all economies assessed show a clear and positive trend that the domestic insolvency laws allow for court-supervised or out-of-court reorganisations with about 95 per cent of overall positive responses. The question whether the insolvency laws contain a specific procedure(s) revealed similar results where only 9 per cent of the respondents denied the availability of a specific procedure for business reorganisation.

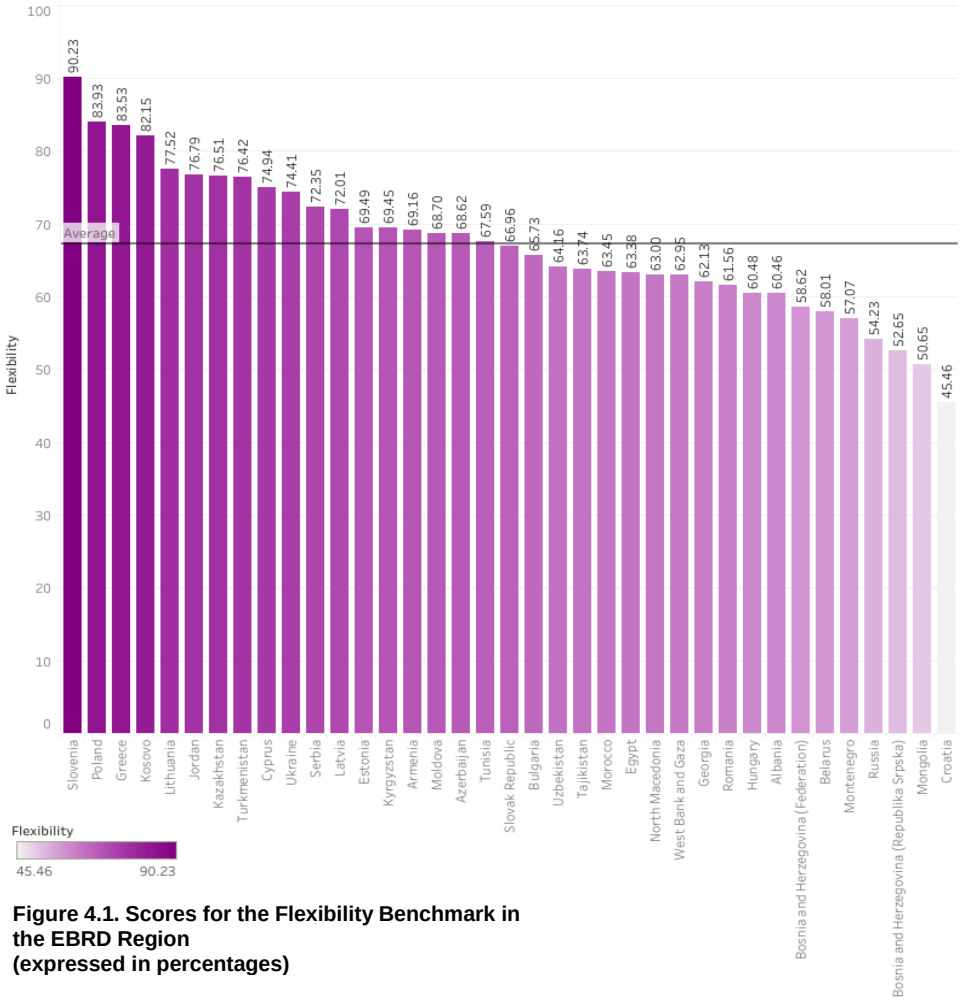



**Figure 4.1. Scores for the Flexibility Benchmark in the EBRD Region (expressed in percentages)**

Except Mongolia and Tajikistan[6], no economy was identified as lacking these possibilities. It should also be noted that the Questionnaire did not have separate sections for each of the available reorganisation procedure(s) in the respective jurisdiction. Therefore, the answers received represent an amalgam of all reorganisation procedures where more than one procedure exist. A reorganisation procedure is available upon the application of the debtor or its creditors in all EBRD economies of operations, except Egypt, Hungary, and Latvia[7] where only the debtor has been granted the right to initiate a formal reorganisation of its business.

The results are less positive regarding early access to reorganisation procedures. In about half of the economies observed, a reorganisation procedure can only be commenced if the debtor's business is in a state of insolvency as defined by the national laws. 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). There seems to be a potential for further development and lowering of access thresholds to reorganisation procedures. Restructuring 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.

