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# Annex II: EBRD New Financing Survey

# Annex II: EBRD Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions

## SECTION 1: Respondent details

## SECTION 2: Jurisdiction

No.	Question
1	Name and Surname
2	Organisation
3	Email Address

No.	Question
4	Please indicate your jurisdiction

## SECTION 3: General movable and immovable security legislation

No.	Question
5	<p>Please identify the key legal, regulatory or practical issues that you consider to be the main impediments in your country's existing movables security legislation. (Please tick as many as apply and list any others.)</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Lack of registration</li> <li><input type="checkbox"/> Physical presence at registration</li> <li><input type="checkbox"/> Re-registration requirements</li> <li><input type="checkbox"/> Lack of assignability of security rights</li> <li><input type="checkbox"/> High costs (e.g. notarisation, taxes and duties, local language requirements, etc.)</li> <li><input type="checkbox"/> Limited pool of assets over which a security can be granted (e.g. no future or floating assets etc.)</li> <li><input type="checkbox"/> Uncertainty around legal treatment of certain security interests (e.g. leases, receivables or c</li> <li><input type="checkbox"/> Uncertainty around priority</li> <li><input type="checkbox"/> Uncertainty around enforcement regime</li> <li><input type="checkbox"/> Direct enforcement not permitted</li> </ul> <p>Please list any further impediments not mentioned above.</p>

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No.	Question
6	<p>Please identify the key legal, regulatory or practical issues that you consider to be the main impediments in your country's existing immovables security legislation. (Please tick as many as apply and list any others.)</p> <ul style="list-style-type: none"><li><input type="checkbox"/> Lack of registration</li><li><input type="checkbox"/> Physical presence at registration</li><li><input type="checkbox"/> Re-registration requirements</li><li><input type="checkbox"/> Lack of assignability of security rights</li><li><input type="checkbox"/> High costs (notarisation, taxes and duties, local language requirements, etc.)</li><li><input type="checkbox"/> Uncertainty around priority</li><li><input type="checkbox"/> Uncertainty around enforcement regime</li><li><input type="checkbox"/> Direct enforcement not permitted</li></ul> <p>Please list any further impediments not mentioned above.</p>

## SECTION 4. Security agents

No.	Question
7	<p>Are 'security agent' structures* expressly permitted by legislation?</p> <p>* In secured financing, a security agent structure (sometimes referred to as security trust structure) allows lenders, under a syndicated loan facility, to share a security interest in a common security (granted by the borrower) through extending the security to a specialist financial institution (security agent or security trustee) that is appointed by the lenders to hold the security and enforce it for the benefit of the lenders as a group.</p> <ul style="list-style-type: none"><li><input type="checkbox"/> Yes</li><li><input type="checkbox"/> No</li></ul>

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## SECTION 5. Security agents<sup>1</sup>

No.	Question
8	<p>Are security agent structures applicable to all types of security (i.e. movable and immovable)?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Comments:</p>
9	<p>Can the security agent enforce security on behalf of all secured lenders?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Comments:</p>

## SECTION 6. Security agents<sup>2</sup>

No.	Question
10	<p>Are security agent structures used in practice despite the lack of supporting legislation?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Comments:</p>
11	<p>Is the 'parallel debt' structure* used in syndicated transactions as an alternative to the security agent structure?</p> <p>* The 'parallel debt' structure in syndicated loan transactions is aimed at achieving a commercial effect similar to that of a security agent structure in jurisdictions where security agency is not legally recognised. In this structure, the borrower undertakes a separate financial obligation ('parallel debt') towards an entity (sometimes referred to as administrative agent), which is a creditor in its own right, in parallel with assuming the secured debt under the finance document entered into between the borrower and the lenders, where the sum of the parallel debt is equal to that of the secured debt, with the security rights contemplated by the finance document granted in favour of the administrative agent.</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Comments:</p>

<sup>1</sup> Please skip entire section 5 (Q8 and Q9) if you answered **NO** to Q7

<sup>2</sup> Please skip entire section 6 (Q10 and Q11) if you answered **YES** to Q7

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## SECTION 7. Subordination of claims

No.	Question
12	<p>Are local law intercreditor agreements* used in your jurisdiction?</p> <p>* An intercreditor agreement is a contractual arrangement between two or more creditors involved in the same financing transaction that governs various aspects of their relationship with regard to their claims against the borrower. The key matters covered in an intercreditor agreement typically include designating ranks to creditors (or classes of creditors) in terms of their rights to obtain satisfaction from the assets of the borrower or against security enforcement proceeds, imposing restrictions on individual actions taken by a creditor, etc.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If not, please explain why:</p>
13	<p>Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Comments:</p>
14	<p>Are intercreditor agreements enforceable in your jurisdiction? *</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Comments:</p>

