Covid-19 Emergency Measures in the EBRD Regions

Analysis and Overview of Debt Restructuring and Insolvency Measures for Businesses

European Bank
for Reconstruction and Development

Slovak Republic

START

Contents

EBRD Legal Transition Programme

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North Macedonia

Foreword

The Covid-19 health pandemic affected economies around the world. It led to social lockdowns and caused significant interruptions to business and trade. This had a disproportionate severe effect on emerging economies and smaller businesses.

From April to May 2022, the EBRD Legal Transition Programme carried out, in cooperation with the EBRD Office of the Chief Economist, a cross-jurisdictional EBRD Covid-19 Emergency Measures Survey of partner law firms on the emergency measures introduced by authorities to protect businesses across the economies in which the EBRD invests.[1] The aim of the survey was to gain a better overview and understanding of the different national and regional responses to the pandemic. The survey focused on the impact of emergency measures on debt restructuring and insolvency regimes for businesses.

This report presents the main results of the survey. The results and their impact are discussed in Chapter 4 (Corporate debt and business dynamism) of the EBRD Transition Report 2022-2023 'Business Unusual', within the broader context of corporate debt and 'zombie' companies – those companies that are in financial distress but avoid default due to continued lender support and/or forbearance.[2] The report complements the 2022 EBRD Business Reorganisation Assessment, which evaluated the 'permanent' legislative frameworks for business reorganisation in the EBRD regions.

The pandemic was the first time in recent history that many institutions, such as courts, were unable to operate for a period across a wide range of jurisdictions. Insolvency proceedings in many economies were paused, before moving online in some countries.

From a policy perspective, it was not the first time that legislators had considered the topic of insolvency as a tool for business rescue. The 2007-2008 global financial crisis had already triggered a widespread recognition that insolvency procedures should be more rescue (and less liquidation) focused. In the European Union, in the year immediately preceding the pandemic, many member states were already considering reforms to their national insolvency regimes to transpose a new EU directive on business rescue.[3]

Nevertheless, it was unprecedented for so many countries to introduce, more or less simultaneously, emergency legislation or regulations designed to create a temporary safe harbour for business. The introduction of jurisdictional restrictions on the ability of creditors to initiate insolvency proceedings, combined with regulatory pressure on banks and the practical difficulties of initiating court proceedings, undoubtedly saved some struggling businesses. Inevitably, it also postponed insolvency for some businesses that in 'normal times' would have been subject to insolvency proceedings. Businesses benefited in many countries from an extraordinary range of government support measures, including furlough schemes for employees, regulatory forbearance and tax relief. These were tracked extensively by the International Monetary Fund, the World Bank and other organisations.

The long-term effects of these emergency measures on the banking and business sectors, and on government finances, are still unclear. The measures were largely temporary and most have now expired. Nevertheless, it is interesting to consider the diversity of regional responses, particularly between developed and emerging economies.


Uzbekistan

[1] EBRD regions include Central Asia, Central Europe and the Baltic States, Greece, Eastern Europe and Caucasus, South-Eastern Europe, Southern and Eastern Mediterranean and Türkiye. See: https://www.ebrd.com/where-we-are.html

[2] See also: Bridge Zoller, C. Corporate Restructuring Laws Under Stress: Policy-Making in Uncertain Times. European Business Organization Law Review 24, 387–407 (2023). https://doi.org/10.1007/s40804-023-00274-6

[3] Directive (EU) 2019/1023 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: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1023

The responses to the EBRD Covid-19 Emergency Measures Survey reveal that many EBRD economies – 18 economies in total - introduced no emergency measures to protect businesses from insolvency. In contrast, countries such as the United Kingdom, Germany and France introduced insolvency legislation to mitigate the risk of mass insolvency filings. This report explores the reasons why policymakers may have selected not to introduce temporary insolvency measures and some of the cross-regional trends within the EBRD regions of operations.

With the ongoing war on Ukraine and a recessionary outlook for many countries, national legislators should now consider longer-term improvements to their insolvency frameworks that can support businesses during challenging times. These ought to focus on improving the effectiveness and efficiency of existing reorganisation tools for viable, but struggling businesses. An overview of key trends and developments in business reorganisation can be found in our EBRD Business Reorganisation Assessment report.

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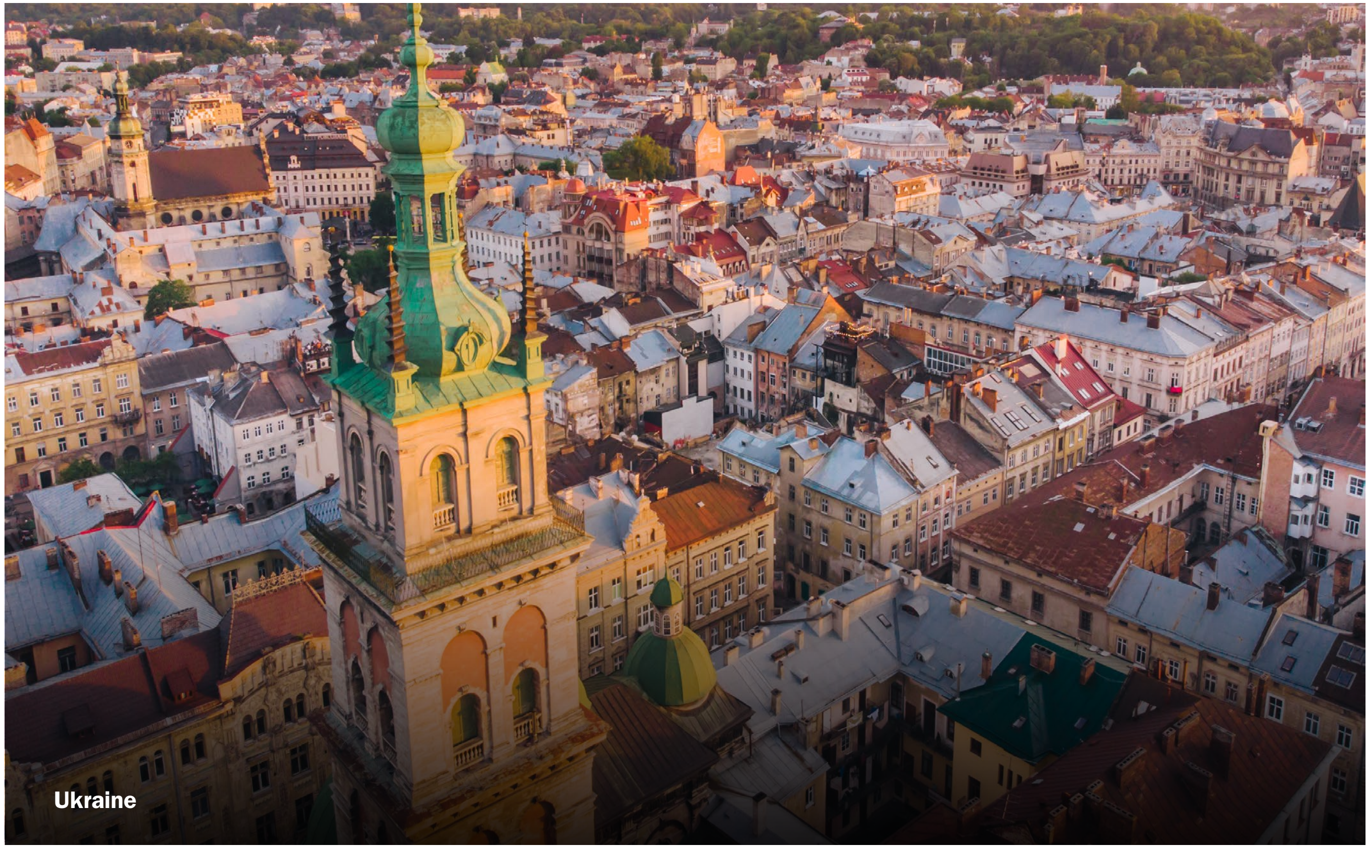


Acknowledgments

The EBRD would like to thank all of our partner law firms for their invaluable support in completing the Covid-19 Emergency Measures Survey and the additional information provided.

The initiative was led by Catherine Bridge Zoller, Senior Counsel from the EBRD Legal Transition Programme, with the support of Natalia Pagkou, Legal Consultant and Liubov Skoryk, Associate in the EBRD Legal Transition Programme. We would like to extend special thanks to our colleagues, Beata Javorcik, EBRD Chief Economist, Ralph De Haas, Director of Research and Cagatay Bircan, Lead Research Economist in the Office of the Chief Economist for their guidance and support.

Bulgaria

Glossary

Please see below some frequently used definitions in the report. These definitions should be interpreted according to the context. The terms bankruptcy and insolvency were used interchangeably in the survey, however for the purpose of this report the EBRD uses the general term 'insolvency'.

EBRD Business Reorganisation Assessment is the insolvency assessment on reorganisation procedures across EBRD economies of operations available at https://www.ebrd-restructuring.com.

EBRD Covid-19 Emergency Measures Survey is the survey carried out by the EBRD Legal Transition Programme from April 2022 to May 2022 on the emergency measures introduced by national authorities from March 2020 to April 2022. A copy of the survey is contained at Annex I.

Insolvency 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 (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 but at risk of insolvency. The term insolvency is used interchangeably with the term bankruptcy.

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. Generally, they are characterised as either reorganisation procedures or liquidation procedures.

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.

NPLs (non-performing loans) are bank loans where the borrower has defaulted by being overdue on principal or interest payments, or is unlikely to pay its credit obligations in full, without recourse to actions such as the sale of any assets. There is divergence in jurisdictional definitions with respect to the period or timeframe when a defaulted loan qualifies as an NPL. In the EU, this period is usually 90 days from when the payment is past due.

Reorganisation procedures are any formal legislative procedures aimed at addressing a debtor's financial difficulties with a view to preventing insolvency and ensuring the viability of the business.

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

Zombie companies are indebted businesses that generate some cash after covering operating costs but only have enough funds to service the interest on their loans, and not the principal. Hence, they continuously face refinancing risk and may face solvency risks.

Executive Summary

The EBRD Covid-19 Emergency Measures Survey covered the emergency measures introduced by authorities across 39 economies from March 2020 to April 2022.[4] The survey was addressed to law firms in 39 economies where the EBRD invests or has invested. EBRD economies include approximately one-third lower-middle-income economies, one-third upper-middle-income economies and one-third high-income economies, as described in the World Bank Country and Lending Groups.[5] The survey covered the period from March 2020 to April 2022 and three main areas of emergency legislation: insolvency legislation for businesses (corporate entities and entrepreneurs); banking regulations or recommendations regarding forbearance of bank loans and other Covid-19 measures; and tax relief measures. A breakdown of the number of responses per economy is contained in Annex II.

The results of the Covid-19 Emergency Measures Survey show that the introduction of emergency banking regulations and tax relief measures was significantly more popular than emergency insolvency legislation across the EBRD regions. Regulators in most economies (33 out of 39)[6], including all those in Eastern Europe and the Caucasus and South-Eastern Europe, as well as Cyprus and Greece, adopted emergency banking and tax measures. However, only 18 EBRD economies introduced emergency insolvency legislation. Respondent feedback in countries that failed to introduce such legislation suggests that insolvency was either not a priority for policymakers or that the legislative process was not considered to be sufficiently efficient.

Court closures also removed the need to legislate for temporary insolvency restrictions. Courts closed for a period in 25 out of 39 EBRD economies during the pandemic.

In most cases, this was a direct legal requirement, however in five economies (Albania, Bosnia and Herzegovina (Federation and Republika Srpska), Kazakhstan, the Kyrgyz Republic and Mongolia), the closure of the courts was discretionary or as a result of general social lockdowns. The average period of the suspension of court proceedings across EBRD economies was two months. However, in some countries courts were closed for a much longer period. In the case of Greece, the courts were closed for 16 months in total from 2020 to 2021.

Emergency insolvency measures

There were some clear geographical trends regarding the introduction of emergency insolvency legislation. None of the economies of the EBRD Southern and Eastern Mediterranean (SEMED) region introduced any emergency (or permanent) insolvency legislation in response to the Covid-19 pandemic or during the pandemic period.[7]

None of the EBRD economies in the South-Eastern Europe region introduced any emergency insolvency legislation in response to the Covid-19 pandemic, except for North Macedonia and Romania. In Central Asia, Kazakhstan and Uzbekistan were the only economies to introduce emergency insolvency legislation. Nevertheless, all EBRD European Union (EU) member countries introduced emergency legislation in response to the Covid-19 pandemic, with the exception of Greece and Cyprus.[8]

Half of the economies that introduced emergency insolvency measures suspended the debtor's or its management's obligation to file for insolvency.

[4] The EBRD Covid-19 Emergency Measures Survey includes Russia and Belarus. However since April 2022, Russia and Belarus no longer have access to the EBRD's resources. The EBRD currently invests in 36 economies

[5] The World Bank Country and Lending Groups (undated) https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups

[6] Moroccan counsel did not answer this question so it was counted as a negative response

[7] The Southern and Eastern Mediterranean region comprising Egypt, Jordan, Lebanon, Morocco and Tunisia is known within the EBRD as SEMED

[8] The EU EBRD economies that introduced emergency insolvency legislation were: Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, the Slovak Republic and Slovenia. The EBRD manages a portfolio in Cyprus, however Cyprus ceased to be an EBRD economy of operations in 2020

Those economies were the Czech Republic, Estonia, Latvia, Lithuania, Poland, Romania, Russia, the Slovak Republic and Slovenia. The same countries, except for Estonia, and with the addition of Croatia, Hungary, Kazakhstan, North Macedonia, Ukraine and Uzbekistan, introduced a temporary emergency stay or moratorium on insolvency filings by creditors. In Estonia, creditors were allowed to continue to file for a debtor's insolvency, without any emergency restrictions. In Türkiye and Uzbekistan, the emergency insolvency legislation took the form of a presidential decree and featured a simple prohibition on the initiation of any insolvency (and in the case of Türkiye also debt enforcement) proceedings by creditors and debtors. National authorities in only two economies (Poland and Hungary) introduced new, temporary insolvency procedures in response to perceived gaps in the insolvency legislation.[9]

Countries reacted at different speeds to the Covid-19 pandemic: the Czech Republic, Türkiye and Uzbekistan were all relatively quick to respond, adopting emergency insolvency legislation in March and April 2020, whereas Armenia and Ukraine did not complete the process until the fourth quarter of 2020. Once enacted, some emergency legislation remained on the statute books. In May 2022, emergency insolvency legislation was still in force in Armenia, Belarus, the Czech Republic, Hungary, Latvia, Lithuania, Poland and Romania, showing the lingering effects of the pandemic.

Emergency banking, regulatory and tax measures

Many analysts and commentators predicted a rise in NPLs (and insolvencies) in response to the major economic shock caused by the Covid-19 pandemic, which led to a 2.4 per cent contraction in output across the EBRD regions in 2020.[10]

However, NPLs have remained low. The banking sector in many EBRD and European economies has proved to be largely resilient in the face of these challenges, with stronger capital buffers and regulatory safety valves and more profitable and liquid banks than at the time of the 2007-2008 global financial crisis.[11]

Responses to the EBRD Covid-19 Emergency Measures Survey also confirm that the Covid-19 pandemic did not cause a huge wave of NPLs to materialise. NPL levels were undoubtedly kept low by the unprecedented levels of emergency government assistance and liquidity, as well as the legislative and non-legislative moratoria (standstill) on loan repayments, provided to businesses and consumers during the pandemic.

