



## **Annex III: Economy Responses**

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# New Financing in the EBRD Regions



**European Bank**  
for Reconstruction and Development

This Annex was produced by the European Bank for Reconstruction and Development (EBRD) Legal Transition Programme, as part of the background research for the Technical Cooperation Project: Covid-19 Response – Business Insolvency and Restructuring Policy Assistance, implemented by the EBRD and funded by the EBRD Shareholder Special Fund.

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# New Financing in the EBRD Regions - Albania

## Albania

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Albanian legal counsels to the New Financing Survey conducted in 2020-2022. Further information on the Albanian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/albania](https://ebrd-restructuring.com/economy-profile/albania).

### 1. General movable and immovable security legislation<sup>1</sup>

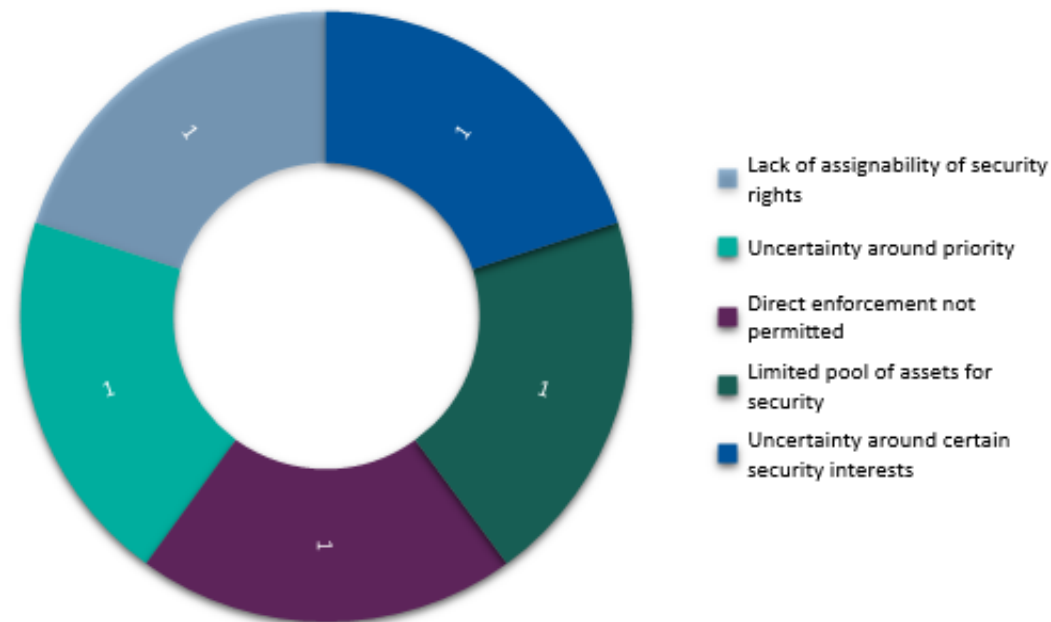
This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

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<sup>1</sup> Two law firms from Albania participated in the New Financing Survey

## New Financing in the EBRD Regions - Albania

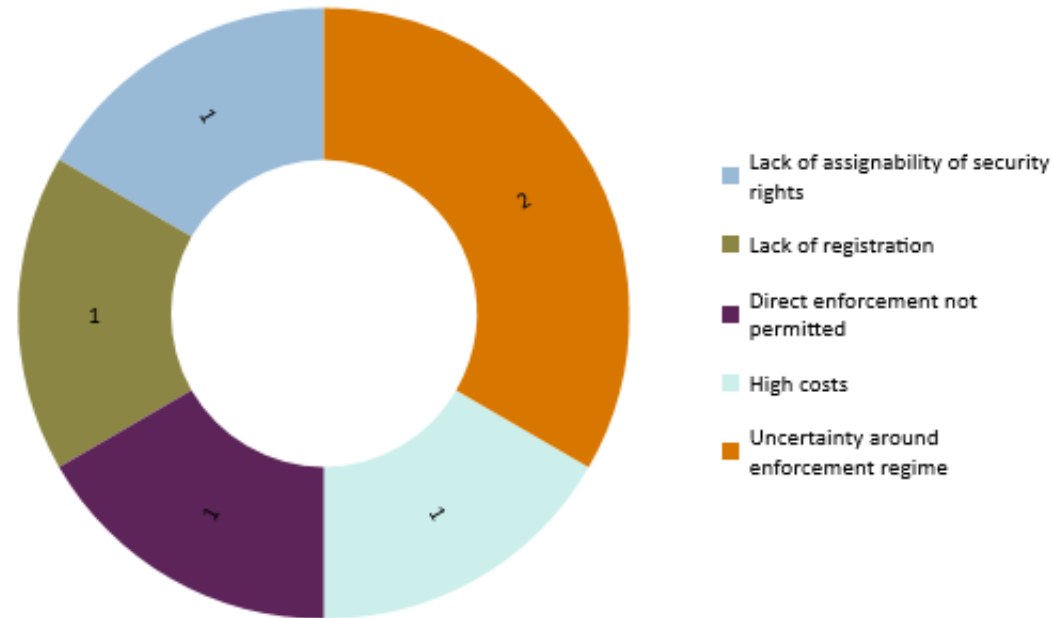
According to the respondents, the main obstacles to taking security over movable assets in Albania are:



**Note:** This illustrates the main obstacles cited by Albanian legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Albania had two respondents from two different law firms.

## New Financing in the EBRD Regions - Albania

With respect to taking security over immovable assets in Albania, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Albanian legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Albania had two respondents from two different law firms.

# New Financing in the EBRD Regions - Albania

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>2</sup> It follows the order of questions contained in the survey.

Albania		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	Rarely. Parties address this issue on a contractual basis, appointing one of the creditors as security agent.

<sup>2</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.



## New Financing in the EBRD Regions - Albania

(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	✓	The Albanian law does not provide any specific legal provision on this matter. However, market practice shows that local banks have used the parallel debt structure, meaning on a contractual basis, since the Albanian law does not prevent it.
<b>Subordination of claims</b>		
Are local law intercreditor agreements used in your jurisdiction?	✓	Rarely involving a bank lender. Typically achieved through entering into a loan agreement between the lender and borrower, while the ranking is governed by a security agreement concluded by the lender/borrower/security provider.
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
Are intercreditor agreements enforceable in your jurisdiction?	✓	To the extent the agreed ranking is compliant with mandatory priority rules (e.g. Article 605 of the Albanian Civil Code that stipulates the general ranking order).
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	In principle. Albanian law is silent on the matter. No established case law.
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	✓	

## New Financing in the EBRD Regions - Albania

Would subordination of creditor claims be enforceable in insolvency of the security grantor?	✓	Would be enforced based on the ranking order provided by the Albanian Insolvency Law (i.e. the Civil Code explicitly excludes the application of Article 605 of the Civil Code in insolvency). For example, secured claims would have priority over the subordinated claims.
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	✓	
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	Must be approved by the creditors' committee under the reorganisation plan. The reorganisation plan is subject to approval by the insolvency court.
Can the debtor grant security in respect of such new financing?	✗	In case of already encumbered assets, the consent of each affected secured creditor is required, and the other creditors (i.e. preferred creditors) must approve the security pursuant to the specific voting rights in the creditors' committee. Specific mandatory requirements apply under the Insolvency Law on the majority required for approving a specific matter, such as the present one.
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	In case it forms part of the court-approved reorganisation plan.
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 borrowing entity?	✗	Very low risk, since the security granted to the lending entity (against the new financing provided to the reorganised debtor) is enforced pursuant to the reorganisation plan ratified by the insolvency court.

## New Financing in the EBRD Regions - Albania

Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	No established case law. Merely a theoretical risk where the new financing is in breach of mandatory rules of debtor's jurisdiction or market financing practice (i.e. the loan has been granted on abusive or discriminatory grounds, or not on arm's length basis, etc.), the creditors of the debtor may request to the insolvency judge to declare new financing and subsequently any related security as null and void.
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	x	The Bank of Albania adopted in 2019 a set of rules, which serve as guidelines for banks rather than mandatory provisions. The guidelines have been adopted in the context of out-of-court treatment of distressed borrowers by one or more banks with respect to the same borrower, aiming at cooperation between the concerned banks.
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	The Bank of Albania instructed banks to suspend their client's loan instalment payments on a case-by-case basis. If banks suspend payments of the loans, no penalty interest shall apply during the suspension period. During this period, no credit rating deterioration measures shall be applied to borrowers. In the event of loan suspension, the Bank of Albania adopted the respective legal measures to prevent the loans from being rated as non-performing loans in the Credit Registry.
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	

## New Financing in the EBRD Regions - Albania

Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	✓	Two sovereign guarantees of more than EUR 200 million were provided by the government. These will serve as collateral to secure bank loans provided to companies having difficulties in paying employees' salaries.
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	x	
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	
Is the appraiser/valuation industry regulated in your jurisdiction?	x	
What valuation standards have been implemented?		Assets proposed/granted as collateral to secure loans are evaluated by licensed topographic experts. Banks often assign the task to experts appointed by them.
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		Extended valuation criteria. Experts' have a wide discretionary right to assess market value.