A common weakness within the Flexibility benchmark is the lack of use of out-of-court restructuring. Only about 30% of respondents agreed that private workouts, which provide an important early alternative to insolvency procedures, are a common practice in their jurisdiction, whereas about 70 % either could not take a position or disagreed.[8] The highest disagreement rate was noted for Romania with 35 votes in total. Figure 4.2 presents a map of the EBRD economies of operations indicating respondents' average level of agreement with the question. In contrast, the hybrid approaches that are usually conducted by pre-packaged reorganisations seem to be more frequently used. About half of the surveyed economies allow for the reorganisation plan to be developed and agreed privately, before the commencement of a formal procedure and then submitted to the court for the confirmation. This approach is largely applied in Azerbaijan, Cyprus, Greece, Jordan, Kazakhstan, Latvia, Lithuania, Poland, Tajikistan, and Ukraine. Both private workouts and hybrid reorganisation procedures have the advantage that they offer a (more) discrete, cost-efficient, and speedy treatment of financial distress as opposed to the formal reorganisation procedures. Therefore, their existence and frequent application would shape a more flexible and efficient business rehabilitation environment.

Lastly, the most important area for further legal reform seems to be the development of simplified reorganisation procedures for SMEs. About 70% of all Questionnaire respondents replied that SMEs could not benefit from simplified reorganisation procedures. Further economy-by-economy analysis of the responses is needed in order to identify jurisdictions which contain a specific procedure adjusted to the needs of SMEs with fewer formalities and shorter timeframes. As a general trend, the lack of such procedural flexibility seems to be a common weakness in the EBRD region. This could be because as a general trend, developed economies tend to regulate more about this phenomenon, although some developing economies also seem to be focusing more on the issue. The possibility of a simplified regime for SMEs is under discussion in Mongolia, for example.

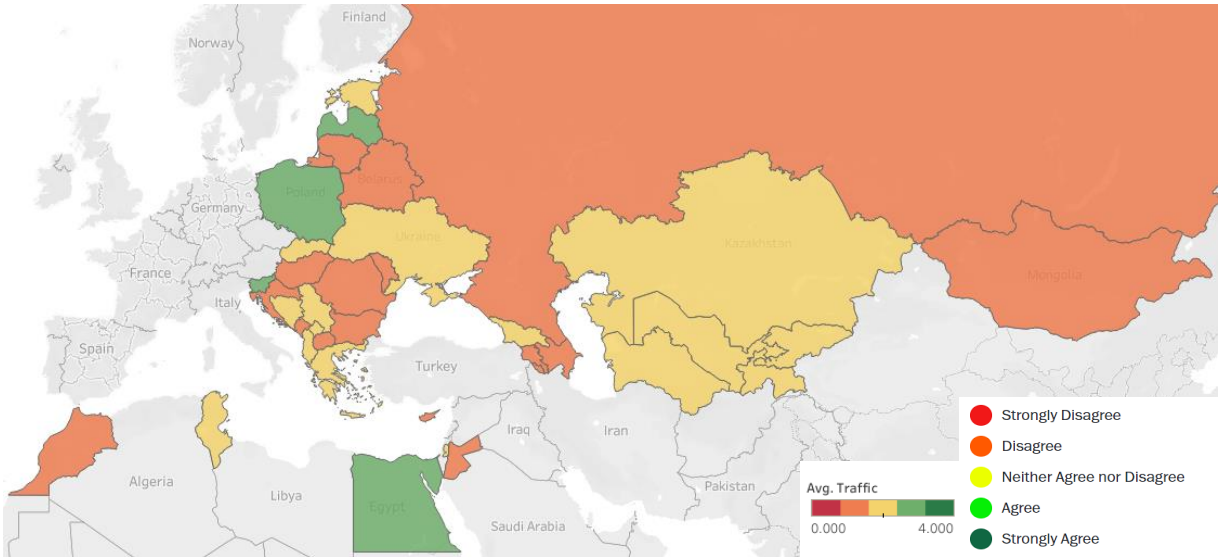



**Figure 4.2. Traffic Lights Map for Private Workouts in the EBRD Region**

[6] Subject to further validation.
[7] Subject to further validation.

[8] If a position cannot be taken, it already demonstrates a weakness in itself.