According to the survey, 33 out of 39 economies introduced emergency banking and regulatory measures to support the banking and business sectors.

These were wide ranging and can be grouped into measures that were destined to maintain the solvency of banks and forbearance measures that were intended to help businesses to remain solvent. The solvency of banks was secured with the relaxation of loan classification requirements, the formation of special reserves, injections of additional liquidity into banks and recommendations on avoiding the payment of dividends by banks to their shareholders. Forbearance measures typically took the form of grace periods provided by bank lenders to borrowers with respect to repayment obligations, the rescheduling or postponement of repayment dates by lenders and interest rate subsidies provided by the state for borrowers. However, in some EBRD economies of operations (Croatia, Georgia, Jordan, Moldova, North Macedonia and Poland), as well as in Belarus, compliance with emergency banking and regulatory measures was either partly or completely voluntary in nature.

[9] In Poland, the 'Shield 4.0' Covid-19 Act came into force in June 2020, which included simplified insolvency proceedings for businesses. The procedure was reportedly more popular with businesses than pre-pandemic business reorganisation procedures and was fully absorbed into permanent insolvency legislation at the end of 2021. Similarly, in Hungary, the legislator enacted a temporary business reorganisation procedure in response to the pandemic, which expired at the end of 2022

[10] EBRD regions include Central Asia, Central Europe and the Baltic States, Greece, Eastern Europe and Caucasus, South-Eastern Europe, Southern and Eastern Mediterranean and Türkiye. See: https://www.ebrd.com/where-we-are.html

[11] In Europe, NPLs have been on a downward trajectory since 2015, but the credit risks are rising due to higher interest rates and a challenging business environment. In most economies where the EBRD invests, the stock of NPLs is low, with the notable exception of Ukraine, where the Russian invasion has wiped out the country's success in recent years in reducing NPL levels

Only Estonia, Latvia and Lithuania (all three EU member states), Morocco, Turkmenistan and Uzbekistan abstained from introducing any emergency banking and regulatory measures.

Another 33 economies introduced emergency taxation measures. These measures included temporary tax reliefs and discounts, in particular for micro, small and medium-sized companies, the deferral of tax payments, with further tax payment by instalments or the use of tax credits, a relaxation in real estate tax, and the acceleration of tax refunds. In the EBRD Central Europe and the Baltic States region, all nine economies introduced tax relief measures.

Almost all national authorities in the EBRD regions took some legal or regulatory steps to assist businesses. Only one EBRD economy, Turkmenistan, refrained from introducing all three types of insolvency, banking and regulatory and tax relief measures to contain the negative impact of the pandemic on businesses.

Lithuania

Introduction

This report presents the findings of an EBRD survey across the EBRD regions launched in April 2022 and completed in May 2022.[12] The Covid-19 Emergency Measures Survey covered the enactment of emergency legislation by governments to assist businesses in response to the pandemic. It was conducted for purposes of collecting information for a chapter in the EBRD Transition Report 2022-2023 prepared by the EBRD's Office of the Chief Economist in partnership with the EBRD's Legal Transition Programme.

The survey included insolvency (also referred to as bankruptcy), banking and regulatory, as well as tax relief measures. As the survey responses revealed, emergency banking and regulatory measures, particularly those aimed at ensuring banks showed forbearance to their borrowers in respect of amounts due under bank loans, may have been an indirect way of helping businesses to avoid insolvency.

The creation of well-functioning and efficient insolvency frameworks that promote opportunities for business reorganisation, as well as liquidation, remains a challenge for many legislators. In many emerging economies the challenge is particularly acute due to the underdeveloped nature of the legal and institutional frameworks, as well as the lack of a 'rescue culture', which is a relatively new trend in many developing economies.

In 2022 the EBRD Legal Transition Programme published its research and assessment of business reorganisation within national insolvency systems across all EBRD economies.[13] The EBRD Business Reorganisation Assessment was a direct response to the Covid-19 pandemic and the concern that insolvency systems around the world needed to be strengthened to support struggling businesses.[14] However, the assessment was primarily concerned with 'permanent' procedures and did not analyse specifically the temporary emergency measures that were being adopted in parallel by many governments in response to the Covid-19 pandemic. These have now been covered by the Emergency Measures Covid-19 Survey.

The EBRD Business Reorganisation Assessment shows that national authorities in most economies covered by the assessment need to strengthen their laws in respect to business reorganisation and to tailor those laws so they can be used effectively by businesses and their creditors.[15] Furthermore, the assessment reveals a significant data gap when it comes to insolvency.[16] Only six of the economies covered by the assessment (Belarus, Greece, Latvia, Russia, the Slovak Republic and Slovenia) currently have a centralised electronic insolvency register. Much of the insolvency data collected in other countries is incomplete or out of date, which tends to reduce transparency for creditors, debtors and other stakeholders. This may be due to the fact that many economies have not yet sufficiently invested in insolvency regulation. Only five economies in the regions where the EBRD invests at present have a dedicated government regulatory agency for insolvency.[17] At the same time, greater investment in regulation only makes sense where there is a significant volume of insolvency cases. Here, the analysis of insolvency data in the assessment suggests insolvency procedures are not used in practice in a number of jurisdictions.

[12] The EBRD Covid-19 Emergency Measures Survey included respondent law firms from Russia and Belarus. However since April 2022, Russia and Belarus no longer have access to the EBRD's resources. The EBRD currently invests in 36 economies

[13] The Business Reorganisation Assessment measures the availability, effectiveness and extensiveness of formal legislative reorganisation procedures under legislation in the 38 EBRD economies of operations

[14] This is in line with international best practices, including the EBRD Core Insolvency Principles, the Directive (EU) 2019/1023 on preventive restructuring frameworks and the World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes

[15] On a scale of 0 to 110, economies only averaged 64 in terms of the strength and completeness of their legal, institutional and regulatory frameworks for the rescue of businesses, with scores ranging from 85 in Greece to just 38 in Lebanon. Poland, Lithuania, Romania and Kosovo were the other top performers in terms of overall scores. See Figure 6.3 of the EBRD Business Reorganisation Assessment Main Report, p. 64, available at: https://ebrd-restructuring.com/main-report

[16] See Annex 3 (Data Transparency Factor) of the EBRD Business Reorganisation Assessment available at: https://ebrd-restructuring.com/annexes

[17] Albania, the Kyrgyz Republic, Latvia, Serbia and Uzbekistan

Morocco

This report on responses to the Covid-19 Emergency Measures Survey complements the EBRD Business Reorganisation Assessment in a number of ways. First, it demonstrates that insolvency laws are not fully within the spectrum of many governmental legislators. Second, it shows that legislators may use alternatives to insolvency laws in response to perceived weaknesses in the legislative regime – for example, indirect measures introduced by the banking regulator requiring banks to show forbearance. Third, this report reveals that most of the actions taken by governments during the Covid-19 pandemic period were only temporary.

To ensure better 'crisis-preparedness' and business resilience in the future, and to guard against the fragmentation of investment and financial networks across jurisdictions with diverging insolvency frameworks, legislators and policymakers need to work on changes to their permanent insolvency laws. In some economies this also requires reflection and understanding on why existing insolvency laws are not used and on how these could be used in the future to ensure better options for businesses in financial difficulties and their creditors, as well as long-term economic prosperity and growth.

II. Methodology

Kosovo

CONTINUE →

Methodology

The data presented in this report derives from responses to the EBRD Covid-19 Emergency Measures Survey. Depending on the question and context, the data is analysed according to: i) the percentage of the EBRD economies surveyed; or ii) the percentage of total (unweighted) answers received from survey respondents.[18]

For many economies, more than one partner law firms participated in the survey. In order to extract one line of response per economy, for the questions that needed to be evaluated as a percentage of EBRD economies, all answers were analysed and, if necessary, overridden based on the totality of information received and research of relevant legislation.

An example of validation was the case where the respondent replied affirmatively to the question regarding the adoption of emergency Covid-19 insolvency legislation. In some cases, the respondent understood the question to refer to general restrictions or measures adopted in order to mitigate the risk of the pandemic, such as health measures, rather than measures of an economic nature. Graphs representing percentages were automatically produced by the Smart Survey platform used to conduct the survey, while pie charts were created manually and based on the validated data.

In total, 67 completed surveys were collected, of which 59 were submitted online and eight paper versions shared via email, representing 39 economies[19], as shown in the table to the right.

Economy	Number of Respondents	Economy	Number of Respondents
Albania	1	Lithuania	2
Armenia	1	Moldova	1
Azerbaijan	1	Mongolia	1
Bosnia and Herzegovina (Federation and Republika Srpska)	2	Montenegro	4
		Morocco	1
		North Macedonia	3
Belarus	1	Poland	1
Bulgaria	3	Romania	2
Croatia	3	Russia	1
Cyprus	1	Serbia	3
Czech Republic	1	Slovak Republic	1
Egypt	1	Slovenia	3
Estonia	2	Tajikistan	1
Georgia	2	Tunisia	1
Greece	2	Türkiye	2
Hungary	2	Turkmenistan	1
Jordan	3	Ukraine	1
Kazakhstan	2	Uzbekistan	1
Kosovo	1	West Bank and Gaza	3
Kyrgyzstan	1		
Lebanon	3		
Latvia	1		


Greece

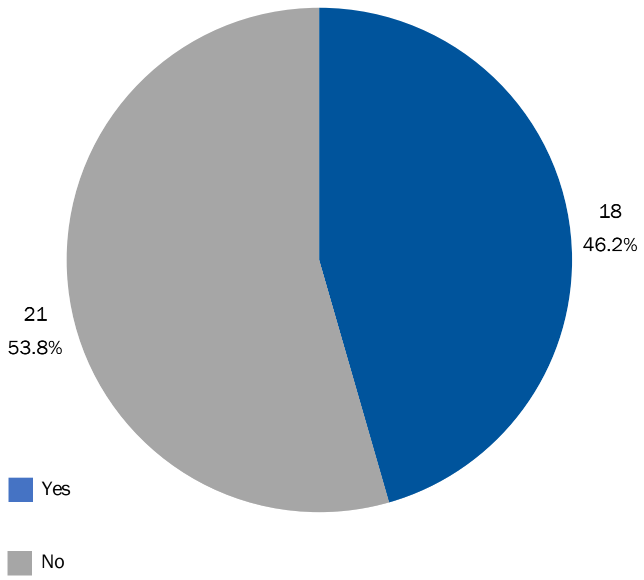
[18] In some economies, there was more than one respondent law firm

[19] The EBRD Covid-19 Emergency Measures Survey included Russia and Belarus. However in April 2022, as a result of the Russian invasion of Ukraine, the EBRD Board of Governors voted overwhelmingly to suspend Russia and Belarus from accessing the Bank's resources, under Article 8.3 of the Agreement Establishing the Bank. The EBRD currently invests in 36 economies

III. Overview of Adopted Emergency Measures

CONTINUE →

Figure 1: Did your jurisdiction introduce any insolvency/bankruptcy legislation in response to the Covid-19 pandemic?[20]



The cross-jurisdictional Covid-19 Emergency Measures Survey showed that almost half of the economies (18 out of the 39 covered) introduced Covid-19 related 'emergency insolvency legislation'.[21] Egypt, Jordan, Lebanon, Morocco, Tunisia and West Bank and Gaza, economies that form the entire EBRD SEMED region, did not adopt any emergency insolvency legislation.

Cyprus and Greece, which form a separate EBRD region, also abstained from implementing any emergency insolvency legislation. However, Greece introduced insolvency legislation, the Debt Settlement and Facilitation of a Second Chance Law No. 4738/2020, published in the Official Gazette in October 2020, which became effective on 1 March 2021.[22] Given the timing and the business rescue focus of the legislation, this partly explains why there was no additional emergency insolvency legislation in Greece. Greece and Cyprus were the only two EU member states among the EBRD's economies of operations that did not introduce specific emergency insolvency legislation.

In contrast, Hungary engaged significant efforts in adopting emergency insolvency legislation. This covered aspects such as a payment moratorium for Hungarian businesses, the introduction of virtual tools such as electronic filings and online court hearings, the suspension of enforcement proceedings, and the increase of the minimum debt requirements for creditors to initiate insolvency procedures. In parallel, the Hungarian legislator introduced a new reorganisation procedure, available until 18 June 2021, aiming to improve the financial situation of companies that had suffered huge losses due to Covid-19 pandemic. The availability of the procedure was extended until 1 June 2022 and again until 31 December 2022. The procedure was an extraordinary measure helping the debtor to continue its operations by reaching an agreement with its creditors within the framework of a reorganisation plan.

[20] Linked to Question 3 of the EBRD Covid-19 Emergency Measures Survey

[21] The term 'emergency insolvency legislation' is used throughout this report to refer to the amendments that governments introduced to business-related insolvency laws. Often the amendments were on a temporary basis, although some authorities retained certain amendments or temporary procedures on the statute books

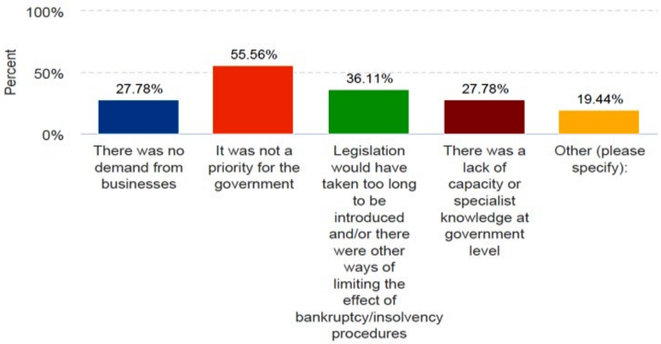
[22] The legislation was subsequently amended and the provisions with respect to early warning tools and the out-of-court debt settlement mechanism were only effective from 1 June 2021. It was introduced as part of the transposition of the 2019/1023 EU Directive on preventive restructuring frameworks

The reaction time also differed among EBRD economies. The Czech Republic, Türkiye and Uzbekistan were relatively fast to respond, as they adopted emergency insolvency legislation already in March and April 2020. In contrast, Armenia and Ukraine only completed the process during the last quarter of 2020. As of May 2022, emergency insolvency legislation was still in force in Armenia, Belarus, the Czech Republic, Hungary, Latvia, Lithuania, Poland and Romania. This can be perceived as a lingering effect of the Covid-19 pandemic as no clear-cut lines exist on when it will end.

Emergency insolvency reforms also varied in terms of their content and substance. A few countries, such as Hungary and Poland, made substantial modifications to their insolvency legislation as part of emergency measures. Seven economies (the Czech Republic, Latvia, Lithuania, Poland, Romania, Russia and Slovenia) imposed a suspension on the debtor's obligation to file for insolvency. It should be noted that a suspension on the debtor's obligation to file for insolvency was not needed in many economies because there was no statutory duty for directors to file for insolvency. However, creditors still had the ability to file for insolvency in economies such as Lithuania, Poland (for one out of four available reorganisation procedures), Romania and Russia.

Respondent feedback in countries that did not introduce emergency insolvency measures suggests that insolvency was either not a priority for policymakers (for example, Cyprus, Jordan, Lebanon and Serbia) or that the legislative process was not efficient (for example, Kosovo and West Bank and Gaza). Figure 2 covers the main reasons for the lack of emergency insolvency measures during the Covid-19 pandemic period. It reflects the percentage of total answers received from survey respondents.