# New Financing in the EBRD Regions - Armenia

## Armenia

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Armenian legal counsels to the New Financing Survey conducted in 2020-2022. Further information on the Armenian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/armenia](https://ebrd-restructuring.com/economy-profile/armenia).

### 1. General movable and immovable security legislation<sup>3</sup>

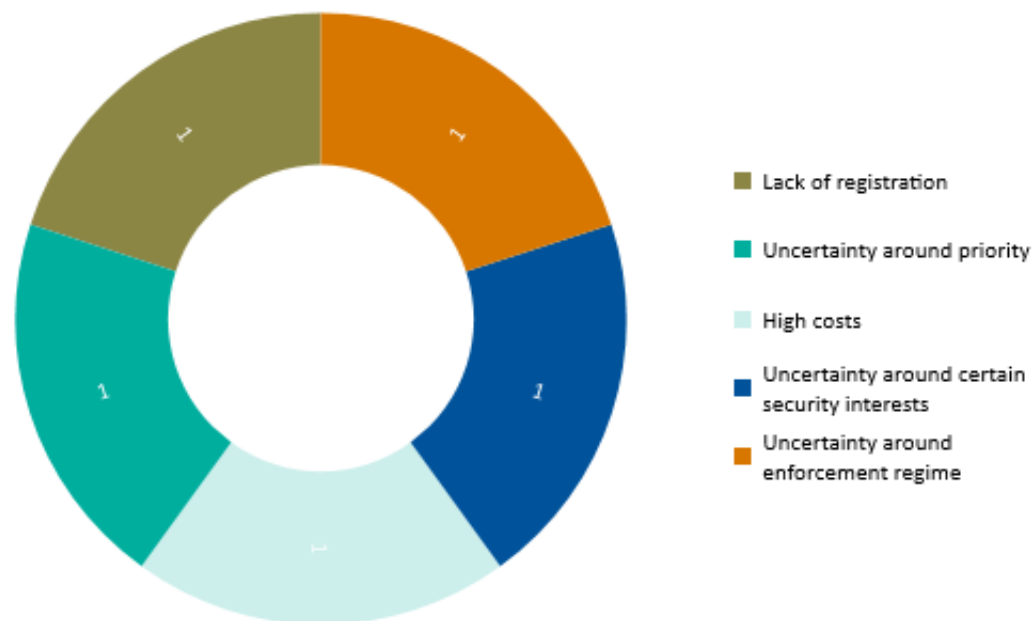
This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

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<sup>3</sup> One named law firm from Armenia and one anonymous participant from another Armenian law firm participated in the New Financing Survey

## New Financing in the EBRD Regions - Armenia

According to the respondents, the main obstacles to taking security over movable assets in Armenia are:



**Note:** This illustrates the main obstacles cited by Armenian legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Armenia had two respondents.

## New Financing in the EBRD Regions - Armenia

With respect to taking security over immovable assets in Armenia, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Armenian legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Armenia had two respondents from one law firm and one anonymous.

# New Financing in the EBRD Regions - Armenia

Further impediments identified by the New Financing Survey are that Armenian law does not recognise the concept of a security agent. Therefore, in certain cross-border multiple-lender transactions each lender is required to register its (first or second ranking) security rights over immovable property. Furthermore the procedure of direct enforcement (outside the court) is not fully regulated.

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>4</sup> It follows the order of questions contained in the survey.

Armenia		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		

<sup>4</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.



## New Financing in the EBRD Regions - Armenia

(N) Are security agent structures used in practice despite the lack of supporting legislation?	x	
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	x	
<b>Subordination of claims</b>		
Are local law intercreditor agreements used in your jurisdiction?	✓	Theoretically possible. Armenian law does not provide for intercreditor agreements. Lack of known cases.
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	Possible where foreign element is involved. In the absence of it, using foreign law is questionable, however, the dominant view is that they cannot be used in practice.
Are intercreditor agreements enforceable in your jurisdiction?	✓	See previous comments.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	

## New Financing in the EBRD Regions - Armenia

(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	x	Enforcement shall take place pursuant to priority rules established under the Insolvency Act. Subsequently, the priority lender must collect the proceeds from the subordinated lender.
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?		
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	Under the court-controlled proceedings of 'financial recovery'.
Can the debtor grant security in respect of such new financing?	✓	If such decision is adopted by the meeting of the creditors and is approved by the court.
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	If it violates the rights of the creditors, the court may not approve such decision.
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 borrowing entity?	x	Provided the new financing forms part of the reorganisation plan adopted by the creditors and approved by the court, no risk is foreseen.

## New Financing in the EBRD Regions - Armenia

Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	No risk is foreseen, as the corresponding decision is adopted by the creditors and is approved by the court.
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	x	
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	<input type="checkbox"/>	Information not available
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	<input type="checkbox"/>	Information not available

## New Financing in the EBRD Regions - Armenia

Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	✓	
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	
What valuation standards have been implemented?		At least two methods should be covered by the report, one of which is liquidation method.
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		High volatility of the collateral forces lenders to take a “conservative” approach and very often to back it up with additional security requirements (e.g. personal guarantee from the shareholders and their affiliates).

## Azerbaijan

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Azerbaijani legal counsels to the New Financing Survey conducted in 2020-2022. Further information on the Azerbaijani insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/azerbaijan](https://ebrd-restructuring.com/economy-profile/azerbaijan).

### 1. General movable and immovable security legislation<sup>5</sup>

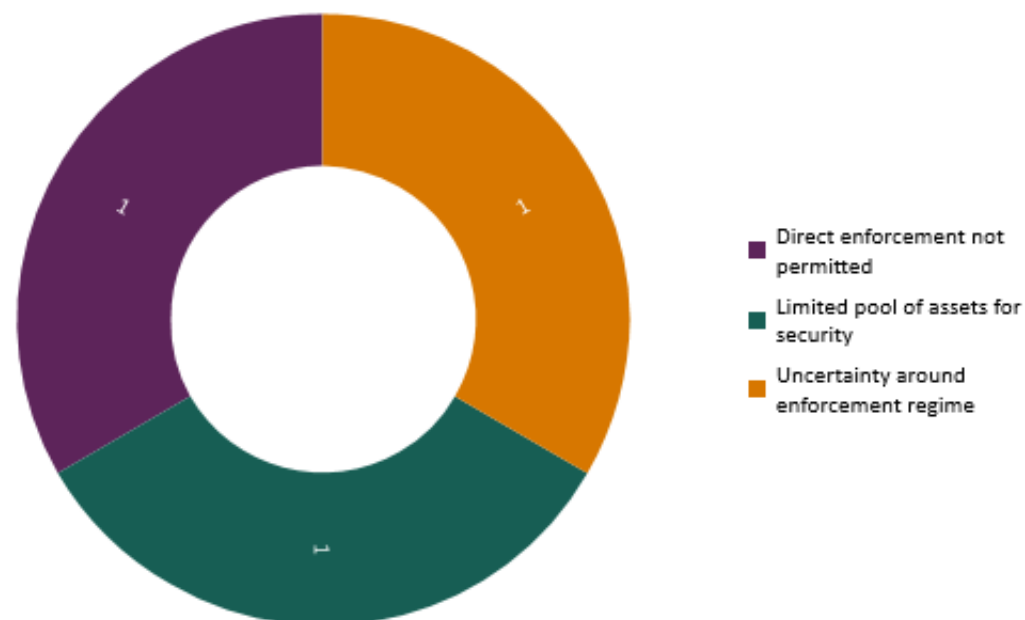
This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

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<sup>5</sup> Three law firms from Azerbaijan participated in the New Financing Survey

## New Financing in the EBRD Regions - Azerbaijan

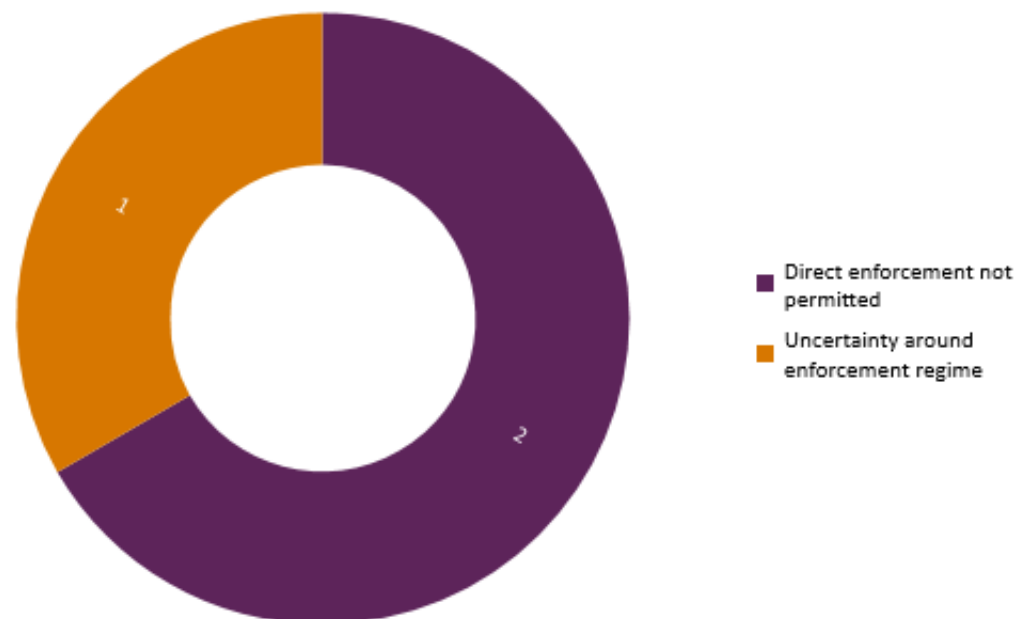
According to the respondents, the main obstacles to taking security over movable assets in Azerbaijan are:



**Note:** This illustrates the main obstacles cited by Azerbaijani legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Azerbaijan had three respondents from three different law firms.