Simplified reorganisation procedures for SMEs are considered to be of significant importance as SMEs usually lack the resources to conduct a successful reorganisation and are often liquidated rather than restructured. It is notable that a number of countries, including Australia and Singapore, have introduced amendments recently in favour of SMEs, albeit Singapore's amendments are on a temporary basis in response to the Covid-19 generated economic crisis. Other countries such as Argentina and South Korea have had an SME insolvency regime for some time. Common features of the new legislative initiatives include (i) limited role of the insolvency practitioners/ trustees, (ii) single majority threshold for plan approval, (iii) simplified plan confirmation procedure with fewer formal requirements, (iv) debtor-in-possession, and (v) use of electronic means of communication and electronic voting procedures. UNCITRAL's Working Group on insolvency has presented a final draft text on a simplified insolvency regime to be considered at the 58th session that will be held later in 2021. The draft text provides for a simplified insolvency regime putting in place expeditious, simple, flexible and low-cost insolvency proceedings available and easily accessible to micro and small-sized enterprises. As the procedure aims to specifically tackle SMEs, appropriate eligibility criteria need to be set out by the law. The definition or categorization of SMEs differs among jurisdictions and is usually established based on (1) number of employees, (2) annual turnover, and/or (3) value of assets. Interestingly, both Singapore and Australia linked the eligibility criteria for access to the procedure to, *inter alia*, the amount of liabilities of the applying debtor. Overall, an SME-specific procedure should have the primary aim to reduce the time and cost required for a reorganisation. In addition, appropriate safeguards should be put in place to prevent the misuse of the procedure.