Figure 2: In your view, why was there no emergency insolvency/ bankruptcy legislation?[23]



Respondent feedback for each of the jurisdictions covered by the EBRD Covid-19 Emergency Measures Survey regarding the reasons why no emergency insolvency legislation can be accessed here.

[23] Linked to Question 7 of the EBRD Covid-19 Emergency Measures Survey

Emergency Banking, Tax and Regulatory Measures

According to the data collected from the Covid-19 Emergency Measures Survey, emergency banking and tax regulations were much more popular than emergency insolvency measures (see Figures 3 and 4). Regulators in most EBRD economies (33 out of 39)[24], including all regions in Eastern Europe and the Caucasus, South-Eastern Europe, Cyprus and Greece, adopted emergency banking and tax measures.

Figure 3: Did the banking authority introduce any regulation or recommendation to the banking sector?[25]

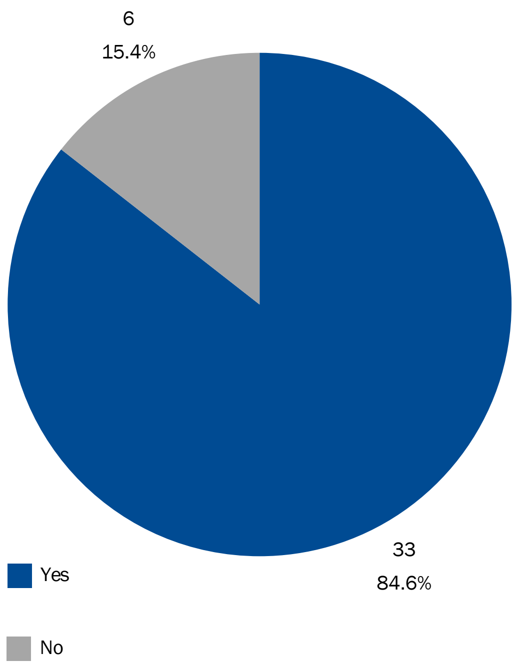
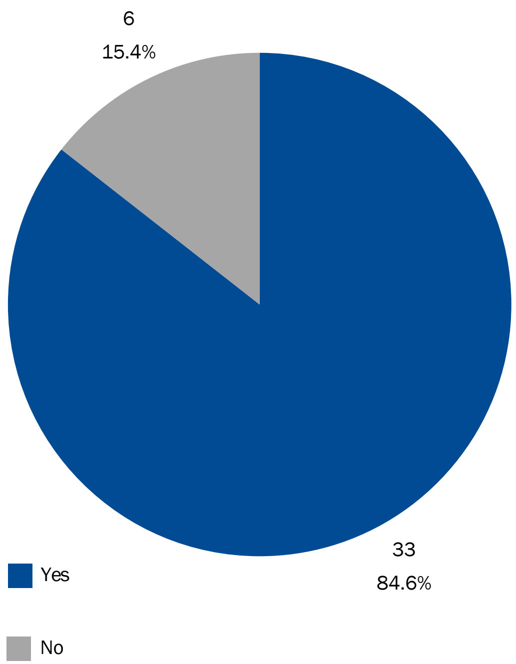


Figure 4: Did the legislator introduce any Covid-19 related tax relief measures?[26]



[24] Morocco was the only economy that did not answer these questions so it was calculated as a negative response

[25] Linked to Questions 17 and 19 of the EBRD Covid-19 Emergency Measures Survey. Morocco was the only economy that did not answer this question so it was calculated as a negative response

[26] Linked to Question 20 of the EBRD Covid-19 Emergency Measures Survey. Morocco was the only economy that did not answer this question

On the banking side, forbearance measures were the most popular type of measure among the EBRD economies, as 26 out of 33 economies introduced relevant banking regulations aimed at providing relief for borrowers from the repayment of loan principal and the capitalisation of (unpaid) interest.[27]

Estonia, Latvia, Lithuania, Morocco, Turkmenistan and Uzbekistan did not adopt Covid-19-related banking regulations. However, they all introduced both tax measures and emergency insolvency legislation. Banking regulation and emergency insolvency legislation were in these countries mutually exclusive. All economies in Central Europe and the Baltic States adopted emergency tax legislation.

On the taxation side, the most common measures were temporary tax reliefs or the reduction of personal and corporate income tax, in particular for the micro, small and medium-sized enterprises and reduction of real estate tax.

Estonia suspended the requirement to publish quarterly information on companies' tax payments, turnover and number of employees from 12 March 2020 until the end of the emergency situation. In Romania, medicines and medical equipment that could be used in the prevention, limitation, treatment and overall fight against Covid-19 were exempt from VAT where supplied to non-governmental organisations.

Only one EBRD economy (Turkmenistan) refrained from taking any initiative in the fields of taxation, insolvency and banking regulation to tackle the consequences of the pandemic.


Kazakhstan

Respondent feedback regarding emergency insolvency measures, banking regulations and tax relief measures for each of the jurisdictions covered by the EBRD Covid-19 Emergency Measures Survey can be accessed here.

[27] Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Egypt, Georgia, Greece, Jordan, Kazakhstan, the Kyrgyz Republic, Lebanon, Moldova, Mongolia, Montenegro, North Macedonia, Poland, Romania, Russia, Serbia, the Slovak Republic, Slovenia, Tajikistan, Tunisia, Türkiye, Ukraine and West Bank and Gaza

IV. Emergency Insolvency Measures Analysis

Kyrgyz Republic

CONTINUE

Emergency Insolvency Measures Analysis

As mentioned in the previous section, only 18 out of 39 EBRD economies adopted emergency insolvency legislation to tackle the effects of the Covid-19 pandemic. The lack of coordinated efforts in the insolvency field in times of crisis may be attributable to the fact that insolvency regulation is underdeveloped in many EBRD economies. This section explores some of the linkages between the Covid-19 Emergency Measures Survey results and the EBRD's research on insolvency laws.

Jordan

Latvia

Regulatory frameworks

According to the EBRD's research to date, the main focus of insolvency regulation (where it exists) is the supervision and monitoring of insolvency practitioners. In 2014, the EBRD completed an assessment of the insolvency office holder (IOH) in 27 economies, with economy profiles updated in 2016. The findings from this assessment were used to update the EBRD Insolvency Office Holder Principles in 2021.

The EBRD IOH assessment report describes three main regulatory systems for the supervision of IOHs in the EBRD regions: i) a self-regulatory model for IOH regulation; ii) a dedicated state agency or department with regulatory responsibility for the IOH profession; and iii) a government ministry entrusted with the regulatory responsibilities regarding IOHs.

The 2022 EBRD Business Reorganisation Assessment confirmed that for the vast majority of EBRD economies (approximately two-thirds) the main insolvency regulator is a government ministry.[28]

Government ministries are not full-time, specialised regulators. They are concerned with the formulation of policies and the drafting and passage of legislation, rather than with the regulation of professionals, such as IOHs. In some economies, the absence of a dedicated agency for insolvency regulation and the limited public resources can partly explain why no initiatives were taken in enacting emergency insolvency legislation during the pandemic period. Government ministries in many economies lacked the necessary capacity and also, in cases where the ministries historically played a more passive role in the regulation of the insolvency system, the internal expertise. In addition, some government ministries had more pressing concerns, such as public health and safety.

In other jurisdictions, where no ministry is actively involved, regulatory oversight of the insolvency system is left to the court. In Lebanon, Tajikistan and West Bank and Gaza, for example, courts supervise all regulatory aspects of insolvency proceedings. In these jurisdictions, insolvency regulation is more passive than in countries with a dedicated state or private association regulator.

Only a minority of countries have strong regulatory systems for IOHs. In Albania, the Kyrgyz Republic, Latvia, Serbia and Uzbekistan a dedicated state agency acts as an insolvency regulator. A few countries rely on a predominantly self-regulatory model. In Armenia, Romania and Russia a self-regulatory model for insolvency practitioners is applicable, however a government ministry has some oversight over the self-regulatory association in Armenia.

Lack of data (and practice)

Another reason for the lack of emergency insolvency legislation was undoubtedly the lack of practice or an observed volume of insolvency cases in some economies. The EBRD Business Reorganisation Assessment assessed the availability and accessibility of insolvency data in all EBRD economies and revealed a significant 'data' gap. Only six out of the EBRD's economies at the time offered a dedicated electronic insolvency register, which centralises data for insolvency and reorganisation procedures*:

1 | **Belarus** (unified state register on insolvency information)

2 | **Czech Republic**[29] (insolvency register)

3 | **Greece** (electronic insolvency and reorganisation register)

4 | **Latvia** (insolvency register)

5 | **Russia** (unified federal register on insolvency information)

6 | **Slovak Republic** (insolvency register)

7 | **Slovenia** (as part of a broader government business register)

* The EBRD survey includes Russia and Belarus. However in April 2022, as a result of the Russian invasion of Ukraine, the EBRD Board of Governors voted overwhelmingly to suspend Russia and Belarus from accessing the Bank's resources, under Article 8.3 of the Agreement Establishing the Bank. The EBRD currently invests in 36 economies.

[28] Azerbaijan, Bosnia and Herzegovina (Federation and Republika Srpska), Bulgaria, Croatia, Egypt, Georgia, Greece, Hungary, Kazakhstan, Kosovo, Latvia, Lithuania, Moldova, Mongolia, Montenegro, North Macedonia, Poland, Slovak Republic, Slovenia, Tunisia, Türkiye, Turkmenistan and Ukraine

[29] The Czech Republic was not part of the Assessment as its status as an economy of operations was re-introduced following the commencement of the Assessment. This information regarding the insolvency register is not included in the Assessment findings

While some of these economies mentioned above (the Czech Republic, Greece, Latvia and the Slovak Republic) have already quite advanced frameworks, these are relatively new and there is limited historic data. For example, in Greece the electronic insolvency register began operating in 2021.[30]

Much of the insolvency data collected in other economies is incomplete or not up to date and partially this is due to the lack of a centralised regulator and/or low levels of digitalisation. The Business Reorganisation Assessment Annex 3: Data Transparency Factor revealed that for Bosnia and Herzegovina (Federation and Republika Srpska), Egypt, Jordan, Kosovo, Lebanon, Mongolia, Morocco, Tajikistan, Tunisia and West Bank and Gaza insolvency data is not centralised and maintained by an official authority and thus they are not available online.[31] The results of the survey confirmed that no emergency insolvency legislation was adopted in any of those economies.

Ten economies covered by the Assessment did not publish any insolvency data and have no identifiable central authority for collection of insolvency data. This lack of data significantly reduces transparency for creditors, debtors and other stakeholders. However, recent EU insolvency legislation will help to narrow the insolvency data gap in EU member states and promote digital solutions for insolvency procedures in the near future.[32] It is hoped that this will lead to spillover effects in non-EU economies where the EBRD invests. A far greater challenge remains in respect of encouraging market participants to use the business insolvency frameworks that exist when needed.


Lebanon

[30] Collection and publication of insolvency data is expected to improve for all EU member EBRD countries of operation within the next few years due to EU legislation, specifically: the European Regulation on insolvency proceedings and the Directive (EU) 2019/1023 on preventive restructuring frameworks

[31] The assessment also identified that in many economies the courts play a leading role in collecting insolvency data, which may not always be efficient. For Bulgaria, Ukraine and Uzbekistan, the supreme courts are responsible for insolvency data, while in Moldova a number of courts are required to maintain a public register of insolvency cases. In Montenegro, some data is available on the website of the commercial court

[32] Due to the requirement to establish national insolvency registers and interconnection of such registers under Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings and the data collection requirements under the Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks

Legislative approaches to emergency insolvency measures

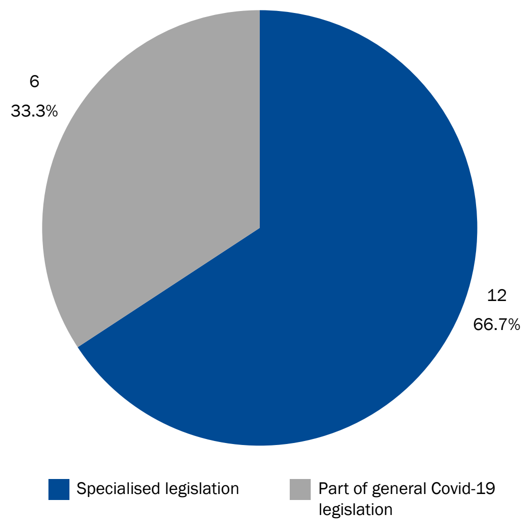
Some of the 18 economies that adopted emergency insolvency legislation ranked highly in the EBRD Business Reorganisation Assessment. For example, Poland ranked in second place in overall performance, while Lithuania, which during the Covid-19 pandemic introduced extremely targeted insolvency emergency measures[33], ranked in third place for transparency.[34]

The data collected from the survey showed that out of the 18 economies, Armenia, Croatia, Hungary, Kazakhstan, Lithuania, North Macedonia, Poland, Romania, Russia, the Slovak Republic, Türkiye and Ukraine were the only economies that adopted stand-alone insolvency focused emergency legislation, while in Belarus, the Czech Republic, Estonia, Latvia, Slovenia and Uzbekistan insolvency related provisions were included in the general Covid-19 legislation. See Figure 5 for a related overview.

Of the 18 economies that introduced emergency insolvency measures, 13 economies[35] included an express stay or moratorium on insolvency filings by creditors. In Hungary the debtor was given an extended period to settle its debts, effectively resulting in a stay or postponement of any proceedings. The position in Poland was indirectly similar due to the closure of courts. Out of 18 economies that adopted emergency insolvency legislation, eight economies (Lithuania, North Macedonia, Romania[36], Russia, the Slovak Republic, Slovenia, Ukraine and Uzbekistan) imposed temporary prohibitions on creditors filing for insolvency of the debtor.

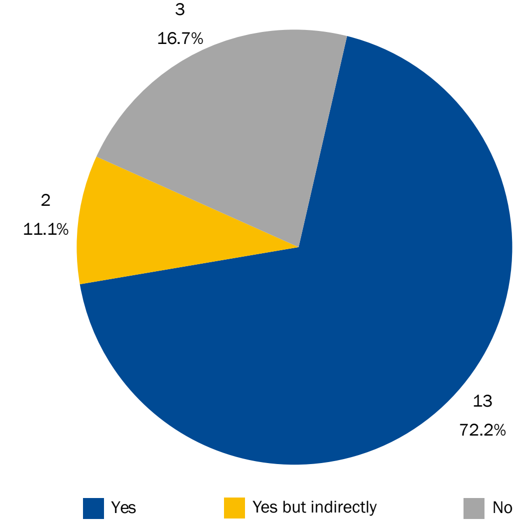
In the Czech Republic, Latvia, Lithuania, Poland, Romania and Russia one of the emergency measures adopted was imposing the suspension of debtors' obligation to file for insolvency.[37]

Figure 5: Nature of the insolvency/bankruptcy legislation introduced in response to the Covid-19 pandemic[38]



In Croatia, Hungary, Romania, Russia the Slovak Republic and Türkiye the legislator introduced a temporary prohibition on enforcement proceedings, while in Armenia and Romania, the legislator increased the entry thresholds to file for insolvency. See Figure 6 for a related overview.