## New Financing in the EBRD Regions - Azerbaijan

With respect to taking security over immovable assets in Azerbaijan, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Azerbaijani legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Azerbaijan had three respondents from three different law firms.

# New Financing in the EBRD Regions - Azerbaijan

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>6</sup> It follows the order of questions contained in the survey.

Azerbaijan		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	x	Not known in local financing transactions. More likely possible in the case of cross-border financing transactions.

<sup>6</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.



## New Financing in the EBRD Regions - Azerbaijan

(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	x	
<b>Subordination of claims</b>		
Are local law intercreditor agreements used in your jurisdiction?	✓	Rarely.
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
Are intercreditor agreements enforceable in your jurisdiction?	✓	Generally.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	Subject to general limitations imposed by the Law on International Private Law on application of foreign law.
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	Azerbaijani insolvency legislation does not treat subordinated creditors as separate category of unsecured creditors in the waterfall for discharge of obligations of a bankrupt entity. Therefore a liquidator may refuse to enforce subordination or similar provisions of intercreditor agreements of a bankrupt entity to the extent those do not align with the insolvency legislation. However, there is a known case, where the liquidator has honoured subordination provisions.

## New Financing in the EBRD Regions - Azerbaijan

(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	✓	Considered possible, however, uncertainty remains.
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	✓	
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	The Insolvency Law of the Republic of Azerbaijan (which regulates insolvency of entities other than banks) suggests indirectly that new financing can be attracted in rehabilitation process. However, in the absence of explicit statement, various interpretations are possible. The Law on Bank of the Republic of Azerbaijan (which regulates insolvency of banks only) does not provide for possibility of attracting financing in the context of rehabilitation of banks.
Can the debtor grant security in respect of such new financing?	x	Not regulated by the law.
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	x	
Are there any risks that new financing and related security provided on a commercial, arm's length basis could be subject to	✓	As the provision of the financing as part of rehabilitation of an entity is not specifically regulated by legislation, general claw-back powers of liquidator may

## New Financing in the EBRD Regions - Azerbaijan

avoidance actions and set aside in the event of the insolvency of the borrowing entity?		apply. Uncertainty remains as to whether actions of a temporary administrator may be scrutinised by the liquidator appointed in insolvency proceedings.
Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	✓	Local banks are required to assess the credit risks of their borrowers at the time of the application for a loan and at least once a year thereafter. The borrower's risk profile is also reconsidered in the event of changes in economic conditions and if the borrower's compliance with the terms of the loan is unreliable. However, there are no provisions that would specifically prevent banks from granting new loans to a financially distressed borrower.
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	The Government of Azerbaijan adopted an Action Plan contemplating state support to the banks issuing new loans to entrepreneurs directly affected by pandemic through: <ul style="list-style-type: none"> <li>(i) the provision of state guarantee for repayment of principal amount of 60% of such loans and</li> <li>(ii) subsidising 50% of interest rate in relation to such state guaranteed loans. In furtherance of this Action Plan, the Central Bank of Azerbaijan adopted several measures, including easing regulatory requirement on banks.</li> </ul>
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection	x	

## New Financing in the EBRD Regions - Azerbaijan

from avoidance actions or lender liability risks?		
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	✓	The Central Bank recommended local banks to restructure loans financed by various state funds (upon obtaining consent of such funds to restructuring), provided that such loans were classified as satisfactory prior to 1 March 2020.
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	✓	
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	Fairly easy as there are several appraisers in the market.
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	Law No. 510-IQ on Valuation Activity, dated 25 June 1998. Control over valuation activity is carried out by the State Service on Property Matters under the Ministry of Economy and the Ministry of Economy. The valuation activity is not licensed.

## New Financing in the EBRD Regions - Azerbaijan

What valuation standards have been implemented?		In addition to the Valuation Law, the Rules on Valuation Standards and Norms and Preparation of Professional Valuers were approved by the Cabinet of Ministers of Azerbaijan on 27 June 2000 setting out general principles of valuation standards and preparation of professional valuers. In addition, there is a set of National Valuation Standards adopted by the Azerbaijan Valuers Association and approved by the State Committee on Standardization, Meteorology and Patents in 2009. The Association confirmed that these Rules are still in force.
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		Absence of publications, statistics, overviews.

# New Financing in the EBRD Regions – Belarus

## Belarus<sup>7</sup>

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Belarusian legal counsels to the New Financing Survey conducted in 2020-2022. Further information on the Belarusian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/belarus](https://ebrd-restructuring.com/economy-profile/belarus).

### 1. General movable and immovable security legislation<sup>8</sup>

This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

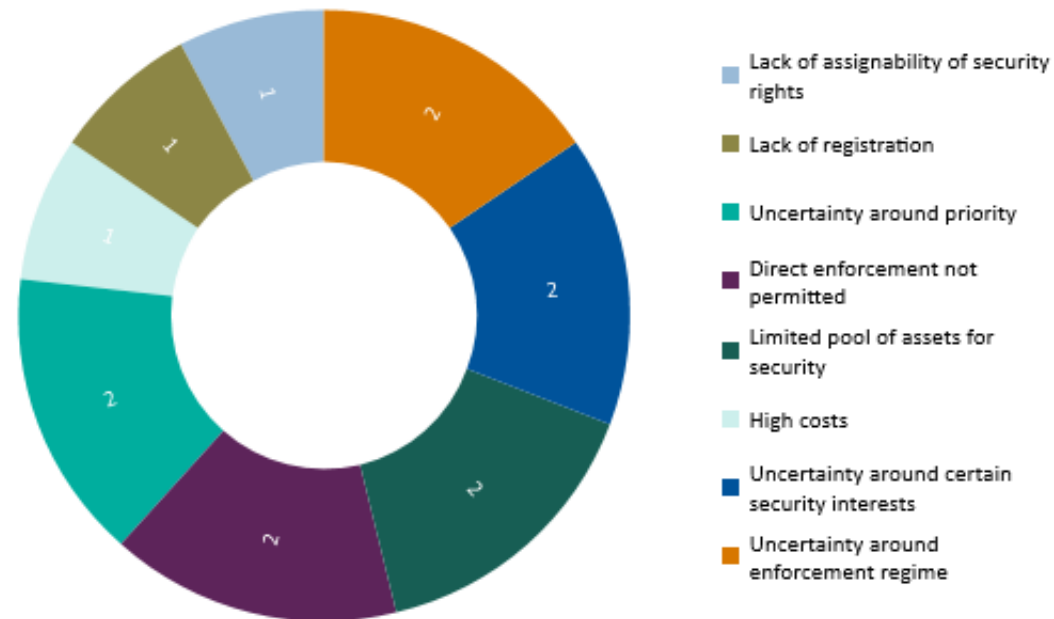
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<sup>7</sup> The EBRD New Financing Survey includes Russia and Belarus. However, since April 2022, Russia and Belarus no longer have access to the EBRD’s resources. The EBRD currently invests in 36 economies.