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

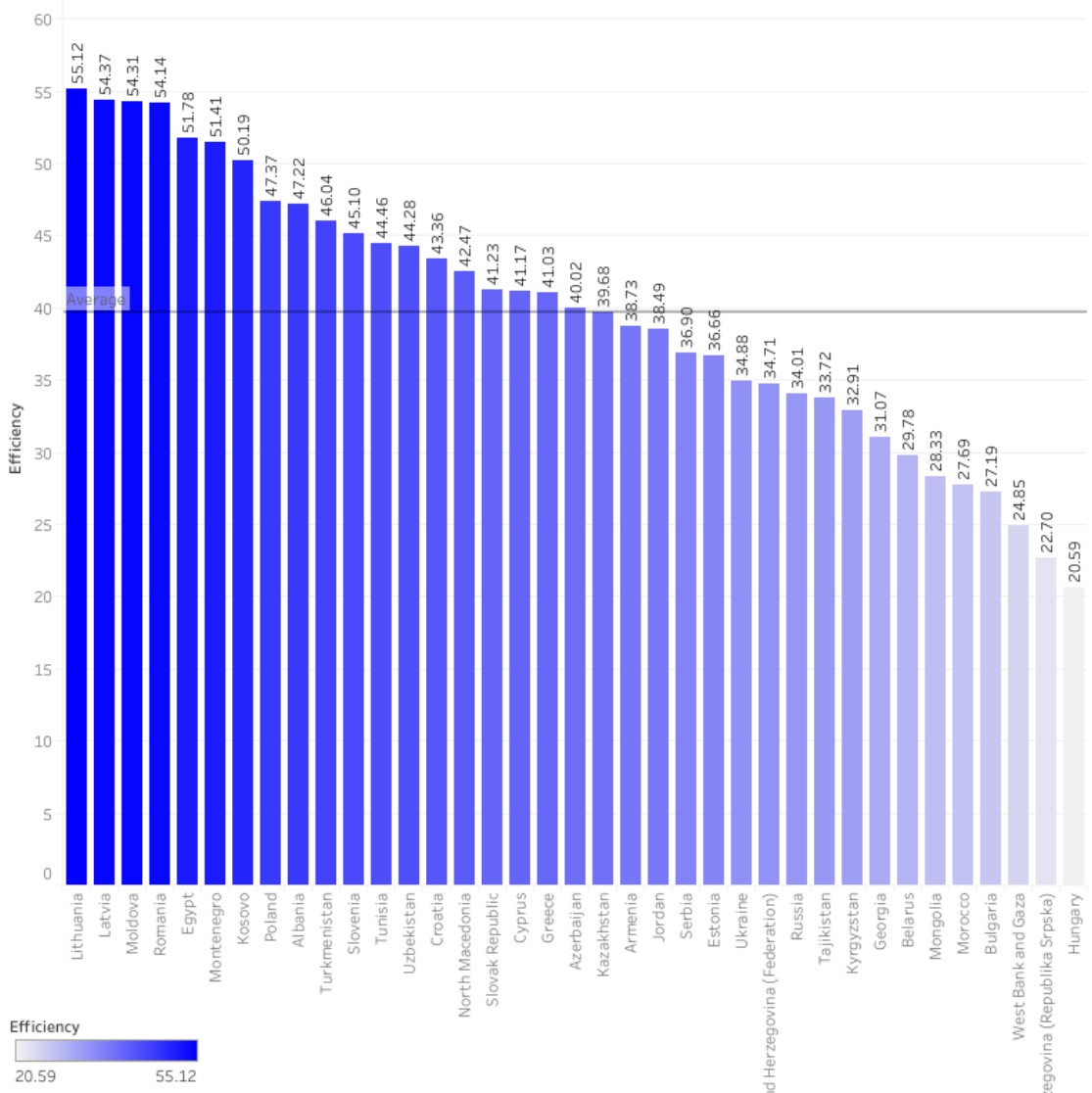



**Figure 4.3. Scores for the Efficiency Benchmark in the EBRD Region**

As can be seen from Figure 4.3, none of the economies reached a score of 60 per cent or more. The scores for most economies vary between 30 and 50 per cent indicating a quite low overall performance of the EBRD economies of operation. Even the best performer, Lithuania, only achieved slightly more than half of the maximum possible score (55.1 per cent), followed by Latvia, Moldova, and Romania with almost equal scores of about 54 per cent. Both Lithuania, and Latvia are in leading positions as per overall Assessment scores (Lithuania ranked fourth and Latvia eighth) as well as per Flexibility benchmark results (Lithuania ranked fifth and Latvia 12th). In contrast, Romania is leading as the second-best performer according to the overall results but shows a medium performance in terms of flexibility of its insolvency framework. At the end of the scale are West Bank and Gaza with 24.8 per cent, Republic Srpska with 22.7 per cent, and Hungary with 20.9. per cent as the economy with the least efficient insolvency framework. Hungary and West Bank and Gaza showed similarly low performances based on the overall Assessment scores.

The above results seem to be closely correlated with the two key problematic areas. First, only 36% of the respondents consider the insolvency law in their jurisdiction efficient from the procedural point of view. Latvia, Tunisia, Egypt, and Slovenia are the few economies where the majority of respondents agreed with the insolvency law's procedural efficiency.

Figure 4.4 shows the average of traffic light answers per economy in the EBRD region.

A more negative trend was observed when the respondents were asked about the economic efficiency of the insolvency law: 72 % of the responses either considered it inefficient from an economic point of view or could not take a position. Only Egypt, Latvia and Lithuania could be identified as economies where there was a majority of positive responses. In all of the assessed economies, the reorganisation process carries a negative stigma for the debtor according to the views of the respondents. Interestingly, the majority of responses from economies other than the EBRD economies of operations also indicated a negative stigma attached to the reorganisation procedure. Although this question is not weighted and does not contribute towards the total scoring of the Efficiency benchmark, it informs and confirms the above analysis: neither the procedural nor the economic efficiency is assessed positively by the insolvency law users in the majority of economies.

Slightly different conclusions may be made regarding the time spent in the reorganisation 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 ranging from less than 3 months to more than 12 months. A clear positive trend could be recorded in Latvia, Lithuania, Jordan and Romania where the large majority of respondents identified a maximum period of 6 months. This may be correlated with the fact that in Latvia and Lithuania, the majority of insolvency law users also consider it efficient from a procedural point of view; in Jordan, most respondents either agreed or did not take a position on this question. At the other end of the scale, Georgia, the Federation of Bosnia and Herzegovina and Tunisia produced a majority of responses indicating a time period of more than 12 months. The comparison of the average time spent in reorganisation and the insolvency law users' perception of its procedural efficiency reveals similar results in Georgia and the Federation of Bosnia and Herzegovina, where none of the economies' insolvency laws was predominantly assessed as procedurally efficient. As seen above, only in Tunisia does the trend seems to be different, since respondents believe that the procedure is efficient despite the majority of responses indicating a time period of more than 12 months.