Figure 6: Did the emergency legislation result in any stay or moratorium on insolvency/bankruptcy filings by creditors?[39]



[33] Suspension of the director's obligation to apply to the court for insolvency proceedings for the duration of the quarantine and for three months after the quarantine is lifted; restriction of the right of creditors to apply to the court for insolvency proceedings for the period of the official quarantine; and the restructuring proceedings could not be terminated during the quarantine period and for a period of three months after it is lifted, even if the plan is not properly implemented

[34] The Assessment ranked economies with a 10-point 'Data Transparency Bonus', which measured the extent to which economies publish comprehensive insolvency data. These rankings reflect the Data Transparency Bonus

[35] Croatia, the Czech Republic, Kazakhstan, Latvia, Lithuania, North Macedonia, Romania, Russia, the Slovak Republic, Slovenia, Türkiye, Ukraine and Uzbekistan

[36] Unless creditors could document an attempt to conclude a payment agreement with the debtor, which failed

[37] A debtor's statutory obligation to file for insolvency does not exist in many EBRD economies' legislation so it was not needed to the same extent as in Western Europe

[38] This figure is a result of analysis made on the answers provided in Question 4 of the EBRD Covid-19 Emergency Measures Survey

[39] Linked to Question 5 of the EBRD Covid-19 Emergency Measures Survey


Hungary

According to the Covid-19 Emergency Measures Survey, court procedural deadlines, which are measures of general nature and not insolvency-specific, were extended in Romania, Russia and the Slovak Republic. Hungary, Poland and Russia were the only three economies that actually introduced new simplified reorganisation procedures to assist debtors in tackling the obstacles caused by the Covid-19 pandemic. All were, however, mixed in terms of their performance under the EBRD Business Reorganisation Assessment, ranking in 35th, 2nd and 13th place respectively.[40]

A few economies transposed emergency insolvency legislation into permanent insolvency legislation. The survey also investigated whether any temporary emergency legislation relating to insolvency has been transposed as integral part of the permanent insolvency legislative framework in any of the EBRD economies. While respondents from Poland, Latvia, Russia and North Macedonia affirmed the transposition of some emergency insolvency measures into permanent legislation, it was necessary to disregard the feedback from North Macedonia as it related to general legislation with no connection to insolvency frameworks.

Poland: The Polish Covid-19 Act 'Shield 4.0' introduced a simplified procedure for business reorganisation proposals. Its usage doubled in 2021 compared to 2020, when Shield 4.0 was first introduced. The popularity of the new simplified restructuring proceedings resulted in very similar provisions being retained as part of the Polish Restructuring Law adopted on 15 May 2015 (as amended). The new procedure (with minor changes) was introduced in articles 226a - 226h of the Restructuring Law as one of the options for conducting the procedure for approval of an arrangement.

[40] For further details see p. 56 of the EBRD Business Reorganisation Assessment Main Report available at: https://ebrd-restructuring.com/main-report

Latvia: The permanent legislation that resulted from the Covid-19 temporary provisions is the right to submit applications for insolvency and restructuring proceedings electronically and to hold creditor committee meetings remotely.

Russia: The retained legislation that resulted from the Covid-19 temporary provisions included: i) the right, in exceptional cases, of the Russian Government to impose a moratorium on creditors' initiation of insolvency proceedings in order to stabilise the economy; and ii) the creation of the new concept of a judicial instalment plan which permits an eligible debtor filing a voluntary insolvency petition at the so-called 'observation' stage (or in a debt restructuring procedure, in the case of an individual entrepreneur) to petition, as from the date of the first creditors' meeting, for the court to approve a plan.

The 18 economies that adopted emergency insolvency legislation reacted at different speeds. The Czech Republic, Türkiye and Uzbekistan had the fastest legislative reflexes, adopting emergency insolvency legislation from March to April 2020. Armenia and Ukraine were the slowest and completed the process during the fourth quarter of 2020. As of May 2022, emergency insolvency legislation was still in force in Armenia, Belarus, the Czech Republic, Hungary, Latvia, Lithuania, Poland and Romania.

No SME-specific emergency insolvency legislation was adopted during the Covid-19 pandemic in the EBRD regions. However, there were some SME-related emergency banking measures in countries such as Greece and Mongolia.

In Greece, interest rate subsidies for SMEs were adopted, while in Mongolia, a long-term repurchase agreement (repo financing) instrument was introduced by the banking authority to support SMEs and non-mining exports. In Egypt, in March 2020 the central bank published a circular deferring all credits due for SMEs, but also for other customers, including other corporates and individuals, for a period of six months as well as exempting them from any late interest fees or additional fines for late payments.[41] In addition, according to the circular, the interest calculated on the delayed amount would be capitalised over the period of the loan.

Respondent feedback regarding emergency insolvency measures and their content for each of the jurisdictions covered by the EBRD Covid-19 Emergency Measures Survey can be accessed here.

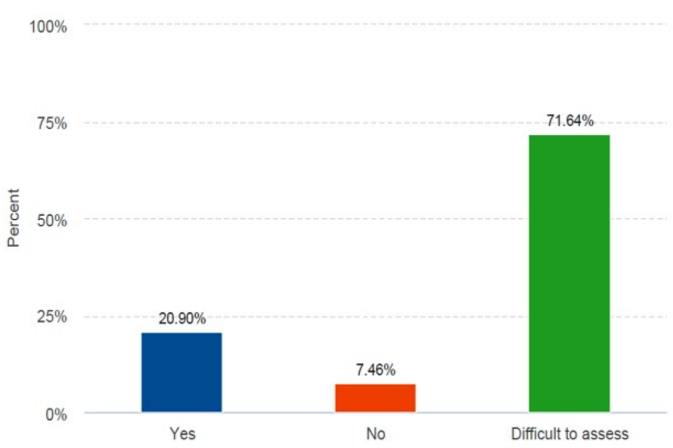
[41] Central Bank of Egypt Circular (20 March 2020), https://www.cbe.org.eg/-/media/project/cbe/file/long-context/central-bank-of-egypts-measures-to-offset-the-impact-of-covid19.pdf

Zombie companies

Zombie companies remain a legacy of the Covid-19 pandemic. EBRD survey respondents reported an increase in zombie companies in 12 countries (Albania, Bulgaria, Cyprus, Greece, Jordan, Moldova, Montenegro, North Macedonia, Romania, Serbia, the Slovak Republic and Türkiye) during the period between April 2021 and April 2022. This may have been due to government financial support for businesses, as well as emergency legislative measures discussed previously.

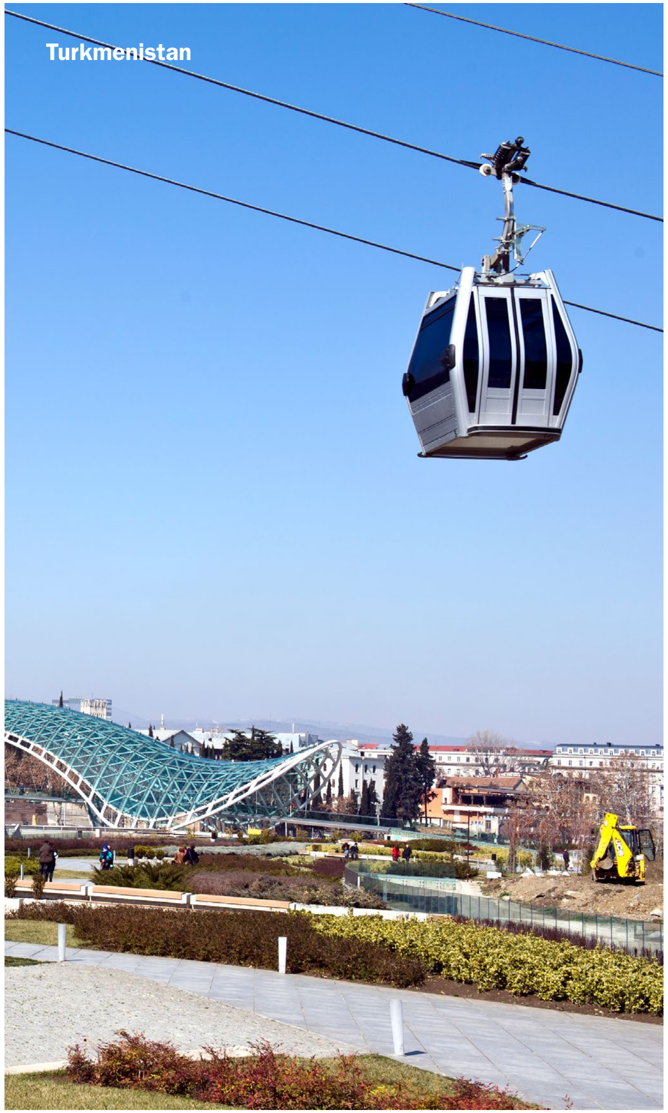
Figures 7, 8 and 9 contain perception-based data collected from survey respondents with respect to the existence of zombie companies. They reflect the percentage of total answers received from survey respondents.

Figure 7: Has there been an increase in zombie companies in your jurisdiction due to Covid-19 during the past 12 months?[42]



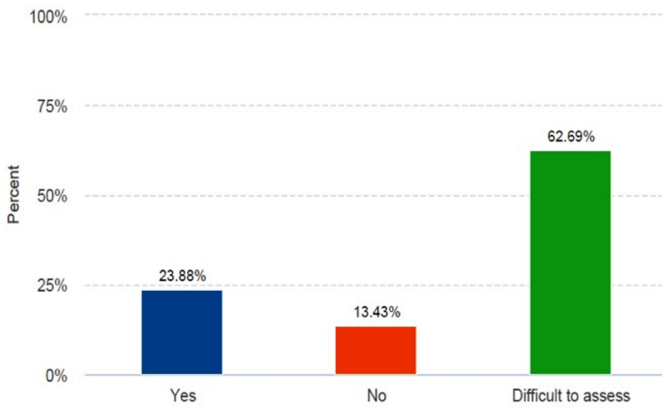
[42] Linked to Question 15 of the EBRD Covid-19 Emergency Measures Survey

[43] Linked to Question 16 of the EBRD Covid-19 Emergency Measures Survey



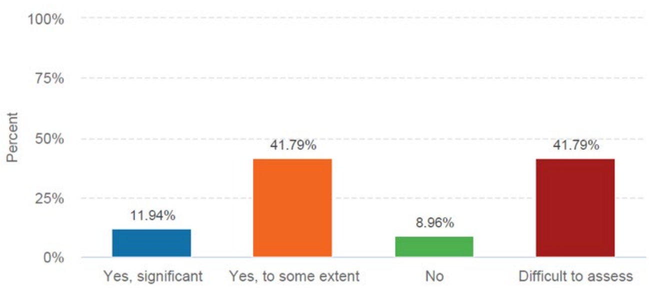
The vast majority of respondents replied that it is difficult to assess whether there has been an increase in zombie companies. For Bulgaria, Montenegro, North Macedonia and Serbia there were conflicting answers between "Yes" and "Difficult to assess". Respondents from Belarus, Georgia, Greece (only one out of the two respondents), Kosovo and West Bank and Gaza emphatically answered that there was no increase in zombie companies.

Figure 8: In your view, will the jurisdiction see a further increase in Covid-19 pandemic related zombie companies in the next 12 months starting 1 May 2022?[43]



Half of the respondents replied that it is difficult to assess whether they can foresee a further increase in zombie companies. For Bulgaria, Croatia, North Macedonia, Serbia and Türkiye there were conflicting answers between "Yes" and "Difficult to assess". For West Bank and Gaza and Slovenia there were conflicting answers between "No" and "Difficult to assess". Respondents from Belarus, Egypt, Georgia, Tajikistan and Ukraine emphatically answered that they do not foresee a further increase in zombie companies.

Figure 9: In your view, was there a problem of 'zombie companies' in your jurisdiction prior to Covid-19?[44]



Respondents from Jordan, Lithuania, Kazakhstan, Montenegro, North Macedonia, Tunisia and West Bank and Gaza replied that relevant data was not available so they could not answer this question. Respondents from Cyprus, Estonia, Greece, Montenegro, Serbia and Türkiye replied that there was already either a significant issue or to some extent an issue with zombie companies in their economies due to the financial crisis and the business climate.

Some responses in relation to zombie companies are set out below:

Bulgaria: "Although there might be zombie companies in Bulgaria, banks tend to be relatively prudent in relation to their corporate portfolio, although this depends on the risk appetite and policy of the credit institution."

Croatia: "Insolvency is almost exclusively initiated in the case of the blocked bank accounts. For this reason, as long as the bank accounts are not blocked, a zombie company which may be over-indebted continues to operate until it is no longer able to repay interest and smaller claims. The real issue with Croatian insolvency is that there is no obligation to initiate insolvency even in case when there is negative equity."

Romania: "According to the latest study there are approximately 6,000-7,000 active companies facing financial difficulties, with some of them being in a state of imminent insolvency for years"

Hungary: "According to the 2019 Inflation Report of the Hungarian National Bank, based on the 2017 data of the National Tax and Customs Administration there were at least 56,200 zombie companies in Hungary. The number of zombie companies has continually grown in the previous years."

Slovenia: "Zombie companies are not a large problem in Slovenia, however they do exist. The problem is often delaying the commencement of insolvency proceedings against such companies."

Türkiye: "The working group report of the Ministry of Development for the Eleventh Development Plan in 2018 acknowledged the zombie companies as the SMEs which are able to live only with the financial loans, and therefore operate with high credit risks and without any contribution to the economy due to ineffectiveness and low employment."