<sup>8</sup> Two law firms from Belarus participated in the New Financing Survey

## New Financing in the EBRD Regions – Belarus

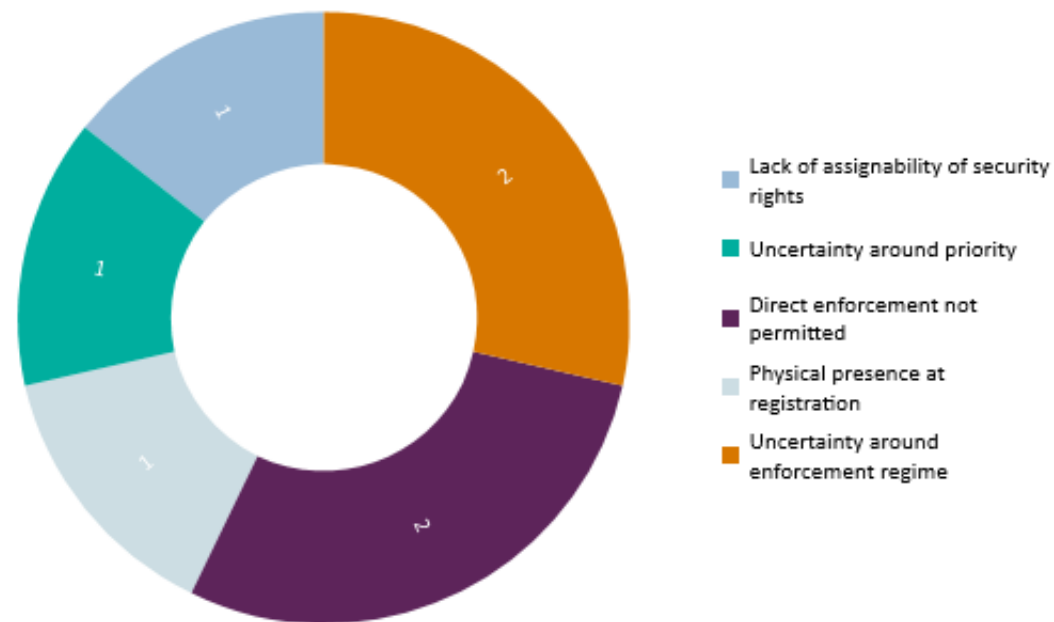
According to the respondents, the main obstacles to taking security over movable assets in Belarus are:



**Note:** This illustrates the main obstacles cited by Belarusian legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Belarus had two respondents from two different law firms.

## New Financing in the EBRD Regions – Belarus

With respect to taking security over immovable assets in Belarus, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Belarusian legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Belarus had two respondents from two different law firms.



## New Financing in the EBRD Regions – Belarus

More specifically, in respect of movables security legislation, (i) pledges of particular assets (receivables, shares in a limited liability company) are not subject to registration with any public registry in Belarus, (ii) notarisation of a pledge agreement often requires preparing a notarised translation, (iii) registration of pledge over multiple movables under same agreement may be unreasonably costly, (iv) Belarusian laws do not provide for the concept of a ‘floating charge’ to capture fluctuating and future assets, (v) there are practical issues with pledges over future assets, (vi) the availability of a pledge over property rights other than receivables is uncertain, (vii) in bankruptcy, pledged assets are included in the bankruptcy estate on the same ground as other pledgors’ assets while the pledgee’s claim ranks in fourth place, (viii) out of bankruptcy, other pledgors can execute against pledged property ignoring a pledgor’s secured claim of higher priority if such claim is not yet matured, (ix) the out-of-court procedure of levying execution on the pledged property is poorly regulated and out-of-court enforcement largely depends on the pledgor’s cooperation, (x) direct enforcement is only permitted for the out of-court enforcement of a receivables pledge, (xi) there is an imperfect movables pledge registration procedure (e.g. practical difficulties with pledging a large number of movables under the same pledge agreement, etc.); and (xii) there are issues with the maintenance of the registry i.e. notaries and pledge registry specialists in some cases do not have enough technical information on operation of the registry.

In respect of immovables security legislation, (i) in bankruptcy, mortgaged assets are included in the bankruptcy estate together with other unsecured assets of the mortgagor and a mortgagee’s claim ranks in fourth place, (ii) outside of bankruptcy, other mortgagors can execute against the mortgaged property, ignoring a secured claim with higher priority if such claim is not yet matured, (iii) the out-of-court procedure of levying execution on the mortgaged property is poorly regulated and therefore out-of-court enforcement largely requires the mortgagor’s cooperation; and (iv) immovable mortgages are subject to registration with the territorial body of the district where the property is located (i.e. in some cases unreasonable travelling is required); and registration requirements of territorial bodies may differ in certain details.

# New Financing in the EBRD Regions – Belarus

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>9</sup> It follows the order of questions contained in the survey.

Belarus		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	Rarely. Those include foreign law governed syndicated loans and notes offerings, secured by pledge over movable assets (inventories, vehicles, etc.), receivables or shares in Belarusian limited liability companies. Security agreements in respect of Belarusian assets are typically governed by Belarusian law.

<sup>9</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Belarus

		The possibility to enforce the security held by a security agent is doubtful, as in certain respects the security agent structure conflicts with mandatory provisions of Belarusian law. Not tested in the Belarusian courts.
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	✓	The possibility to enforce security covering 'parallel debt' is doubtful, as in certain respects 'parallel debt' structure conflicts with mandatory provisions of Belarusian law. Not tested in the Belarusian courts.
<b>Subordination of claims</b>		
Are local law intercreditor agreements used in your jurisdiction?	x	Questionable enforceability. Belarusian law does not provide for intercreditor agreements. Typical provisions of intercreditor agreements may conflict with mandatory provisions of Belarusian law, especially those designating ranks of creditors and constituting waivers of procedural rights.
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	Sometime, in cross-border transactions.
Are intercreditor agreements enforceable in your jurisdiction?	x	Questionable enforceability due to potential collision with mandatory provisions of Belarusian law. Not tested in the Belarusian courts.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?		
(Y) Has enforceability been tested before the courts?		

## New Financing in the EBRD Regions – Belarus

Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	x	Belarusian laws do not provide for contractual subordination of creditors' claims. Subordination is only mentioned in regulations on capital requirements in respect of certain loans granted to Belarusian banks by their shareholders. Typical provisions of subordination agreements may conflict with mandatory provisions of Belarusian laws.
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?		
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	x	Insolvency proceedings are governed by mandatory provisions of Belarusian insolvency law. Subordination of creditor claims may be deemed conflicting with such rules.
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?		
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	Generally, yes. Provision of financial aid to the debtor is expressly mentioned among the ways to rescue the debtor in the course of reorganisation-type insolvency proceedings. No detailed rules exist however.
Can the debtor grant security in respect of such new financing?	x	Belarusian law is silent on this matter. At the same time, granting security may be deemed to conflict with the general provisions of insolvency law.
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	x	Belarusian law is silent on this matter. General ranking set forth by Belarusian insolvency law applies.

## New Financing in the EBRD Regions – Belarus

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 borrowing entity?	✓	Belarusian law is silent on this matter. Therefore, general regulations on avoidance actions in insolvency apply.
Are there any lender liability risks in granting new financing to a financially distressed borrower?	✓	Civil or criminal liability risks may be relevant for the lender's management. Depending on circumstances such financing may fall within the scope of offences envisaged by the Criminal Code of the Republic of Belarus of 9 July 1999 No. 275-Z, such as Article 424 (Abuse of Official Capacity) or Article 216 (Infliction of Proprietary Damage). The risk is material where management gains some financial benefit out of such transaction or has another personal interest.
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	✓	Banks' risk management rules and prudential requirements may apply. These are regulated by inter alia: <ul style="list-style-type: none"> <li>(i) the Instruction on Procedure for Providing Funds in Form of Loan and Redemption (Repayment) Thereof, adopted by the Regulations of the Board of the National Bank of the Republic of Belarus of 29 March 2018 No. 149; and</li> <li>(ii) the Instruction on Procedure for Creating and Using Special Reserves to Cover Potential Losses under Assets and Off-Balance Operations, adopted by the Regulations of the Board of the National Bank of the Republic of Belarus of 28 September 2006 No. 138.</li> </ul>
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as	✓	Several times in the spring of 2020, the Board of the National Bank adopted regulations easing particular prudential requirements applicable to the banks, nudging the latter to finance Belarusian enterprises more actively.

## New Financing in the EBRD Regions – Belarus

forgivable loans or easing of some regulatory measures?		Also, as a measure of support in the COVID-19 situation, the Council of Ministers provided grants (in the form of debt releases) to a number of state-owned enterprises, simultaneously increasing the state's share in them.
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	x	
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?		
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	x	Rather difficult. There are independent valuation organisations in Belarus. In 2014, the Association of Valuation Organisations was established.

## New Financing in the EBRD Regions – Belarus

Is the appraiser/valuation industry regulated in your jurisdiction?	✓	The main legal act regulating valuation industry is the Edict of the President of the Republic of Belarus of 13 October 2006 No. 615 "On Valuation Activities in the Republic of Belarus".
What valuation standards have been implemented?		There is a range of the National Standards adopted by the State Committee for Standardisation of the Republic of Belarus. Currently general standards of valuations are set by the National Standard 52.0.01-2017 (СТБ 52.0.01-2017) "Valuation of the Objects of Civil Law Rights. General Terms".
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		No substantial changes to collateral valuation activities are noted during the financial crisis situation.

# New Financing in the EBRD Regions – Bosnia and Herzegovina

## Bosnia and Herzegovina

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Bosnian legal counsel to the New Financing Survey conducted in 2020-2022. Further information on the Bosnian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com](https://ebrd-restructuring.com).