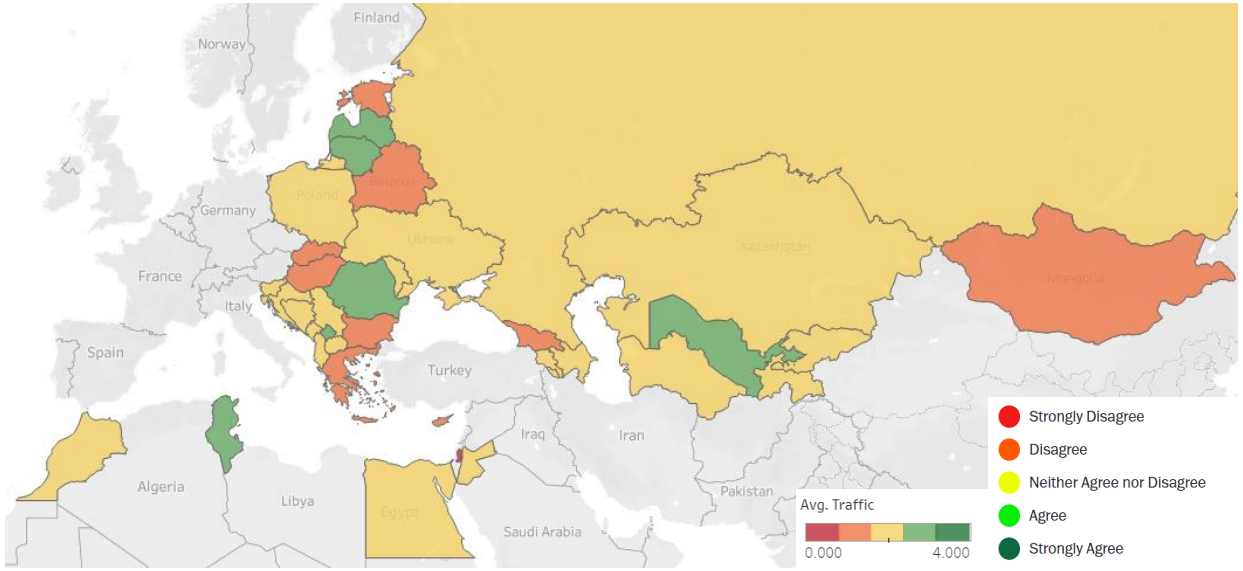
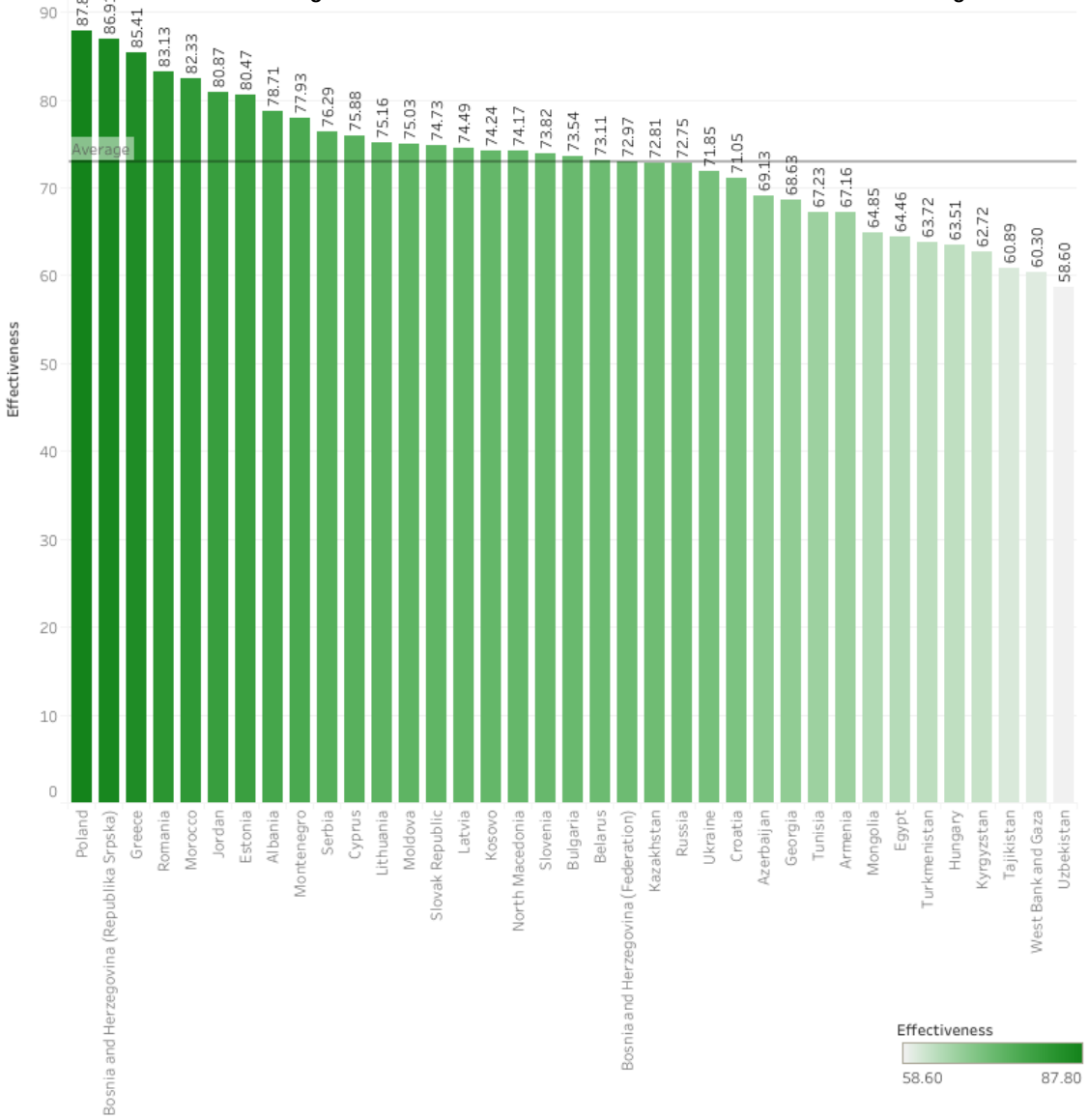