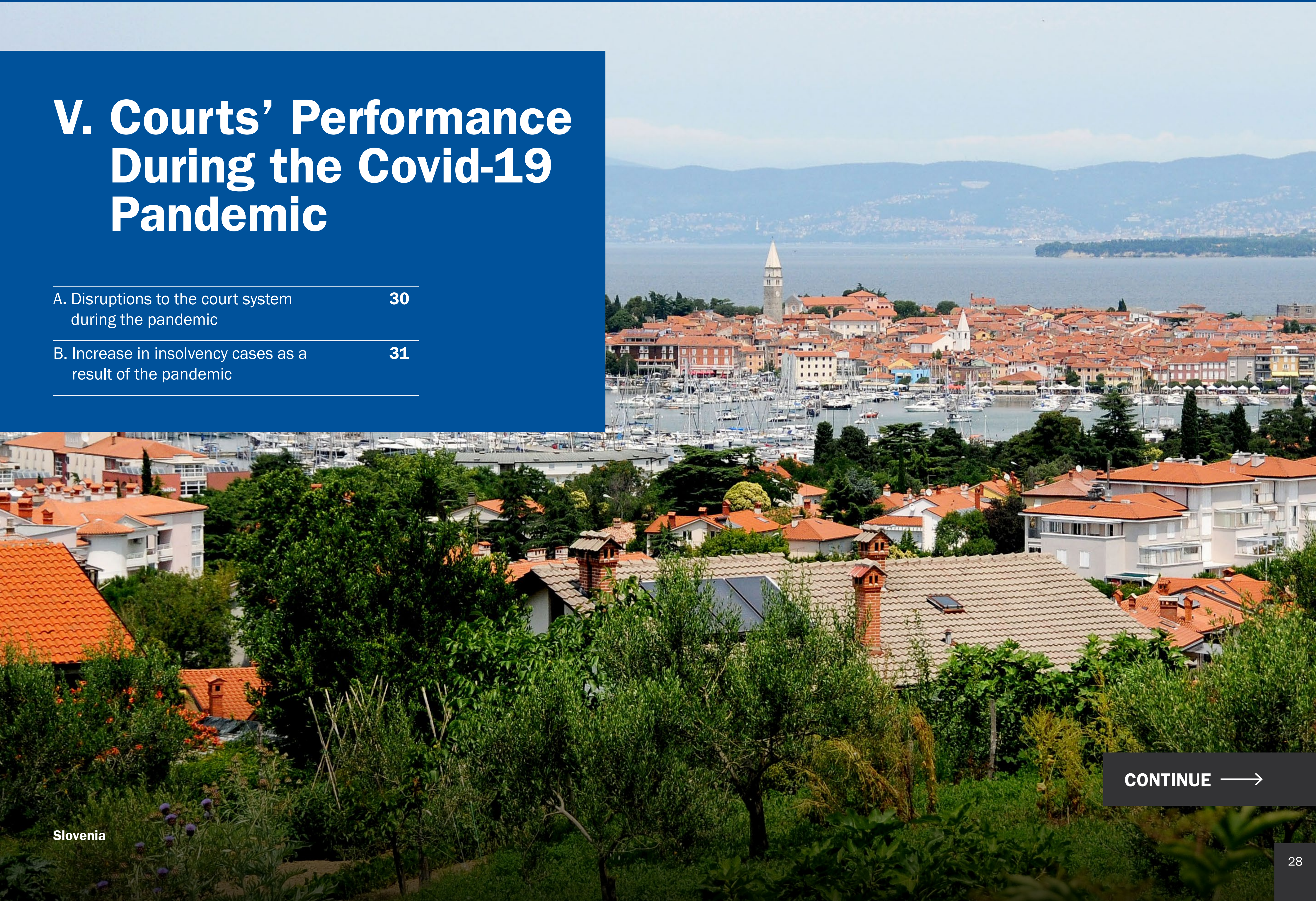
Latvia: "Part of the reason for Latvia's recovery rate can be attributed to companies having a belated reaction to their solvency issues."

Greece: "Zombie companies had been widely present in Greece over the years prior to the pandemic, mainly due to the ineffectiveness of the previous insolvency/bankruptcy legal framework."

Estonia: "In Estonia, it is a common problem that we have too many companies, which do not have enough funds even for the insolvency proceedings."

[44] Linked to Question 14 of the EBRD Covid-19 Emergency Measures Survey

V. Courts' Performance During the Covid-19 Pandemic



Slovenia

CONTINUE ⟶

Courts’ Performance During the Covid-19 Pandemic

Despite increasing recognition of the specialised nature of insolvency and need for specialist judges and insolvency practitioners, the Business Reorganisation Assessment revealed that fewer than half of the EBRD economies allocate insolvency cases to commercial courts.[45] Out of the economies that have commercial courts, Egypt is the only economy which has a special insolvency department within its economic courts. Armenia has no commercial courts, but does have a dedicated Insolvency Court. Some economies allocate insolvency cases to specific courts. For example, Hungary allocates any early reorganisation/restructuring-type insolvency cases to the Budapest-Capital Regional Court.

The rest of the EBRD economies allocate insolvency procedures to civil courts of general jurisdiction, which leads to issues of capacity and expertise. This section explores the responses to the EBRD Covid-19 Emergency Measures Survey with respect to the impact of the pandemic on the court system in EBRD economies of operations.


Albania

[45] Albania, Azerbaijan, Belarus, the Czech Republic, Croatia, Egypt, Kazakhstan, Kosovo, Montenegro, Morocco, Poland, Romania, Russia, Serbia, Tajikistan, Türkiye, Turkmenistan, Ukraine and Uzbekistan

Disruptions to the court system during the pandemic

The EBRD Covid-19 Emergency Measures Survey revealed that courts closed for a period in 25 out of 39 EBRD economies during the pandemic. In most cases, this was a direct legal requirement, however in five economies (Albania, Bosnia and Herzegovina (Federation and Republika Srpska), Kazakhstan, the Kyrgyz Republic and Mongolia) the closure of courts was triggered indirectly by social lockdowns or the exercise of court discretion, in other words deciding to close operations.

Remote hearings were an option in about half of EBRD economies (20 economies in total). Moreover, in some countries where the courts remained open, for example in Belarus, Estonia, Georgia, Latvia, Lithuania and Ukraine, there was still the possibility to conduct remote hearings. Court closures were not always directly mandated by government authorities. Respondents from Albania, Bosnia and Herzegovina (Federation and Republika Srpska), Kazakhstan, the Kyrgyz Republic and Mongolia reported that in person court sessions were suspended due to the general lockdown by the courts acting at their own discretion.

Figures 10 and 11 contain an overview across 39 economies regarding the closure of courts during the pandemic period and whether remote hearings were an option.

Figure 10: Did the courts close for any period from March 2020 to date as result of the Covid-19 pandemic and/or social distancing measures?[46]

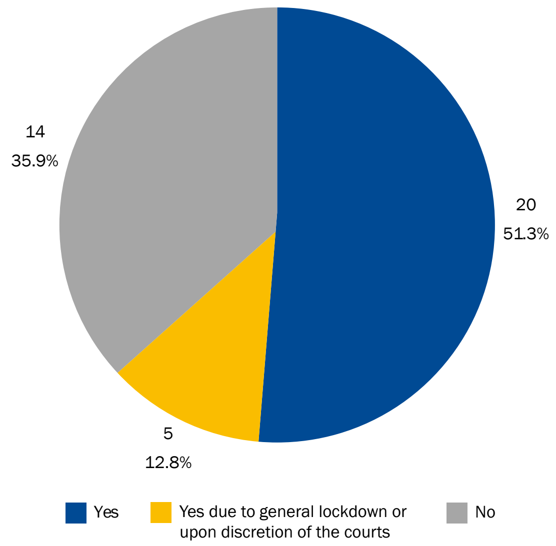
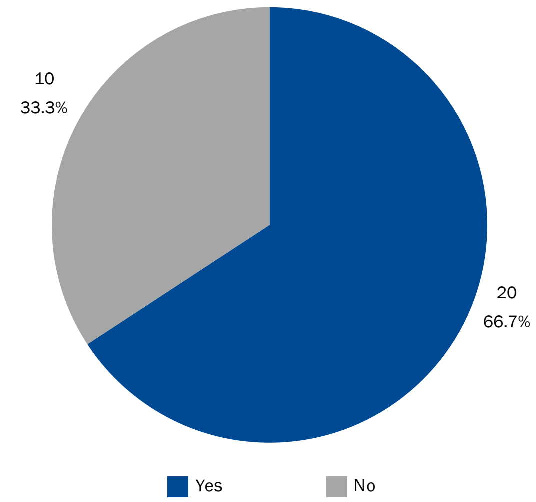


Figure 11: Were remote hearings an option?[47]

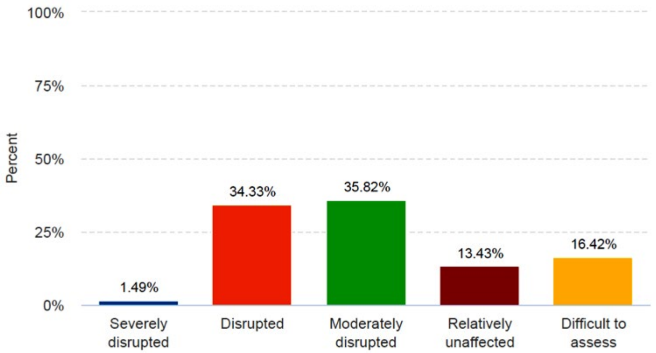


[46] Linked to Question 8 of the EBRD Covid-19 Emergency Measures Survey

[47] Linked to Question 9 of the EBRD Covid-19 Emergency Measures Survey

Respondents were asked to comment on the level of disruption of the pandemic to the court system in their country. Only respondents from Kosovo reported that the court system was severely disrupted. However, respondents from Albania, Croatia, the Czech Republic, Greece, Jordan Lebanon, Moldova, Mongolia, Montenegro, North Macedonia, Poland, Serbia, the Slovak Republic, Slovenia, Türkiye and West Bank and Gaza confirmed a general disruption to the court system due to the Covid-19 pandemic. Respondents from nine economies reported that it was difficult to assess.[48] See Figure 12 for an overview of law firm respondents' perceptions as to the extent to which the Covid-19 pandemic disrupted the court system for commercial cases in their jurisdiction. Figure 12 reflects the percentage of total answers received from survey respondents.

Figure 12: How disrupted was the court system for commercial cases (including insolvency/bankruptcy cases) from March 2020 to 31 December 2021?[49]

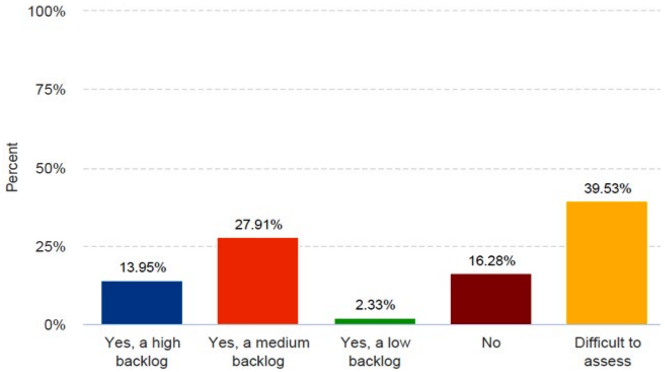


Respondent feedback regarding the courts' performance during Covid-19 pandemic, the suspension of activities and the possibility of remote hearings for each of the jurisdictions covered by the EBRD Covid-19 Emergency Measures Survey can be accessed here.

Increase in insolvency cases as a result of the pandemic

The Covid-19 Emergency Measures Survey asked respondents to comment on whether there had been an increase in the number of insolvency cases during the Covid-19 pandemic as a result of the closure of the courts. Figure 13 is purely perception-based and reflects the percentage of total answers received from survey respondents regarding whether the closure of the courts led to a backlog in insolvency cases. The picture was mixed, with over one third of respondents confirming that it was difficult to assess.

Figure 13: Did the closure of courts create any backlog for insolvency/bankruptcy cases?[50]



High backlog: Greece, Montenegro, the Slovak Republic, Tunisia, and West Bank and Gaza

Medium backlog: Albania, Bosnia and Herzegovina (Federation and Republika Srpska), Greece, Moldova, Mongolia, Montenegro, North Macedonia, Poland, Russia, Slovenia and Türkiye

Low backlog: Slovenia

No backlog: Bulgaria, Georgia and Hungary

Difficult to assess: Bulgaria, Jordan (x2), Kazakhstan and Croatia

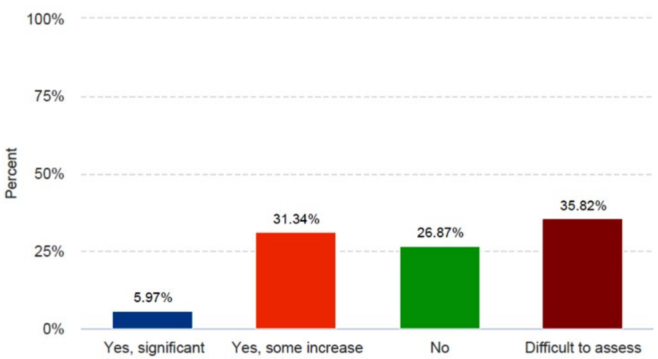
[48] Georgia, Hungary, Jordan, Lebanon, Lithuania, Morocco, Tajikistan, Tunisia and Uzbekistan

[49] Linked to Question 11 of the EBRD Covid-19 Emergency Measures Survey

[50] Linked to Question 10 of the EBRD Covid-19 Emergency Measures Survey. In some economies, multiple law firm respondents participated in the survey. If more than one respondent from the same economy opted for the same answer, this is noted next to the name of the economy

Figure 14 is purely perception-based and reflects the percentage of total answers received from survey respondents regarding whether the pandemic resulted in an increase in the number of insolvency cases over the previous 12-month period. Once again the responses were mixed, with a significant split of opinion between respondents that found it difficult to assess (the majority opinion) and others that saw some increase and those that saw no increase.

Figure 14: Has the Covid-19 pandemic resulted in an increase in the number of business insolvency/bankruptcy cases in your jurisdiction during the past 12 months?[51]



Yes significant: Poland, the Slovak Republic and Uzbekistan

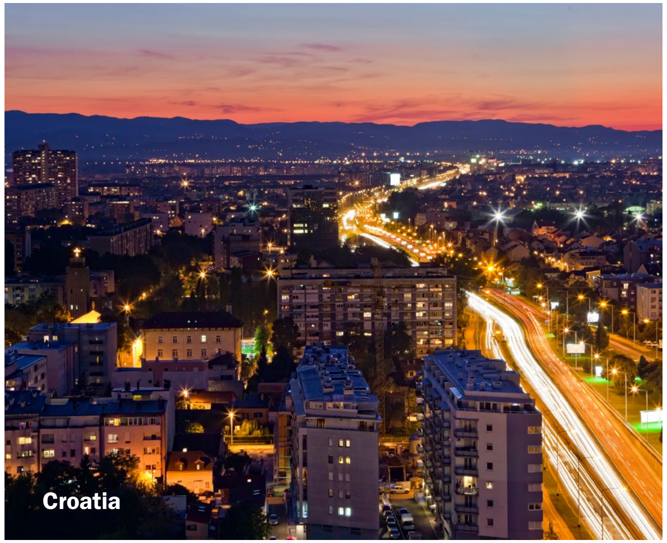
Yes, some increase: Albania, Bosnia and Herzegovina (Federation and Republika Srpska), Croatia, Romania, Bulgaria, Cyprus, Estonia (x2), Jordan, Lebanon (x2), Lithuania, Moldova, Montenegro (x2), North Macedonia, Tunisia, Türkiye (x2) and Russia

No increase: Belarus, Bulgaria, Croatia (x2), Georgia, Greece, Latvia, Lithuania, Romania, Serbia, Slovenia (x2), Turkmenistan, West Bank and Gaza and Ukraine

Difficult to assess: Bosnia and Herzegovina (Federation and Republika Srpska), Bulgaria, the Czech Republic Egypt, Kazakhstan (x2), Georgia, Greece, Hungary, Jordan (x2), the Kyrgyz Republic, Lebanon, Mongolia, Morocco, North Macedonia (x2), Serbia, Tajikistan and West Bank and Gaza

Some of the respondents included public data on the number of insolvency cases and/or comments on insolvency statistics or trends in their answers. It should be noted that this data has not been validated. The arrows below show any upward or downward trends on a year-on-year basis in the total number of insolvency proceedings reported per jurisdiction.[52]

- Belarus reported 2,389 insolvency cases in 2019, 1,883 insolvency cases in 2020 and 1,643 insolvency cases in 2021. ▼
- Kazakhstan reported 3,129 insolvency cases in 2019, 2,763 insolvency cases in 2020 and 3,028 insolvency cases in 2021. ▲
- Latvia reported 566 insolvent liquidation cases in 2020 and 329 cases in 2021; it reported 121 cases of (reorganisation) legal protection proceedings in 2020 compared with 97 cases in 2021. ▼
- Lithuania reported 1,609 insolvency cases in 2019 and 790 cases in 2020. ▼
- Moldova reported 2,796 pending insolvency cases in 2019, 2,802 pending cases in 2020 and 2,877 pending cases in 2021. ▲
- Poland reported 587 insolvent liquidation cases in 2020 and 412 in 2021 ▼; the number of 'Covid-19 Shield' proceedings doubled in 2021 compared to 2020 when the emergency procedure was first introduced. ▲
- Romania reported that the number of insolvency cases increased by 12.34 year-on-year per cent based on the public information available until February 2022. ▲
- Serbia reported double the number of insolvency cases in 2021 compared to 2020. ▲
- Slovenia reported 1,116 insolvency cases in 2019, 988 insolvency cases in 2020 and 898 insolvency cases in 2021. The decreasing trend appeared to have continued in 2022. ▼

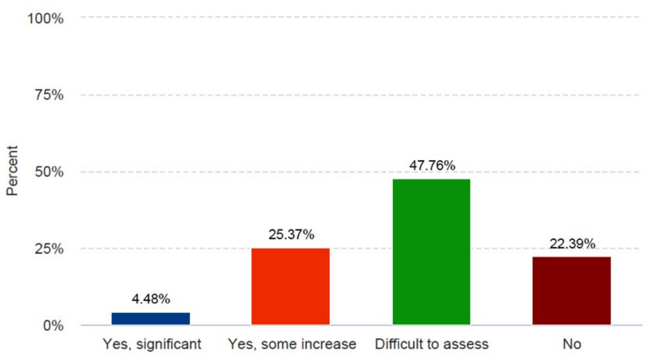


[51] Linked to Question 12 of the EBRD Covid-19 Emergency Measures Survey. If more than one respondent from the same economy opted for the same answer, this is noted next to the name of the economy

[52] In respect of Poland and Latvia, the respondents provided a breakdown of data for the total number of reorganisation proceedings and insolvent liquidation proceedings

Figure 15 is purely perception-based and reflects the percentage of total answers received from survey respondents regarding whether the pandemic would result in an increase in the number of insolvency cases over the next 12-month period from 1 May 2022. Once again the responses were mixed, but almost half of all respondents confirmed that it was difficult to assess.