### 1. General movable and immovable security legislation<sup>10</sup>

This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

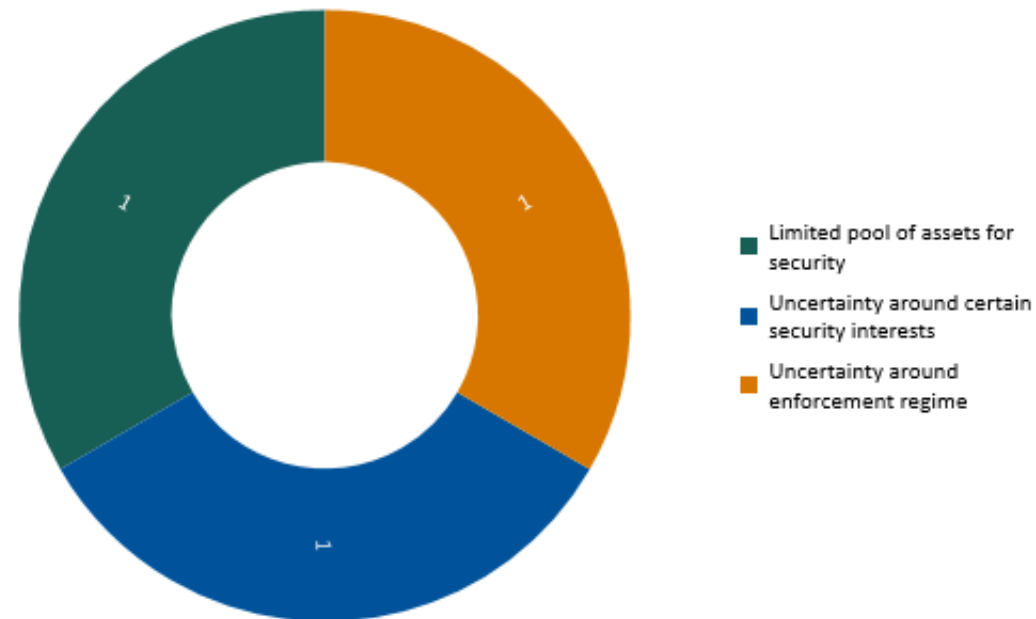
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<sup>10</sup> One law firm from Bosnia and Herzegovina participated in the New Financing Survey



## New Financing in the EBRD Regions – Bosnia and Herzegovina

According to the respondent law firm, the main obstacles to taking security over movable assets in Bosnia and Herzegovina are:



**Note:** This illustrates the main obstacles cited by Bosnian legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Bosnia and Herzegovina had one law firm respondent.

## New Financing in the EBRD Regions – Bosnia and Herzegovina

With respect to taking security over immovable assets in Bosnia and Herzegovina, the respondent cited the lack of assignability of security rights as the main obstacle in their economy's existing secured transactions framework. One law firm respondent participated from Bosnia and Herzegovina.

Further impediments identified by the survey are, in respect of movables security legislation:

- (i) the possibility of the debtor to sell the pledged property,
- (ii) difficulties to trace it, and
- (iii) highly inefficient enforcement procedure; in respect of immovables security legislation, the enforcement procedure is extremely slow.

# New Financing in the EBRD Regions – Bosnia and Herzegovina

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>11</sup> It follows the order of questions contained in the survey.

Bosnia and Herzegovina		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	Only in international transactions.
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	✓	

<sup>11</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Bosnia and Herzegovina

Subordination of claims		
Are local law intercreditor agreements used in your jurisdiction?	✓	
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
Are intercreditor agreements enforceable in your jurisdiction?	✓	
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	✓	

## New Financing in the EBRD Regions – Bosnia and Herzegovina

Would subordination of creditor claims be enforceable in insolvency of the security grantor?	✓	Only if the claims are secured with a pledge.
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	✓	
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	It is possible only with the approval of the creditors of all ranks.
Can the debtor grant security in respect of such new financing?	✓	Not expressly provided for by law, but as the corresponding claim would have priority in respect of all other creditors' claim, it is considered possible.
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	The reorganisation plan adopted in the course of bankruptcy proceedings can stipulate that the additional financing has priority over bankruptcy creditors' claims. Court must approve reorganisation plan.
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 borrowing entity?	✓	In the case of out-of-court restructuring, new financing may be subject to avoidance actions.

## New Financing in the EBRD Regions – Bosnia and Herzegovina

Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	x	
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	✓	

## New Financing in the EBRD Regions – Bosnia and Herzegovina

(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	x	
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	x	
Is the appraiser/valuation industry regulated in your jurisdiction?	x	Court experts are engaged privately for appraisals. Banks tend to prescribe the use of preferred court experts.
What valuation standards have been implemented?		N/A
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		N/A

## Bulgaria

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Bulgarian legal counsels to the New Financing Survey conducted in 2020-2022<sup>12</sup>. Further information on the Bulgarian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/bulgaria](https://ebrd-restructuring.com/economy-profile/bulgaria).

### 1. General movable and immovable security legislation<sup>13</sup>

This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

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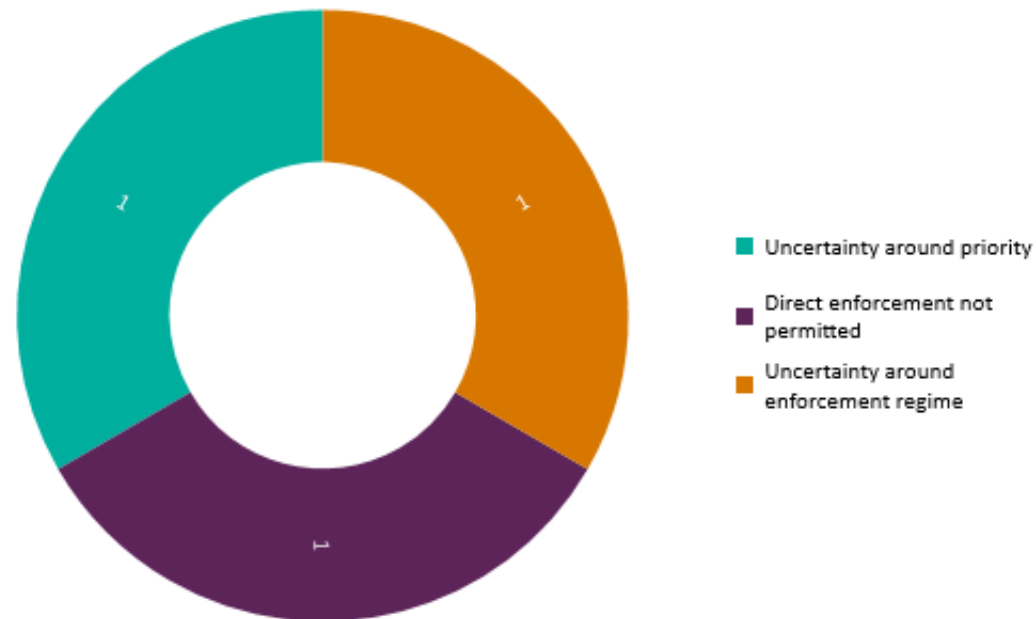
<sup>12</sup> Please note that due to the transposition of Directive (EU) 2019/1023 on preventive restructuring frameworks, the laws and commentary with respect to new financing may have changed in this EU member state.

<sup>13</sup> Two law firms from Bulgaria participated in the New Financing Survey



## New Financing in the EBRD Regions – Bulgaria

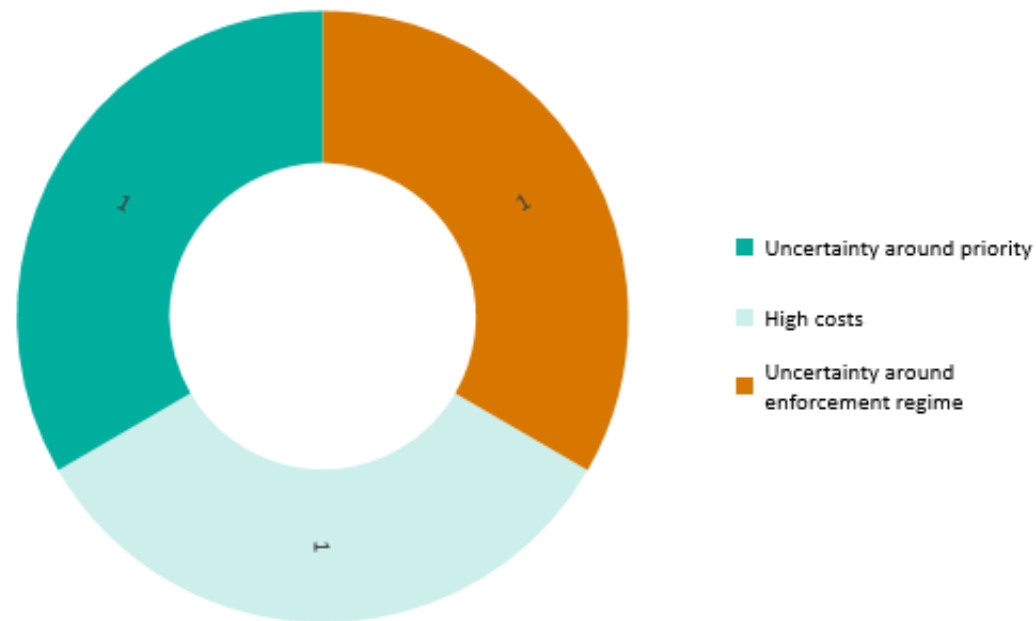
According to the respondents, the main obstacles to taking security over movable assets in Bulgaria are:



**Note:** This illustrates the main obstacles cited by Bulgarian legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Bulgaria had two respondents from two different law firms.