**Figure 4.4. Traffic Lights Map for Procedural Efficiency in the EBRD Region**

**Figure 4.5. Scores for the Effectiveness Benchmark in the EBRD Region**




## 3. Effectiveness

All EBRD economies of operations showed relatively good results when assessed against the Effectiveness benchmark. Compared to the other two benchmarks, the scores are, on average, higher per economy. In this regard, the Questionnaire aimed to evaluate whether the insolvency law of the participating economies contains the necessary tools to facilitate a successful reorganisation compared against international practice in this area including EU Directive 2019/1023. Further clarification of the available reorganisation tools at national level is being conducted by the Assessment Team and will be published in national profiles prepared for each of the participating economies.

Figure 4.5 shows the scores per economy for the Effectiveness benchmark.

Poland, Republic Srpska and Greece are leading the ranking with a score of 87.8 per cent, 86.9 per and 85.4 per cent, respectively, showing a high level of effectiveness. Poland and Greece also dominated the ranking according to the overall Assessment results as well as according to the Flexibility benchmark as one of the top five performers but showed medium results in terms of efficiency. Interestingly, Republic Srpska[9] ranked among the least good performers in the Flexibility and Efficiency benchmarks and showed a medium performance according to the overall Assessment.

Different from the overall scores and the other two benchmark rankings, at the end of the scale in terms of effectiveness of the insolvency law are, besides West Bank and Gaza, Uzbekistan, Tajikistan, Kyrgyzstan, and Turkmenistan. None of these economies were positioned as one of the worst five performers in any of the other rankings. However, the achieved scores of 58.6 per cent (Uzbekistan), 60.8 per cent (Tajikistan), 62.7 per cent (Kyrgyzstan) and 63.7 per cent (Turkmenistan) show sufficiently positive results.

The debtor has the freedom to propose any reorganisation option in almost all economies surveyed. Only in the Federation of Bosnia and Herzegovina do most respondents seem to be either disagreeing with the question or not able to take a position.

[9] In Bosnia and Herzegovina, there are two separate legal systems and rules governing insolvency for the Republic Srpska and for the Federation of Bosnia and Herzegovina. Thus, both are reviewed and scored separately.

The reorganisation option may also comprise a debt write-off, including the write-off of preferred debt in most economies. Some exceptions were recorded in Armenia, Belarus, Georgia, Kyrgyzstan, Kosovo, Moldova, Tajikistan, Tunisia, and Uzbekistan.[10] Another strength of the legislation regarding the reorganisation plan is that in almost all economies it can bind secured creditors; some exceptions include Kyrgyzstan, Uzbekistan, and Tunisia.[11]A remarkable strength of the insolvency laws in the EBRD region is the availability of the moratorium during the reorganisation procedure which provides the debtor with a breathing space to develop and negotiate a reorganisation plan. In the absolute majority of economies, the insolvency law allows for this possibility and extends the application of the moratorium to secured creditors. However, this is not the case (and therefore seems to be a weakness) in Armenia, Azerbaijan, Federation of Bosnia and Herzegovina, Croatia, Jordan, Kazakhstan, Kyrgyz Republic, North Macedonia, Turkmenistan, Poland and West Bank and Gaza[12].