Figure 15: In your view, will your jurisdiction see a further increase in Covid-19 pandemic related insolvencies in the next 12 months starting from 1 May 2022?[53]



Yes, significant: Greece, Hungary and Romania

Yes, some increase: Bosnia and Herzegovina (Federation and Republika Srpska), Croatia (x2), Estonia, Georgia, Greece, Hungary, Lithuania, Moldova, Montenegro (x2), North Macedonia, Poland, Serbia, Slovenia and Türkiye (x2)

Difficult to assess: Albania, Armenia, Azerbaijan, Bosnia and Herzegovina (Federation and Republika Srpska), Bulgaria (x2), Croatia, Cyprus, Egypt, Estonia, Jordan, Kazakhstan (x2), Latvia, Lebanon, Lithuania, Mongolia, Montenegro, Morocco, North Macedonia (x2), Romania, Serbia, the Slovak Republic, Slovenia, Tunisia and West Bank and Gaza

No: Belarus, Bulgaria, Jordan, Kosovo, Kyrgyz Republic, Lebanon (x2), Serbia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and West Bank and Gaza (x2)

[53] Linked to Question 12 of the EBRD Covid-19 Emergency Measures Survey. If more than one respondent from the same economy opted for the same answer, this is noted next to the name of the economy

Some of the comments from respondents in relation to the increase in insolvency cases were:

Belarus: "Belarus has not imposed strict anti-Covid-19 measures that could have a significant impact on business activity, so companies continued to operate almost as usual. The Belarusian economy was rather affected by external factors associated with global pandemic (transport, logistics, tourism)."

Bulgaria: "The three prolonged crises of Covid-19, inflation and the Russian invasion into Ukraine will most probably trigger a rise in insolvencies in Bulgaria. It will be difficult to assess whether Covid-19 was the sole causation of any future insolvencies."

Greece: "The suspension of the operation of several businesses during Covid-19 conditions as well as the lifting of the state support/relief measures which had been adopted during the Covid-19 outbreak are expected to lead to an increase in local businesses' insolvency since the latter seem to already be facing liquidity difficulties in meeting their outstanding obligations."

Latvia: "Given the high and previously unforeseen level of support from the government for entrepreneurs and the risks posed by Covid-19, it is difficult to assess the future situation and whether the support prevented entrepreneurs becoming insolvent, mitigated their insolvency or simply delayed the initiation of an insolvency proceeding."

Serbia: "The government support programme towards companies going through financial difficulties due to the Covid-19 pandemic were more than present. But it is hard to assess if companies in general can 'survive' after the government support measures come to an end (e.g. government guaranteed loans with up to 60 months to maturity date, or loans restructured or refinanced under the Covid-19 emergency legislation), especially given the possibilities of more Covid-19 outbreaks and the unpredictable capacity of different markets to adapt."

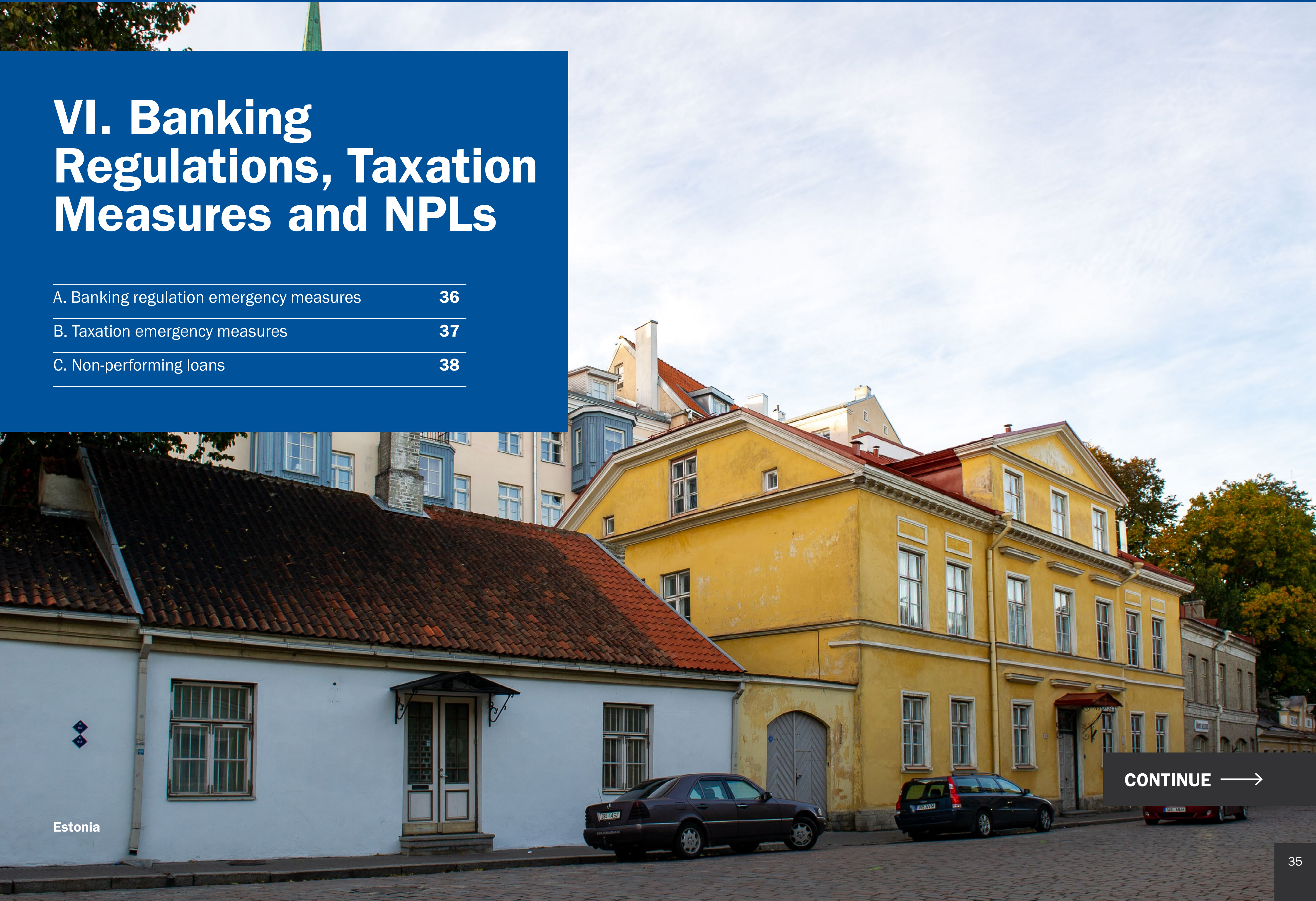
Turkmenistan: "Turkmenistan has taken all the necessary preventive measures against coronavirus infection."

West Bank and Gaza: "The pandemic did not affect the business and most of the industries were not closed during the pandemic."

Cyprus

Respondent feedback regarding the impact of Covid-19 pandemic on the number of insolvency cases for each of the jurisdictions covered by the EBRD Covid-19 Emergency Measures Survey can be accessed here.

VI. Banking Regulations, Taxation Measures and NPLs



Estonia

CONTINUE ⟶

Banking Regulations, Taxation Measures and NPLs

Banking regulation emergency measures

According to the results of the EBRD Covid-19 Emergency Measures Survey, the vast majority of EBRD economies adopted emergency banking regulations aimed at relieving the pressure on businesses during the Covid-19 pandemic. Only six economies - Estonia, Latvia, Lithuania, Morocco[54], Turkmenistan and Uzbekistan - did not.

Loan forbearance banking measures (with respect to the forbearance of capital and/or interest) were adopted in 26 out of 33 economies.[55] Greece and Poland introduced interest rate subsidies. Other countries focused on financial institutions: Mongolia introduced measures on asset classification and provisioning for commercial banks and Tajikistan introduced greater liquidity requirements for financial institutions. According to the survey data, Bulgaria ensured that the banking system fully capitalized profits amounting to BGN 1.6 billion (EUR 0.8 billion). In Belarus, emergency banking measures were introduced only by letters from the central bank and were voluntary in nature. In addition to Belarus, in Croatia, Georgia, Jordan, Moldova, North Macedonia and Poland, emergency banking regulations were in part or in whole voluntary in nature.

A respondent from Greece reported, "There were Covid-19 emergency provisions introduced either by the Greek Government, or by the banking sector itself (Hellenic Banking Association, Hellenic Loan Servicers Association). The main program is called 'Gefyra' meaning the 'bridge'. Such measures concern: i) interest payment subsidy; ii) protection of primary residence; and iii) auctions suspension." Further measures adopted by the Greek government related to interest rate subsidies for SMEs, suspension of time limits for cheques, refundable advance payments and time extensions on social security contributions for businesses.

The banking authority in Mongolia made amendments to the asset classification and provisioning procedure of commercial banks to: i) extend loan classification terms from 15 days to 90 days for consumer loans, from 31 days to 91–120 days for past-due arrears, and from 90 days to 121 days for non-performing loans; and ii) ease requirements on impaired consumer and business loans. The policy rate was reduced by the banking authority from 10 per cent in 2020 to 6 per cent in 2021. Also, a long-term repurchasing agreement (repo financing) instrument was introduced by the banking authority to support SMEs and non-mining exports. The authority also reduced the reserve requirement of banks by 200 basis points to 8.5 per cent.

In Slovenia, according to the 'Act determining the intervention measures to contain the Covid-19 pandemic and mitigate its consequences for citizens and the economy', natural and legal persons were able to apply for a deferral of up to 12 months of any payment obligations under credit agreements with banks until 30 June 2021. They were required, however, to demonstrate that the obligations were not due for payment by 18 October 2020 and that they were temporarily unable to repay the obligations due to circumstances related to the pandemic. Interest did not accrue on such qualifying loans during the deferral period.


Greece

[54] Morocco was the only economy that did not answer these questions so it was calculated as a negative response

[55] Belarus, Bosnia and Herzegovina (Federation and Republika Srpska), Bulgaria, Croatia, Cyprus, the Czech Republic, Egypt, Georgia, Greece, Jordan, Kazakhstan, the Kyrgyz Republic, Lebanon, Moldova, Mongolia, Montenegro, North Macedonia, Poland, Romania, Russia, Serbia, the Slovak Republic, Slovenia, Tajikistan, Tunisia, Türkiye, Ukraine and West Bank and Gaza

Taxation emergency measures

The EBRD Covid-19 Emergency Measures Survey revealed that 33 out of 39 economies introduced emergency measures in taxation.[56] These included temporary tax reliefs or reduction of personal and corporate income tax in particular for micro, small and medium-sized enterprises, value added tax reduction, concessions on real estate tax, deferral of taxes with further payment by instalments or tax credit, no fines for late submission of tax declarations or late payment of taxes, and acceleration of tax refunds.

In total, 18 out of 33 economies delayed or extended tax payment deadlines. Five economies - Kazakhstan, Mongolia, Russia, Tajikistan, and Tunisia - reported taking tax measures explicitly designed to protect micro, small and medium-sized enterprises. Eight economies took steps to relieve corporate tax burdens, and another eight economies took emergency measures to alleviate or delay real estate taxation.

Estonia suspended the requirement to publish quarterly information on companies' tax payments, turnover and number of employees from 12 March 2020 until the end of the emergency situation. Estonia also suspended the calculation and payment of the late payment interest payable by taxpayers until the end of the emergency situation. From 1 May 2020 until 31 December 2020, authorities allowed taxpayers to pay tax arrears in instalments and reduced late payment interest by 100 per cent.

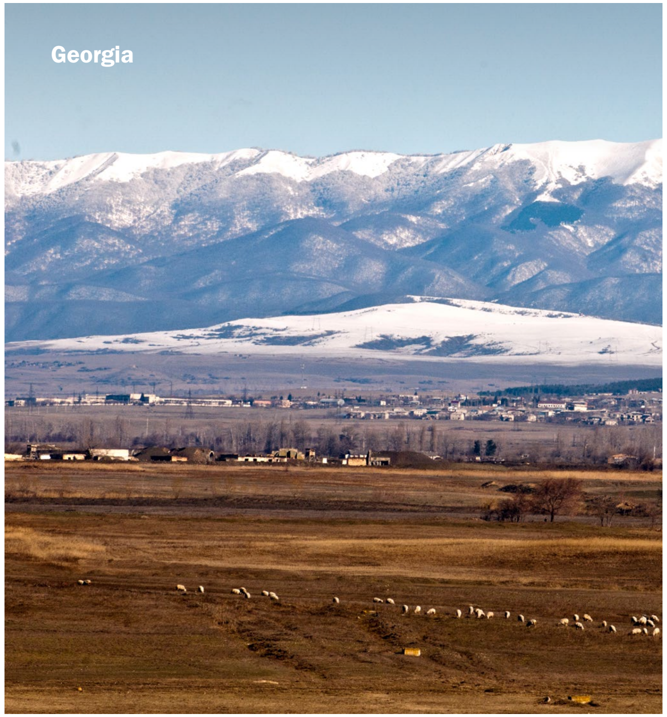
In Romania, medicines and medical equipment that could be used in the prevention, limitation, treatment and overall fight against Covid-19 were exempt from VAT where supplied to non-governmental organisations.