## New Financing in the EBRD Regions – Bulgaria

With respect to taking security over immovable assets in Bulgaria, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Bulgarian legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Bulgaria had two respondents from two different law firms.

# New Financing in the EBRD Regions – Bulgaria

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>14</sup> It follows the order of questions contained in the survey.

Bulgaria		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	✓	The common law concept of trust and security trusteeship is not recognized under Bulgarian law. Additionally, Bulgaria is not a signatory under The Hague Convention on the Law Applicable to Trusts and on their Recognition from 1985. Nevertheless, there are exceptions to this rule. Financial collateral could be granted to a party other than the creditor under the financial transaction (the Bulgarian Financial Collateral Arrangements Act implements Directive 2002/47/EC on financial collateral arrangements). Additionally, there is a bondholders trust under the Bulgarian Public Offering of Securities Act. The bondholders trust, a position held only by a licensed bank, is solely responsible for the registration, administration and enforcement of the security assets for the benefit of multiple and changing bondholders.
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?	×	
(Y) Can the security agent enforce security on behalf of all secured lenders?	✓	Only in case of enforcement under collateralized bonds under the Law on the Public Offering of Securities.

<sup>14</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Bulgaria

(N) Are security agent structures used in practice despite the lack of supporting legislation?		
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	✓	<p>As a general principle Bulgarian law does not recognise the concept of a party holding a security (e.g. security agent under a facilities agreement) for the benefit of a third party because of the concept of accessoriness of security interest to the underlying claim. There are doubts about the lack of cause in the parallel claim under the transaction, which is considered a conundrum under Bulgarian law, because a contract without cause would be declared void and the security interest, which secures it, would also be declared void.</p> <p>Security agency based on parallel debt or joint creditorship is not tested before Bulgarian courts; there are concerns around its enforceability. It does not mean it is not used in practice, especially in context of truly syndicated deals where the finance parties are expected to change in the course of both primary and secondary syndication. As a matter of local practice, joint creditorship is the preferred concept because there is legal doctrine to substantiate it (although it is not backed by statutory provisions or sufficient case law).</p>
<b>Subordination of claims</b>		
Are local law intercreditor agreements used in your jurisdiction?	✓	
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	

## New Financing in the EBRD Regions – Bulgaria

Are intercreditor agreements enforceable in your jurisdiction?	✓	There is no case law of the Bulgarian courts on the issue whether intercreditor agreements are enforceable. However, there are no legal impediments to concluding such type of agreements. Theoretically, it is possible for the bailiff or the insolvency court to refuse to comply with the intercreditor agreement. However, there is no legal obstacle for the creditor who has not received satisfaction in accordance with the intercreditor agreement seeking the relevant amount from the creditor who has received greater satisfaction than what was agreed in the intercreditor agreement.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	?	
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	This applies to foreign law governed intercreditor agreement. Subordination under Bulgarian law intercreditor agreements have not been tested before court and there are doubts whether these will be enforceable, particularly in insolvency scenarios
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	✓	There is no binding court practice regarding enforceability of subordinated claims under Bulgarian law governed documentation in insolvency scenarios with a Bulgarian grantor. There are doubts whether such Bulgarian law subordination provisions will be acceptable to local courts or insolvency trustees. Where such claims have been subordinated under a foreign law document (e.g. English law) Bulgarian courts and/or an insolvency trustee

## New Financing in the EBRD Regions – Bulgaria

		would arguably accept this provision as the subordination between competing creditors will be governed by law which has an established practice on the matter. Please note that there is a risk that any foreign law governed subordination arrangements might be considered to be contrary to any overriding mandatory provisions or public policy i.e. the overarching principles governing any given legal system, which if breached would be contrary to public policy.
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	<input type="checkbox"/>	Information not available
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	x	Although it is not explicitly mentioned such new financing could be included in any reorganisation (insolvency)/stabilisation (pre-insolvency) plans
Can the debtor grant security in respect of such new financing?	x	This is not explicitly included in any insolvency legislation, but there is no statutory prohibition of the granting of such security (if there are any unencumbered assets left)
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	x	There are no statutory provisions on the matter and any new financing will be treated pari passu with any other unsecured/secured financing. There are no rules in respect of “super-priority” of such claims
Are there any risks that new financing and related security provided on a commercial, arm’s length basis could be subject to	✓	The Bulgarian insolvency legislation lacks mechanisms for protecting any new and interim financing provided to a debtor in insolvency or restructuring, and guaranteeing that it cannot be declared void, voidable or unenforceable. Any

## New Financing in the EBRD Regions – Bulgaria

avoidance actions and set aside in the event of the insolvency of the borrowing entity?		such financing could be subject to any claims by insolvency trustee/other creditors.
Are there any lender liability risks in granting new financing to a financially distressed borrower?	✓	However, the Bulgarian insolvency legislation lacks mechanisms for ensuring that grantors of any new and interim financing provided to a debtor in insolvency or restructuring financing are protected and they could potentially be subject to civil, administrative or criminal liability.
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	✓	Loans to distressed borrowers should involve the setting aside of additional regulatory capital due to the nature of the loans i.e. leveraged loans provided to low credit borrower.
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	<p>A sector-wide private moratorium on bank loan payments during the period of public emergency in Bulgaria stemming from the COVID-19 outbreak was approved on 10 April (2020) by the Bulgarian National Bank. The draft Moratorium was submitted through the Association of Banks in Bulgaria (“ABB”), the industry body of all credit institutions in Bulgaria. The sector-wide private moratorium followed a resolution of the BNB from 3 April (2020) stating the National Bank’s position that it will comply with the Guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis (“EBA Guidelines”) adopted by European Banking Authority (“EBA”).</p> <p>The EBA Guidelines introduced a temporary principle that bank moratoria (both public or private) on bank loan payments do not lead to a reclassification of</p>

## New Financing in the EBRD Regions – Bulgaria

		exposures (and thus triggering higher regulatory capital requirements for the banks), provided that the relevant payment moratorium meets certain EBA Guidelines criteria (e.g. changes to the schedule of payments only, no applicability to new loans post-moratorium, duration).
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	✓	<p>The Bulgarian Council of Ministers approved and assigned the state owned Bulgarian Development Bank with the implementation of the "Program for liquidity support through portfolio guarantees for micro and SMEs affected by the declared emergency and COVID-19 outbreak".</p> <p>The objective of the Programme was for Bulgarian Development Bank to provide guarantees in favour of commercial banks which, in turn, would create portfolios of loans available to micro, small and medium-sized enterprises, as well as small mid-cap businesses. The amount of the total guarantee fund was approximately EUR 250 million.</p>
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	✓	



## New Financing in the EBRD Regions – Bulgaria

Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation collateral or security in your jurisdiction?	✓	
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	Independent appraisers are regulated by the Bulgarian Financial Audit Act, the Independent Appraisers Act as well as by the internal rules of the Chamber of Independent Appraisers
What valuation standards have been implemented?		Pursuant to the provisions of the Independent Appraisers Act the Bulgarian Chamber of Independent Appraisers has adopted detailed Bulgarian Valuation Standards (latest valuation from 2018)
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		As a small developing economy the Bulgarian financial markets lack the sophistication and depth and thus are not liquid enough to provide objective fair market valuation of assets (especially financial, but also in rem) in case of market downturn. This has led to sharp deterioration of asset valuations in previous economic downturns

## Croatia

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Croatian legal counsels to the New Financing Survey conducted in 2020-2022<sup>15</sup>. Further information on the Croatian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/croatia](https://ebrd-restructuring.com/economy-profile/croatia).