One common trend is the inability of the debtor to select the creditors that will be affected by the reorganisation plan. Estonia, Cyprus, and Poland are the few economies where a clear position of the respondents was recorded and identified that the reorganisation procedure may apply to selected creditors only. Regarding the economies that are Member States of the European Union (EU), this negative trend is expected to change as the concept of affected parties will become part of the legislation as a result of the implementation of the Directive (EU) 1023/2019. A similar weakness is observed regarding creation of creditors' classes. In the majority of economies, the debtor is not granted the freedom to propose the voting classes at its own discretion, except Estonia, Poland, and Serbia. Nor is the provision of cross-class cram-down a common feature of insolvency laws in the EBRD regions. Cross-class cram-down allows the reorganisation plan to be imposed on classes of dissenting creditors and is, therefore, a powerful and effective mechanism to achieve a successful reorganisation, subject to appropriate levels of judicial and professional capacity. Greece, Poland, and Romania which also lead the ranking in terms of effectiveness, are among the few EBRD economies of operations that provide for this tool. All three options are important so as to design a flexible and effective framework for reorganisation procedures and are likely to constitute the areas where legal reform is needed.

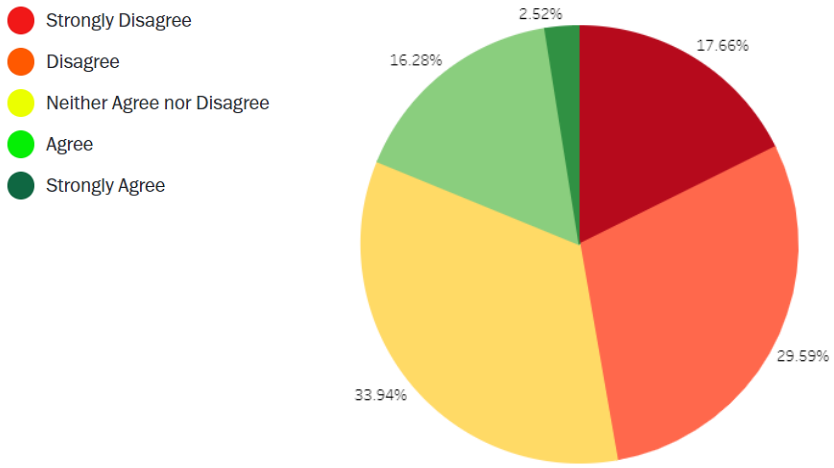



**Figure 4.6. Respondents Level of Agreement in the EBRD Region whether New Financing is a Common Practice.**

Provision of new financing is another area that is not well developed in the majority of the EBRD economies of operation. Only about 18.8% of the respondents indicated that providing new credit during the reorganisation process is a common practice in their jurisdiction. Figure 4.6 shows the overall results for the question. Interestingly, this is even though in most economies new financing can obtain priority over existing claims (some exceptions are Armenia, Azerbaijan, Kazakhstan, Jordan, Tajikistan, Ukraine and West Bank and Gaza[13]) and 65% of the respondents confirmed that new financing is protected from avoidance actions in a subsequent liquidation.

[10] Subject to further validation.
[11] Subject to further validation.
[12] Subject to further validation.
[13] Subject to further validation.

## V. PRELIMINARY HIGH-LEVEL CONCLUSIONS

**The initial analysis of the responses received from the EBRD economies of operations reveals several key areas where further support and legal reform are needed.**

- First and foremost, the use of **out-of-court restructuring**, as well as **hybrid approaches**, should be further encouraged and facilitated by a legal framework that supports and acknowledges these reorganisation options.
- A **simplified reorganisation procedure for SMEs** is another field that needs attention, particularly given the economic crisis caused by the Covid-19 pandemic which has severely hit the SMEs. As SMEs usually lack the resources to conduct a successful reorganisation and are often liquidated rather than restructured, a simplified procedure with fewer requirements and shorter timeframes is of significant importance.
- With regard to the existing reorganisation procedures, **lowering of access thresholds** and enabling the debtors to restructure at an **early stage** of financial distress will be critical.
- The reorganisation procedures should have the **flexibility** to involve and encourage the reorganisation of different types of claims.
- These procedures should, where appropriate, also be enhanced by more powerful and effective mechanisms, such as **cross-class cram-down** and **protection of new financing**. The latter two elements could be found in only a few of the participating economies.
- Judicial and insolvency office holder **expertise** in guiding reorganisation procedures is critical for further development of the legislative framework and use of tools such as cross-class cram down.