Likewise, deliveries of protective masks and intensive care medical ventilators to public institutions which are established in the EU were VAT-exempt until 1 October 2020, using a system that relied upon affidavits provided by those public institutions. Other measures included an extension of payments for property taxes and the suspension of all enforcement proceedings from 21 March 2020 until 30 days after the end of the state of emergency.

A respondent from the Czech Republic reported that authorities passed a “Bill on an anti-crisis tax package to help the most affected sectors,” which primarily provided a “VAT reduction from 15 to 10 per cent in the area of accommodation services, admission fees to cultural events and sporting events, admission fees to sports grounds, fares on ski lifts and admission fees to saunas and other similar facilities.” Other measures adopted in the Czech Republic include an extension of the deadline for the filing of tax returns, adoption of so-called “liberation packages” under which the government did not impose fines for late submission of personal and corporate income tax returns, and a bill on the abolition of real estate acquisition tax, which applied retroactively.

Slovenia allowed taxable persons to apply for tax deferrals of up to two years or for payment of the tax in up to 24 monthly instalments over a 24-month period, due to the loss of earning capacity as a result of the Covid-19 epidemic.

In total, only five EBRD economies refrained from taking any emergency measures in the tax sector: Albania, Armenia, Cyprus, Turkmenistan, and Uzbekistan.



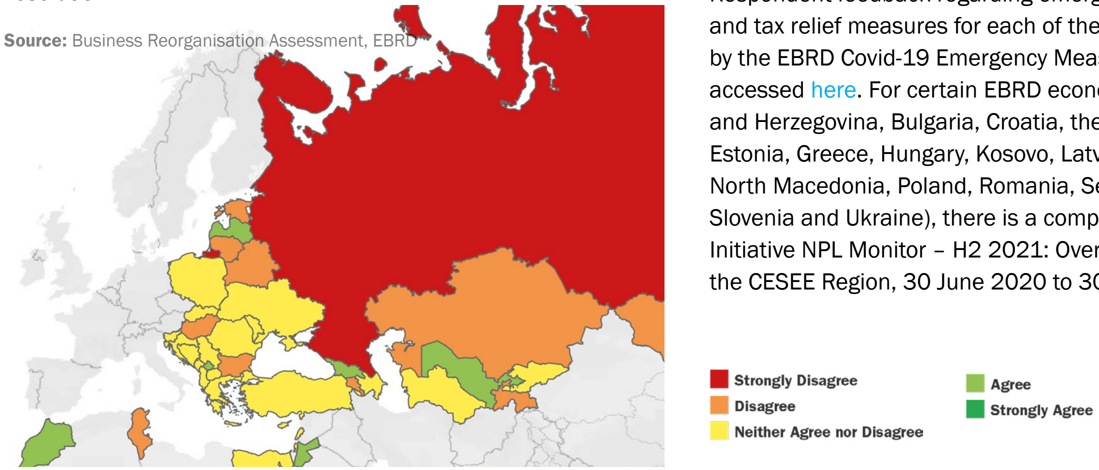
Respondent feedback regarding emergency banking regulations and tax relief measures for each of the jurisdictions covered by the EBRD Covid-19 Emergency Measures Survey can be accessed here.

[56] Albania, Armenia, Cyprus, Turkmenistan and West Bank and Gaza were the only economies that did not adopt any taxation measures to tackle the Covid-19 pandemic’s impact on businesses. Morocco did not answer these questions so it was calculated as a negative response

The reasons for high NPLs are manifold and some lie outside the immediate economic crisis generated by the Covid-19 pandemic. The EBRD Business Reorganisation Assessment explored the correlation between effective and efficient insolvency frameworks and NPL resolution through a short NPL survey. This contained six perception-based questions related to the challenges of NPLs. This exercise was conducted between September and November 2020 during the Covid-19 pandemic and generated 331 completed surveys across 48 different jurisdictions. Of these, 315 surveys were collected from the EBRD regions.

According to survey participants, the main impediments to NPL resolution were: i) the weakness in enforcement regime to collect on debts; ii) the lack of a secondary market for NPLs and iii) an inadequate environment for multi-creditor out-of-court restructuring (workouts). Respondents were also surveyed for their views on the extent to which the insolvency system facilitated NPL resolution. Many perceived insolvency frameworks for business reorganisation to be weak, suggesting that these are either not used widely to resolve NPLs or are largely ineffective in resolving NPLs. Figure 16 presents a traffic light map on the level of agreement with a question in the NPL survey, "Do the reorganisation tools provided in the insolvency law in your jurisdiction efficiently facilitate the resolution of NPLs? Please signal your level of agreement by clicking on the relevant traffic light".

Figure 16: Reorganisation tools do not efficiently facilitate NPL resolution



Source: Business Reorganisation Assessment, EBRD

Respondent feedback regarding potential increase of NPLs level for each of the jurisdictions covered by the EBRD Covid-19 Emergency Measures Survey can be accessed here.

The survey also explored the perception regarding an increase in NPLs as a result of the Covid-19 pandemic. Respondents from 13 out of the 39 surveyed economies - Armenia, Belarus, Bulgaria, Hungary, Jordan, Lebanon, Mongolia, Montenegro, the Slovak Republic, Tunisia, Turkmenistan, Ukraine, Uzbekistan, and West Bank and Gaza – perceived an increase since March 2020.

Respondent feedback regarding emergency banking regulation and tax relief measures for each of the jurisdictions covered by the EBRD Covid-19 Emergency Measures Survey can be accessed here. For certain EBRD economies (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Cyprus, Estonia, Greece, Hungary, Kosovo, Latvia, Lithuania, Montenegro, North Macedonia, Poland, Romania, Serbia, the Slovak Republic, Slovenia and Ukraine), there is a comparison with the Vienna Initiative NPL Monitor – H2 2021: Overview of the NPL Profile in the CESEE Region, 30 June 2020 to 30 June 2021.[57]

[57] EBRD and partner institutions (2022a) NPL monitor for the CESEE region. Edition: H1 2022a. https://npl.vienna-initiative.com/assets/Uploads/2022/NPL-Monitor-H1-2022-fv.pdf

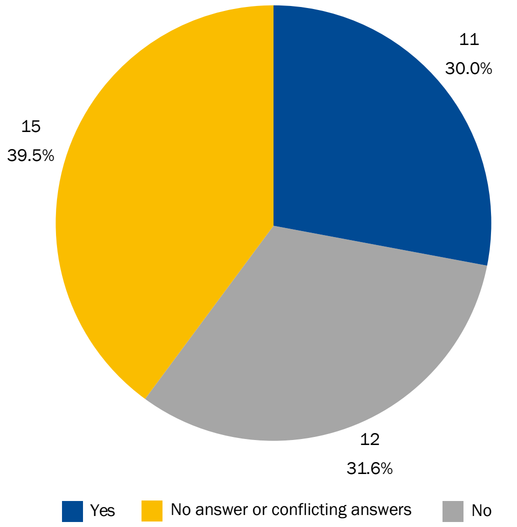
Non-performing loans

The EBRD Covid-19 Emergency Measures Survey also asked respondents about their perception in relation to an increase in the number of non-performing loans due to the pandemic. Respondents from Albania, Azerbaijan, Croatia, Cyprus, the Czech Republic, Egypt, Kazakhstan, Kosovo, Latvia, Moldova, Morocco, Poland, Romania, Russia, Slovenia and Tajikistan reported that NPL levels had remained the same or had decreased. Conflicting answers were provided by respondents from Bosnia and Herzegovina (Federation and Republika Srpska), Estonia, Georgia, Greece, the Kyrgyz Republic, Lithuania, North Macedonia, Serbia and Türkiye.

However, the perception of respondents from Albania, Croatia, Greece, Montenegro, Romania, the Slovak Republic and Slovenia was in line with the IMF data reported by the Vienna Initiative NPL Monitor. Respondents from Bosnia and Herzegovina (Federation and Republika Srpska), Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Kosovo, Latvia, Lithuania, North Macedonia and Serbia provided no answers or conflicting answers. There were some differences in respondents' answers compared to the Vienna Initiative NPL Monitor reporting for Poland and Ukraine.[58]

Figure 17 depicts the answers collected in a perception-based question relating to the potential increase of NPLs since March 2020. It reflects the percentage of total answers received from survey respondents.

Figure 17: Has there been an increase in non-performing loans in your jurisdiction since March 2020?[59]



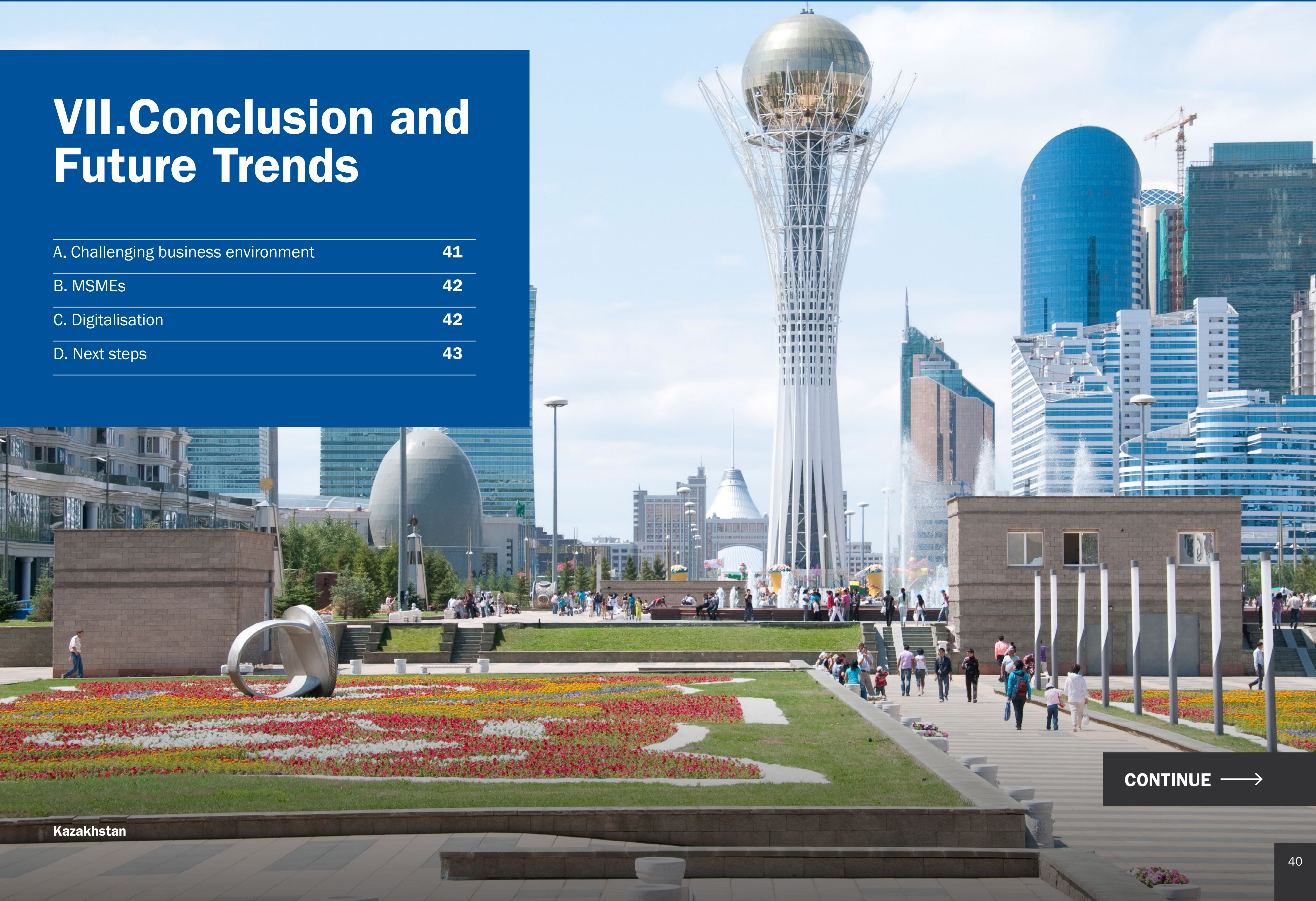
Yes: Armenia, Belarus, Georgia, Jordan, Lebanon, Mongolia, Montenegro, Poland, Tunisia, Ukraine and West Bank and Gaza

No: Albania, Croatia, Egypt, Greece, Kazakhstan, Moldova, Romania, Russia, the Slovak Republic, Slovenia, Türkiye and Turkmenistan

[58] See https://npl.vienna-initiative.com/npl-monitors/

[59] Linked to Question 22 of the EBRD Covid-19 Emergency Measures Survey. The answers should be treated as the respondents' perception, although in some cases respondents confirmed their answers with reference to official data

VII.Conclusion and Future Trends



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Kazakhstan

Conclusion and Future Trends

The EBRD Covid-19 Emergency Measures Survey has revealed that the vast majority of EBRD economies sought to protect their businesses environment from the negative shock of the Covid-19 pandemic. All economies either introduced banking and/or tax related regulations or adopted insolvency emergency legislation. Turkmenistan was the only economy where the EBRD operates to have abstained from any similar initiative.

The Covid-19 pandemic affected all economies worldwide, but unequally. Its financial consequences played out over a period of time with different impacts in each economy, depending on the local business context and each government's fiscal and political capacity to support businesses with extraordinary measures. This economic crisis was perhaps the first time in history when so many national authorities worldwide acted with emergency legislation to alleviate the threat of insolvency to the business community. Nevertheless, all governments had limited resources during the pandemic and the legislative response was uneven.

Only 18 economies in the EBRD regions adopted emergency insolvency legislation. Supportive measures in the banking sector and tax systems were far more widespread among EBRD economies and appear to have been easier to introduce due to their regulatory nature. Simply put, they were not as time consuming to implement as a full legislative process. Many national authorities may not have had the capacity to grapple fully with the operation of insolvency systems during the crisis.

Challenging business environments

Covid-19 is no longer cited as a global downside risk by economic commentators.[60] However, with lower economic growth than pre-pandemic levels, high inflation, increasing finance costs, as well as a war on the European continent in Ukraine, many businesses in EBRD regions are operating in difficult and uncertain times. Most emergency insolvency legislation and government support measures have expired. Support from state authorities is unlikely to return to the same level as during the pandemic. Looking forward, businesses will likely rely on their country's legal framework (and their existing lending relationships) to reach an agreement with their creditors. Strong and robust insolvency frameworks will play a critical role in this process and will help countries to avert a greater economic crisis. Insolvency should therefore be a priority area for all regions that want to boost their economies and promote greater business and banking sector resilience.

The EU constitutes a significant driver for future insolvency reform for its block of 27 member states. The Directive (EU) on preventive restructuring frameworks as transposed into national legislation has helped EU member states and businesses to navigate the current environment and look to improve their insolvency frameworks in the future, in areas such as court management of insolvency cases, regulation of insolvency practitioners and the collection of better insolvency data.

A new EU proposal for a directive harmonising certain aspects of insolvency law should consolidate these efforts further by introducing more minimum harmonisation efforts across the EU aimed at building more efficient national insolvency frameworks.[61] These initiatives should also be influential outside of the EU bloc for EU accession countries where the EBRD operates, such as Moldova and Ukraine, and beyond.