### 1. General movable and immovable security legislation<sup>16</sup>

This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

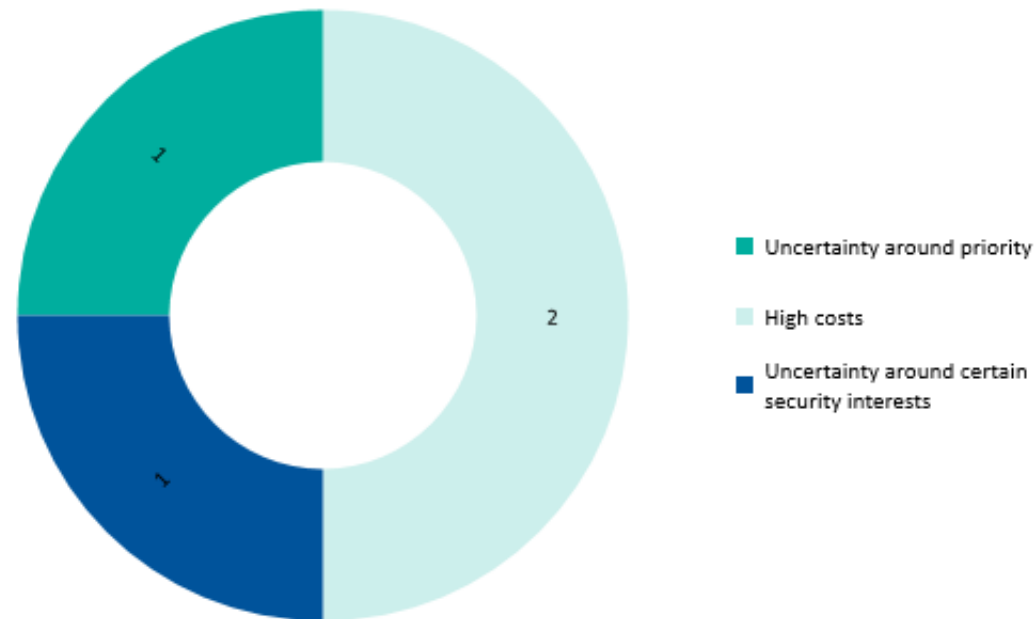
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<sup>15</sup> Please note that due to the transposition of Directive (EU) 2019/1023 on preventive restructuring frameworks, the laws and commentary with respect to new financing may have changed in this EU member state.

<sup>16</sup> Two law firms from Croatia participated in the New Financing Survey

## New Financing in the EBRD Regions – Croatia

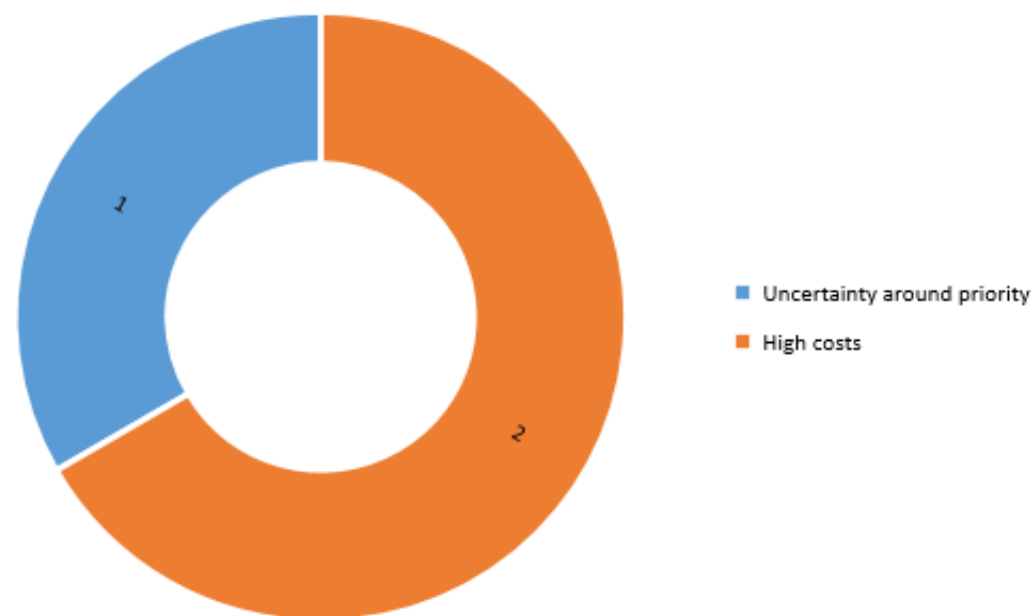
According to the respondents, the main obstacles to taking security over movable assets in Croatia are:



**Note:** This illustrates the main obstacles cited by Croatian legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Croatia had two respondents from two different law firms.

## New Financing in the EBRD Regions – Croatia

With respect to taking security over immovable assets in Croatia, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Croatian legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Croatia had two respondents from two different law firms.

## New Financing in the EBRD Regions – Croatia

Impediments, more specifically, in respect of movable security legislation include the following:

- (i) the pledge of bank accounts is regulated differently by various laws (Enforcement Act, secondary legislation to Monetary Funds Enforcement Procedure, Financial Collateral Act), and banks may refuse to acknowledge it, despite being expressly envisaged by law,
- (ii) there are difficulties in obtaining information from registry on priority or absence of pledges,
- (iii) the lack of availability of electronic registration (it is to be noted that the proposed new Enforcement Act seems to address this issue),
- (iv) the lack of regulation of the security agent.

In respect of immovable security legislation, the impediments are:

- (i) the lack of flexible framework as regards registration of interest rates and changes to existing mortgages (e.g. amount, interest rate, etc.), and the lack of an option to register consent-based new mortgages at the same level of ranking as that of existing mortgages,
- (ii) lack of regulation of security agent, (
- (iii) complicated enforcement where asset is located on the territories of various courts (i.e. separate procedures must be initiated before each court), (iv) lengthy enforcement proceedings,
- (iv) uncertainties around disposal of undeleted mortgage.

# New Financing in the EBRD Regions – Croatia

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>17</sup> It follows the order of questions contained in the survey.

Croatia		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	Would likely require the creditors to agree on a joint and several position (which is not presumed by law) in order to be enforceable, unless such position arises by a special law.
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	✓	The parallel debt structure (where the administrative/security agent becomes a parallel, joint and several, creditor with all the lenders) has become a market standard, however, it has not yet been tested before Croatian courts. It is widely

<sup>17</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Croatia

		considered aligned with Croatian law. Concerns remain as to whether multiple loans may be secured by same asset.
<b>Subordination of claims</b>		
Are local law intercreditor agreements used in your jurisdiction?	✓	Rarely. Such agreement would typically be used in transactions involving foreign lenders and governed by foreign law. Regularly, multiple mortgages are registered at the same level of ranking, not necessitating intercreditor agreements. Exceptions may be unregistered collaterals, such as debenture bonds and bills of exchange where intercreditor agreements are used.
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	Typically to regulate ranking.
Are intercreditor agreements enforceable in your jurisdiction?	✓	The Enforcement Act is silent on this matter. Uncertainty remains as to whether an agreement on the distribution of proceeds different than the one envisaged in the Enforcement Act would be recognised by the enforcement court.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	x	Not tested before the courts.
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	By virtue of assignment of priority rankings, the subordination can be also perfected in the land registry (however, if other mortgagee(s) are in between priority rankings subject to subordination, this can be effected only subject to their consent).

## New Financing in the EBRD Regions – Croatia

(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	✓	Subordination of priority rankings of a certain security interest is regulated by the following laws: (i) Land Registry Act (Official Gazette no. 63/20190) (in particular Articles 51 – 56); (ii) Maritime Code (Official Gazette nos. 181/2004, 76/2007, 146/2008, 61/2011, 56/2013, 26/2015 and 17/2019) (in particular Articles 267 - 272) (iii) Law of Registry of Courts' and Notary Publics' Securities of Creditors' Claims over Movable Assets and Rights
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	✓	The Insolvency Act expressly envisages (in Article 139/2) that contractually subordinated claims will be settled as claims of lower priority. However, there are opinions that neither in pre-bankruptcy nor in bankruptcy proceedings, voluntary subordination would generally survive, unless it is recognised by bankruptcy creditors in a settlement. No relevant case law exists.
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	✓	
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	New financing is permitted in pre-bankruptcy proceedings (predstečajni postupak) and in the extraordinary administration proceedings over systemically important companies (postupak izvanredne uprave). It is subject to consent of creditors (in the event of pre-bankruptcy) and of a creditors' committee (in the event of extraordinary administration).



## New Financing in the EBRD Regions – Croatia

Can the debtor grant security in respect of such new financing?	✓	Not expressly provided for by law. There is one known case in extraordinary administration proceedings.
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	The new financing has priority over all creditors (in the event of bankruptcy) except for the creditors of the highest ranking, i.e. claims of employees for salaries and severance payments and claims for social contributions.
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 borrowing entity?	x	Generally, actions taken on a commercial, arm's length basis should not be avoidable. Only exceptionally, e.g. if such actions also involve intentional damage to creditors or if they were taken during a time when the lender was already incapable of making payments.
Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	No (of course, absent of any illegal actions, such as extortion or usury contracts, which would result in criminal and/or civil liability).
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	✓	Restrictions under the Capital Requirements Regulation (Regulation (EU) 575/2013), Credit Institutions Act (Official Gazette no. 159/2013, 19/2015, 102/2015, 15/2018, 70/2019, 47/2020) and secondary legislation such as the Decision of the Croatian National Bank on Classification of Exposures into Risk Groups and the Manner of Determination of Credit Losses (Official Gazette no. 114/2017, 110/2018).
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	

## New Financing in the EBRD Regions – Croatia

Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	✓	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	✓	
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	x	
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	✓	<p>Croatian National Bank supported lending through programmes aimed at bridging the crisis caused by COVID-19 outbreak (and not by its direct involvement in the financings).</p> <p>Croatian Bank for Reconstruction and Development (HBOR), in cooperation with HAMAG-BICRO (Croatian Agency for SE, Innovations and Investments) and local commercial banks provided over HRK 5.2 billion for financing of working capitals for exporters (including touristic sector) and their export channels. HBOR provided security (ESIF guarantee) for a credit facility up to the 50 per cent of principal, contractual interests, intercalary interest and interests in moratorium.</p>

## New Financing in the EBRD Regions – Croatia

Valuation of collateral		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	Only with respect to real estate pursuant to the Real Estate Appraisal Act.
What valuation standards have been implemented?		Only with respect to real estate (permitted methods: (i) revenue method for commercial properties; (ii) expense method for public properties; and (iii) comparison method for privately owned non-commercial properties (apartments, etc.)).
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		N/A

# New Financing in the EBRD Regions – Cyprus

## Cyprus

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Cypriot legal counsels to the New Financing Survey conducted in 2020-2022<sup>18</sup>. Further information on the Cypriot insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/cyprus](https://ebrd-restructuring.com/economy-profile/cyprus).