**Annex 1:** Conversion Table for weighted question in each section

| Section | No. of Questions | Maximum Possible Weighted Score | Conversion Rate per Weighted Question | Maximum Score |
|---|---|---|---|---|
| **1. General Approach to Corporate Reorganization** | 17 | 6.999 | 1.000 = 3.333<br>0.500 = 1.666<br>0.333 = 1.111<br>0.250 = 0.833 | 20 |
| **2. Planning and Initial Stage of the Reorganization** | 19 | 98.833 | 1.000 = 2.069<br>0.500 = 1.034<br>0.333 = 0.689 | 20 |
| **3. The Reorganization Plan** | 21 | 10.332 | 1.000 = 2.000<br>0.500 = 1.000<br>0.333 = 0.666 | 20 |
| **4. The Reorganization Approval Phase** | 7 | 3.5 | 1.000 = 4.444<br>0.500 = 2.222 | 20 |
| **5. Other Relevant Aspects** | 15 | 4.8 | 1.000 = 4.138<br>0.500 = 2.069<br>0.333 = 1.379 | 20 |
| **6. NPLs** | 6 | 0 | n.a. | Data gathering only |

**Annex 2:** Benchmarks and Indicators

| Benchmark | Description/Value | Indicators | Questions – Assessed | Questions – Non-weighted that inform the benchmark |
|---|---|---|---|---|
| **Flexibility** | The insolvency framework should support corporate rescue and should have the flexibility to meet the needs of different market participants.<br><br>(Core Insolvency Principles 1, 4 and 5) | 1. The legal system supports informal corporate restructuring and private workouts. | 1.1, 1.7, 1.8 | |
| | | 2. The insolvency law contains one or more specific procedures for business reorganisation that are available on application of the debtor or its creditors. | 1.2, 1.5 | 2.2, 2.3 |
| | | 3. A reorganisation procedure is available to businesses at an early stage of financial difficulties, without the need to evidence actual technical insolvency. | 2.1 | |
| | | 4. 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. | 2.7 | |
| | | 5. SMEs have access to simplified insolvency processes with fewer formalities and documentation requirements and/or shorter deadlines. | 1.14, 1.15, 1.16, | |
| **Efficiency** | The insolvency law should be efficient from a procedural and economic point of view and should balance the interests of all stakeholders.<br><br>(Core Insolvency Principles 2, 3, 7, 12, 13, 14) | 1. The reorganisation procedure can be completed within an expeditious timeframe. | 2.4, 5.15 | |
| | | 2. The law takes a universal approach and respects the principles of equal ranking and equal treatment of creditors. | 5.1, 5.5 | 5.10, 5.11, 5.13 |
| | | 3. The insolvency law is procedurally simple and maximises value for creditors. | 1.6, 5.3, 5.4 | |
| | | 4. Reorganisation proceedings are conducted in accordance with high ethical and professional standards. | 5.6 | 2.8, 2.9, |
| | | 5. The involvement of a court or administrative authority in the reorganisation proceeding is limited and is aimed at guaranteeing fairness and transparency. | 2.5, 4.1, 4.6 | 4.2 |
| | | 6. The tax regime supports the reorganisation process. | 2.20, 2.21 | |
| **Effectiveness** | The insolvency law should contain the necessary tools to facilitate a successful reorganisation.<br><br>(Core Insolvency Principles 6, 9, 10, 11, 13) | 1. The debtor is able to propose any reorganisation option (including a debt write-off) that is feasible and in the best interest of creditors. | 2.10, 3.1, 3.3, 3.21, 4.3, 4.4 | |
| | | 2. 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 as a result of the debtor filing for a reorganisation procedure. | 1.13, 2.11, 2.13, 2.14, 2.15 | |
| | | 3. The reorganisation plan can compromise the liabilities of all types of creditors, subject to the right of dissenting creditors to challenge the plan. | 2.16, 2.17, 2.18, 3.4, 4.5 | |
| | | 4. 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. | 3.6, 3.7, 3.9, 3.10 | |
| | | 5. 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. Shareholders and connected parties are not able to frustrate a viable reorganisation and no party can veto the reorganisation plan. | 3.2, 3.12, 3.13, 3.14, 3.15 3.16, 3.17, 3.18, | |
| | | 6. 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. | 1.9, 1.10, 1.11 | |

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