Kosovo

[60] See, for example, the World Bank Global Economic Prospects report, June 2023: Global Economic Prospects (worldbank.org)

[61] Proposal for a Directive of the European Parliament and of the Council published at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0702

MSMEs

Another area of increasing importance for policymakers working in the field is how to tailor national insolvency frameworks to micro, small and medium-sized enterprises (MSMEs), which make up the vast majority of businesses in EBRD economies and globally.

MSME insolvency procedures are new and as yet unexplored terrain among the economies where the EBRD invests. According to the EBRD Business Reorganisation Assessment, only Hungary and Kosovo out of the EBRD economies of operations have insolvency frameworks which offer a tailor-made (and simplified) reorganisation procedure for SMEs.[62] The Covid-19 Emergency Measures Survey indicates that only four economies (Egypt, Greece, Mongolia and Russia) introduced SME specific emergency measures during the pandemic and these were banking and regulatory measures rather than insolvency measures. Nevertheless, in some economies loans to the SME sector will have increased.

For example, respondents from Georgia reported that in 2020 due to the Covid-19 pandemic, the overall volume of non-performing SME loans exceeded GEL 974 million (EUR 350 million; a 143 per cent increase on 2019) and the highest level since 2010.

Kyrgyz Republic

Policymakers and international organisations have proposed guidance to national authorities to address the critical issue of MSMEs. The United Nations Commission for International Trade Law (UNCITRAL) has recently issued recommendations on the insolvency of micro and small enterprises (MSEs) and has added a new Chapter V on MSE Insolvency to its UNCITRAL Legislative Guide on Insolvency Law.[63] One of the most important questions going forward relates to the national classification and criteria of companies as micro, small or medium-sized and where legislators will place their emphasis. Will it range from small to medium enterprises, micro to small enterprises, or encompass them all? Will legislators determine eligibility for a simplified procedure according to the number of employees, as in Spain[64] or the volume of debt, as in the United States Sub-chapter V Chapter 11 procedure.[65]

Digitalisation

One of the most important and long-lasting impacts of the pandemic has been the acceleration in digitalisation. As far as insolvency frameworks are concerned, the digital divide continues, with the risk that some emerging economies may be outpaced by their developed counterparts. Not all EBRD economies and court systems had the capacity to transition to online court insolvency proceedings during the pandemic. The courts closed for a period in 25 economies where the EBRD invests during the period surveyed (March 2020 to April 2022). Only six economies (Belarus, Estonia, Georgia, Latvia, Lithuania and Ukraine) reported the possibility of conducting remote court hearings. This digital gap is corroborated by the information collected by the EBRD Business Reorganisation Assessment on insolvency data. This revealed a lack of digital insolvency registers in 32 economies where the EBRD invests. The digital gap will take investment, time and effort to close.

[62] See Annex 10 (SME Reorganisation Procedures) of the EBRD Business Reorganisation Assessment at: https://ebrd-restructuring.com/annexes. In North Macedonia and Türkiye, procedures dedicated to lower amounts of claims are available, while in Slovenia a company classified as a micro enterprise or entrepreneurs who meet the criteria of micro or small enterprises can opt for a simplified reorganisation (compulsory settlement) procedure

[63] See: https://uncitral.un.org/en/texts/insolvency/legislativeguides/insolvency_law#:~:text=Key%20elements%20are%20identified%20as,reorganization%20proceedings%3B%20simplified%20requirements%20for

[64] In Spain, the Law 16/2022, of 5 September, amending the revised text of the Insolvency Law, as approved by Royal Legislative Decree 1/2020, of 5 May, implements Directive (EU) 2019/1023 and introduces a number of amendments, including a new streamlined insolvency procedure for micro enterprises

[65] The United States has added Sub-Chapter 5 to Chapter 11 to allow small businesses with aggregated debt that does not exceed USD 2.75 million to reorganise their claims under a streamlined procedure. With the Covid-19 emergency legislation, this limit was increased to $7.5 million. In June 2022, the Correction Act extended this higher threshold for two more years, until June 2024

Next steps

In the aftermath of the pandemic, policymakers and legislators should carefully consider what permanent changes are needed to insolvency laws and institutional frameworks. More quantitative data on insolvency proceedings can help policymakers to design better legislative frameworks and evaluate the impact of their efforts. This should be supported, however, with market feedback and close consultations with both the private and state sectors.

Insolvencies will peak at various points of the economic cycle. The pandemic and the stress placed on businesses provides an opportunity to reflect on sound insolvency policy-making and to guard against the fragmentation of financial networks across jurisdictions with differing insolvency systems.

The EBRD continues to monitor developments in insolvency frameworks and to assist national legislators with legal, regulatory and policy changes through its Legal Transition Programme. We look forward to helping the economies where we invest to modernise their insolvency laws and to remain resilient in these uncertain and challenging times.


Lebanon

Annex I: Questionnaire

CONTINUE →

Part 1 - Introduction

This short survey seeks to map the history and evolution of any Covid-19 emergency legislation enacted in the area of insolvency/bankruptcy. This survey is being conducted for purposes of collecting data for a chapter in the EBRD's forthcoming 2022 Transition Report prepared by the EBRD's Office of the Chief Economist in partnership with the EBRD's Legal Transition Programme. The chapter will also incorporate findings from the 2022 EBRD Business Reorganisation Assessment available at: https://www.ebrd-restructuring.com

We use the terms insolvency and bankruptcy in this survey interchangeably to refer to the general legal framework for both the liquidation and/or reorganisation of a business, which is available for a business that is either cash flow insolvent, over-indebted, or in financial difficulties.

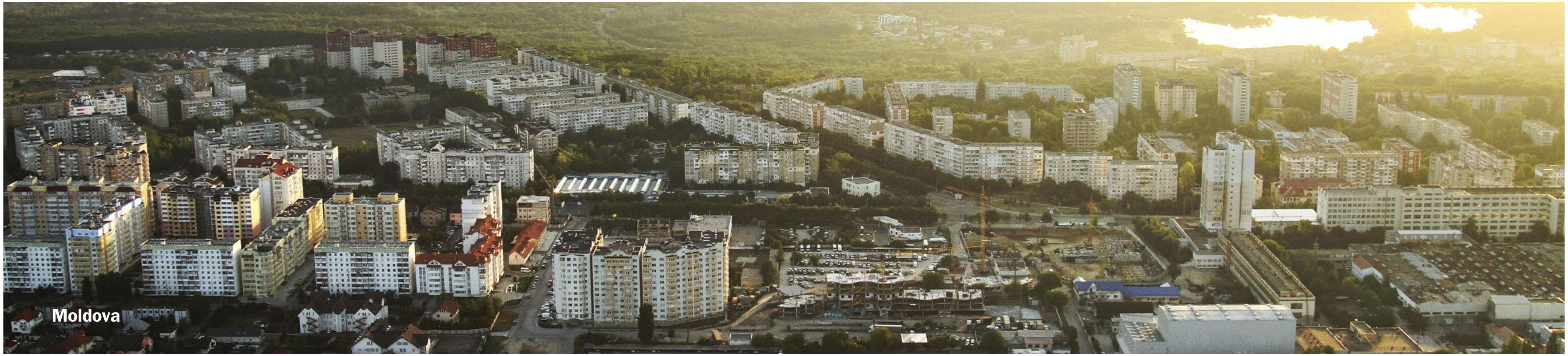
The questions in this survey: i) focus on the period from March 2020 to date; and ii) cover business insolvency, i.e. measures relating to corporate entities and natural person entrepreneurs.

We kindly request that all responses to this survey are submitted by Friday 29 April 2022. Any personal data will be collected, processed and used in accordance with the EBRD Personal Data Protection Policy and Directive available at: https://www.ebrd.com/strategies-and-policies/personal-data-protection-policy.html

1. Please indicate your jurisdiction and answer any questions in this survey on behalf of this jurisdiction only.

2. Please indicate your professional background

- ☐ Legal professionals
- ☐ Financial institutions
- ☐ Accountants and valuers
- ☐ Judges
- ☐ Other (please specify):



Moldova

Part 2 - Questions (Corporate Insolvency/Bankruptcy)

3. Did your jurisdiction introduce any insolvency/bankruptcy legislation in response to the Covid-19 pandemic?

☐ Yes

☐ No

4. Please provide the following details:

Please only answer this question if you have answered Yes to the previous one

1. The date of adoption and title of the legislation - and any link if available online (preferably to official publication)
2. A brief overview of the nature of the legislation, including parties affected and any limitations on initiation of insolvency/bankruptcy proceedings
3. The end date of the legislation
4. Please add any further observations or comments as applicable.

5. Did the emergency legislation result in any stay or moratorium on insolvency/bankruptcy filings by creditors?

Please only answer this question if you have answered Yes to question 3

☐ Yes

☐ No

☐ Don't know

☐ Difficult to assess

6. Has the Covid-19 crisis resulted in any permanent legislative measures?

☐ Yes

☐ No

☐ Difficult to assess

7. In your view, why was there no emergency insolvency/bankruptcy legislation? Please tick all relevant boxes.

Please only answer this question if you have answered Yes to question 3

☐ There was no demand from businesses

☐ It was not a priority for the government

☐ Legislation would have taken too long to be introduced and/or there were other ways of limiting the effect of insolvency/bankruptcy procedures

☐ There was a lack of capacity or specialist knowledge at government level

☐ Other (please specify):

8. Did the courts close for any period from March 2020 to date as result of the Covid-19 pandemic and/or social distancing measures?

- [ ] Yes
- [ ] No

If yes, please provide a timeframe

9. Were remote hearings an option?

- [ ] Yes
- [ ] No

10. Did the closure of courts create any backlog for insolvency/bankruptcy cases?

Please only answer this question if you have answered Yes to question 8

- [ ] Yes, a high backlog
- [ ] Yes, a medium backlog
- [ ] Yes, a low backlog
- [ ] No
- [ ] Difficult to assess

11. How disrupted was the court system for commercial cases (including insolvency/ bankruptcy cases) from March 2020 to 31 December 2021?

- [ ] Severely disrupted
- [ ] Disrupted
- [ ] Moderately disrupted
- [ ] Relatively unaffected
- [ ] Difficult to assess

12. Has the Covid-19 pandemic resulted in an increase in the number of business insolvency/bankruptcy cases in your jurisdiction during the past 12 months?

- [ ] Yes, significant
- [ ] Yes, some increase
- [ ] No
- [ ] Difficult to assess

Please comment

13. In your view, will your jurisdiction see a further increase in Covid-19 pandemic related insolvencies in the next 12 months starting from 1 May 2022?

- [ ] Yes, significant
- [ ] Yes, some increase
- [ ] Difficult to assess
- [ ] No

Please explain why

14. In your view, was there a problem of 'zombie companies' in your jurisdiction prior to Covid-19? ('Zombie companies' are indebted businesses that, although they generate some cash, after covering operating costs, they only have enough funds to service the interest on their loans, but not the principal. Hence they continually face refinancing risk and may face solvency risks.)

- [ ] Yes, significant
- [ ] Yes, to some extent
- [ ] No
- [ ] Difficult to assess

Please elaborate

15. Has there been an increase in zombie companies in your jurisdiction due to Covid-19 during the past 12 months?

- [ ] Yes
- [ ] No
- [ ] Difficult to assess

16. In your view, will the jurisdiction see a further increase in Covid-19 pandemic related zombie companies in the next 12 months starting 1 May 2022?

- [ ] Yes
- [ ] No
- [ ] Difficult to assess

Part 3 - Additional Questions (Banking and Regulatory)

17. Did the banking authority introduce any regulation or recommendation to the banking sector regarding forbearance of bank loans including any limitations on penalty interest and/or deferral of interest and/or principal repayments?

☐ Yes

☐ No

18. If yes, please provide the following details:

Please only answer this question if you have answered Yes to question 17

1. The date of adoption and title of the legislation - and any link if available online (preferably to official publication)

2. A brief summary of its content/main features

3. Whether the regulation or recommendation is still in effect.

4.The end date (if applicable) of such regulation or recommendation

19. Did the banking authority introduce any other Covid-19 emergency provisions (other than with respect to loan forbearance)?

☐ Yes

☐ No

If yes, please elaborate

20. Did the legislator introduce any Covid-19 related tax relief measures?

☐ Yes

☐ No

If yes, please provide the date of adoption, title of legislation, the timeframe and any link if available online (preferably to official publication)

21. In your view, were there any gaps in the availability of emergency measures to protect business in your jurisdiction during the Covid-19 crisis?

- [ ] Yes
- [ ] No

Please elaborate

22. Has there been an increase in non-performing loans in your jurisdiction since March 2020?

- [ ] Yes
- [ ] No

Please elaborate and explain any differences e.g. between corporate and retail NPL rates

Montenegro

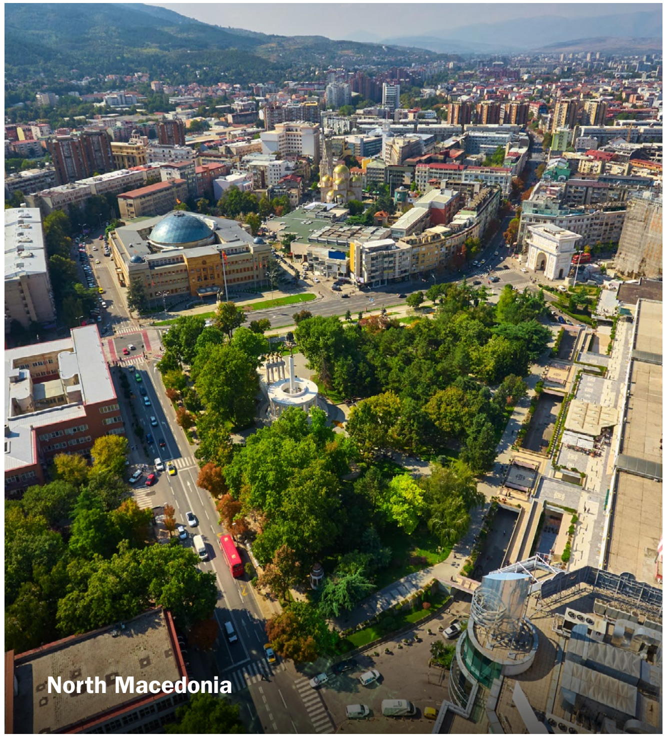
Annex II: Number of Law Firm Responses

Morocco

CONTINUE

Annex II: Number of Law Firm Responses

This Annex summarises the number of law firm contributors per economy to the Emergency Measures Survey in the 39 economies surveyed by this report. The EBRD relied on its existing network of law firms, including those firms that supported the EBRD Business Reorganisation Assessment, to complete the survey.



Economy	Number of Respondents	Economy	Number of Respondents
Albania	1	Lithuania	2
Armenia	1	Moldova	1
Azerbaijan	1	Mongolia	1
Bosnia and Herzegovina (Federation and Republika Srpska)	2	Montenegro	4
Belarus	1	Morocco	1
Bulgaria	3	North Macedonia	3
Croatia	3	Poland	1
Cyprus	1	Romania	2
Czech Republic	1	Russia	1
Egypt	1	Serbia	3
Estonia	2	Slovak Republic	1
Georgia	2	Slovenia	3
Greece	2	Tajikistan	1
Hungary	2	Tunisia	1
Jordan	3	Türkiye	2
Kazakhstan	2	Turkmenistan	1
Kosovo	1	Ukraine	1
Kyrgyz Republic	1	Uzbekistan	1
Lebanon	3	West Bank and Gaza	3
Latvia	1		

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