## SECTION 8. Subordination of claims<sup>3</sup>

No.	Question
15	<p>Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Comments:</p>

<sup>3</sup> Please skip entire section 8 (Q15 and Q16) if you answered **NO** to Q14

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No.	Question
16	<p>Has enforceability been tested before the courts?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>

## SECTION 9. Subordination of claims

No.	Question
17	<p>Can creditors voluntarily subordinate their claims* to other creditors' claims by means of an intercreditor agreement or subordination agreement?</p> <p>* In financing transactions involving multiple creditors, creditors may contractually set forth the order of priority of their respective claims with regard to the borrower's debt, typically in a subordination agreement (sometimes referred to as priority agreement), where a creditor acknowledges that its claim ranks below another creditor's claim in priority (subordinated). This may be part of an intercreditor agreement with the borrower.</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Comments:</p>

## SECTION 10. Subordination of claims<sup>4</sup>

No.	Question
18	<p>Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>

<sup>4</sup> Please skip entire section 10 (Q18) if you answered **NO** to Q17

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## SECTION 11. Subordination of claims

No.	Question
19	<p>Would subordination of creditor claims be enforceable in insolvency of the security grantor? *</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Comments:</p>

## SECTION 12. Subordination of claims<sup>5</sup>

No.	Question
20	<p>Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>

## SECTION 13. New financing in insolvency

No.	Question
21	<p>Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings*?</p> <p>* Formal proceedings accessible in the event the debtor is insolvent or is in the state of imminent insolvency where there is a prospect to rescue the debtor through reorganisation of the business, typically involving the adoption of a reorganisation plan and/or the conclusion of a composition agreement with the creditors.</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Comments:</p>

<sup>5</sup> Please skip entire section 10 (Q18) if you answered **NO** to Q17

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No.	Question
22	<p>Can the debtor grant security in respect of such new financing?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Comments:</p>
23	<p>Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Comments:</p>
24	<p>Are there any risks that new financing and related security provided on a commercial, arm's length basis could be subject to avoidance actions and set aside in the event of the insolvency of the lending entity*?</p> <p>* Avoidance actions are judicial actions or remedies that can be brought in insolvency proceedings (e.g. insolvent liquidation proceedings) against corporations and individuals who have received a payment or other preferred interest from an insolvent debtor if declared insolvent.</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Comments:</p>
25	<p>Are there any lender liability* risks in granting new financing to a financially distressed borrower?</p> <p>* Lenders being subject to civil, administrative or criminal sanctions for extending new financing to a debtor in financial difficulties. For the avoidance of doubt this question does not refer to other grounds on which lenders may be held liable in an insolvency context, for example interfering with the management of the debtor (in particular, acting as a shadow director).</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Comments:</p>
26	<p>Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Comments:</p>



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## SECTION 14. Specific COVID-19 measures

No.	Question
27	<p>Have regulatory authorities introduced new COVID-19 measures specific to credit, such as forgivable loans or easing of some regulatory measures?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Comments:</p>
28	<p>Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions* or lender liability** risks?</p> <p>* Avoidance actions are judicial actions or remedies that can be brought in insolvency proceedings (e.g. insolvent liquidation proceedings) against corporations and individuals who have received a payment or other preferred interest from an insolvent debtor if declared insolvent. ** Lenders being subject to civil, administrative or criminal sanctions for extending new financing to a debtor in financial difficulties. For the avoidance of doubt this question does not refer to other grounds on which lenders may be held liable in an insolvency context, for example interfering with the management of the debtor (in particular, acting as a shadow director).</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Comments:</p>
29	<p>Have regulatory measures relating to connected creditors been eased to encourage new financing?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Comments:</p>
30	<p>Have special state guarantee funds, existing or new, been deployed in the context of the current crisis? *</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Comments:</p>

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## SECTION 15. Specific COVID-19 measures<sup>6</sup>

No.	Question
31	<p>Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>

## SECTION 16. Special COVID-19 measures

No.	Question
32	<p>Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Comments:</p>

## SECTION 17. Valuation of collateral

No.	Question
33	<p>Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Comments:</p>
34	<p>Is the appraiser/valuation industry regulated in your jurisdiction?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>If yes, please specify:</p>

<sup>6</sup> Please skip entire section 15 (Q31) if you answered **NO** to Q30

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No.	Question
35	What valuation standards have been implemented?
36	What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?

## SECTION 18. Further contact and acknowledgement

No.	Question
37	Are you happy to be contacted further in connection with this survey?  <input type="checkbox"/> Yes <input type="checkbox"/> No
38	Do you consent to the name of your firm being acknowledged as a contributor to this survey in EBRD's report on New Financing?  <input type="checkbox"/> Yes <input type="checkbox"/> No