### 1. General movable and immovable security legislation<sup>19</sup>

This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

Respondents did not flag any legal, regulatory or practical aspects in movable security legislation in Cyprus that would require strengthening.

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<sup>18</sup> Please note that due to the transposition of Directive (EU) 2019/1023 on preventive restructuring frameworks, the laws and commentary with respect to new financing may have changed in this EU member state.

<sup>19</sup> Two law firms from Cyprus participated in the New Financing Survey

## New Financing in the EBRD Regions – Cyprus

With respect to taking security over immovable assets in Cyprus, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Cypriot legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Cyprus had two respondents from two different law firms.

# New Financing in the EBRD Regions – Cyprus

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>20</sup> It follows the order of questions contained in the survey.

Cyprus		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	No specific legislation expressly regulates the concept of a 'security agent'. However, Cyprus as a common law jurisdiction recognises the role of a security agent or trustee and the security agent concept is used often in syndicated lending.
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	x	

<sup>20</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Cyprus

Subordination of claims		
Are local law intercreditor agreements used in your jurisdiction?	✓	
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
Are intercreditor agreements enforceable in your jurisdiction?	✓	Enforceable as a contractual agreement.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	Maybe. Court will require an expert witness to testify on the foreign law.
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	✓	Enforceable as a contractual agreement under general contract law. Subordination of creditors' claims is not specifically provided for by law.

## New Financing in the EBRD Regions – Cyprus

(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	✓	
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	
Can the debtor grant security in respect of such new financing?	x	Provided it does not affect the priorities for repayment of creditors on that date.
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	In accordance with general principle stemming from the Cyprus Companies Law, Cap 113, as amended, according to which a subsequent lender that obtains security over assets of a borrower securing the borrower's obligations under the underlying financing agreement, takes priority over existing unsecured creditors.
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 borrowing entity?	✓	Provided it is considered preferential as regards the other creditors.
Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	



## New Financing in the EBRD Regions – Cyprus

Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	✓	Internal regulations and policies of banks on granting new financing to a financially distressed borrower, as well as relevant directives of the Central Bank of Cyprus.
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	×	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	×	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	×	
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?		
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans	✓	

## New Financing in the EBRD Regions – Cyprus

secured with receivables or warehouse receipts?		
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	If the valuation by a valuer is not accepted, a second valuer may be appointed.
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	The valuation procedure is described in the Transfers and Mortgage of Immovables Law 9/1965 as amended, s.44D.
What valuation standards have been implemented?		The Central Bank has issued a directive to Credit Institutions and the valuation procedure is also described in the Transfer and Mortgage of Immovables Law 9/1965 as amended, s.44D. Values are registered in the Property Values Association.
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		Lack of accurate assessment as valuations differ.

## Egypt

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Egyptian legal counsels to the New Financing Survey conducted in 2020-2022. Further information on the Egyptian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/egypt](https://ebrd-restructuring.com/economy-profile/egypt).

### 1. General movable and immovable security legislation<sup>21</sup>

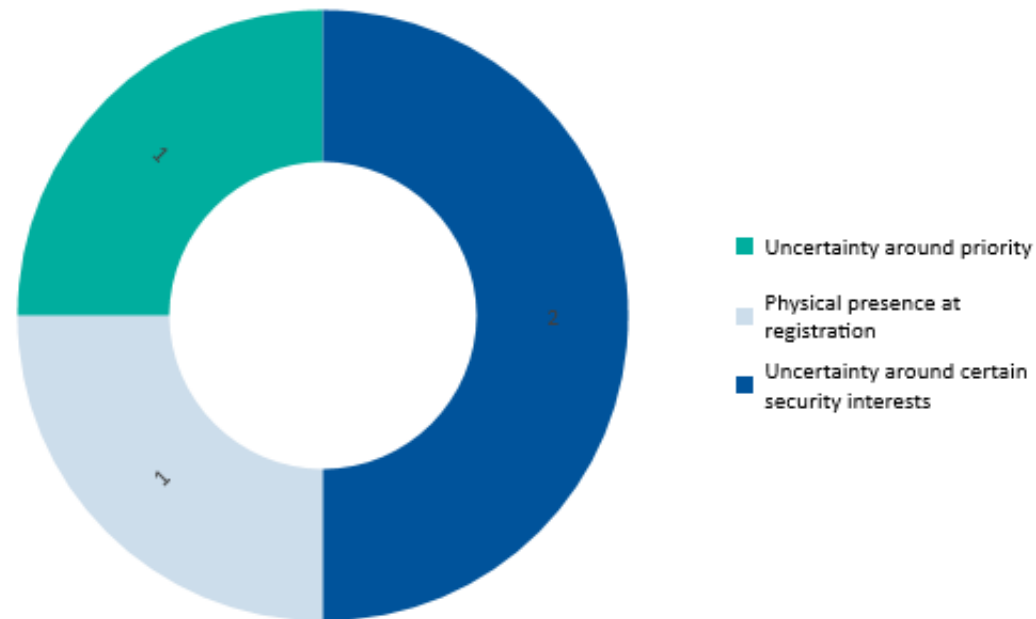
This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

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<sup>21</sup> Two law firms from Egypt participated in the New Financing Survey

## New Financing in the EBRD Regions – Egypt

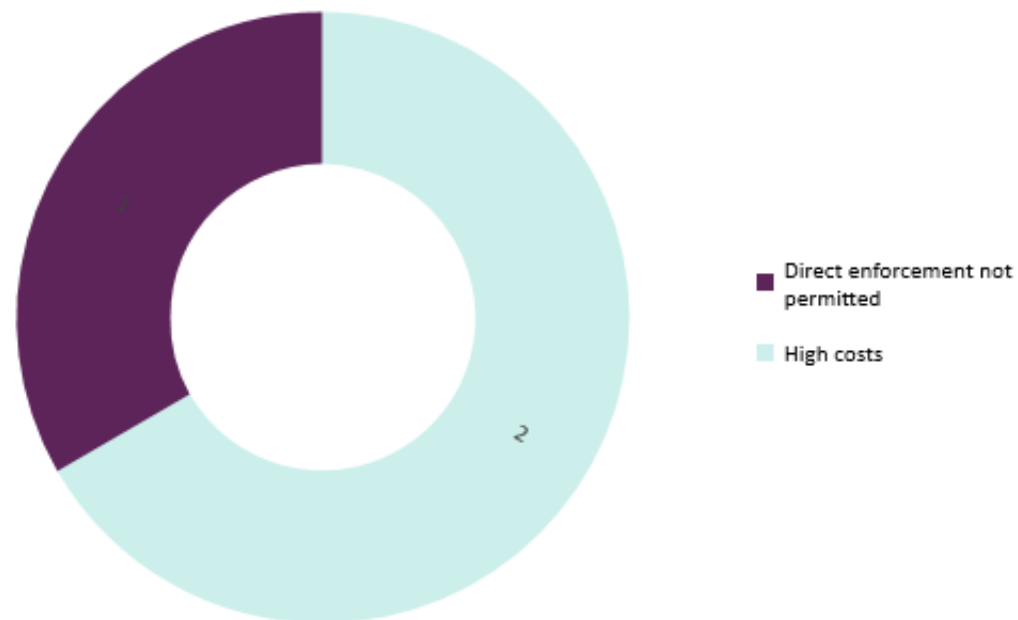
According to the respondents, the main obstacles to taking security over movable assets in Egypt are:



**Note:** This illustrates the main obstacles cited by Egyptian legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Egypt had two respondents from two different law firms.

## New Financing in the EBRD Regions – Egypt

With respect to taking security over immovable assets in Egypt, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Egyptian legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Egypt had two respondents from two different law firms.

# New Financing in the EBRD Regions – Egypt

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>22</sup> It follows the order of questions contained in the survey.

Egypt		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	✓	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?	x	In practice, yes. Expressly stated only in the law regulating the security over movables.
(Y) Can the security agent enforce security on behalf of all secured lenders?	✓	In a non-lender security agent structure issues are: <ul style="list-style-type: none"> <li>(i) not tested and bureaucratic obstacles may arise during notarisation, since the dominant practice is that the security agent is a lender,</li> <li>(ii) a non-lender security agent may not benefit from the direct enforcement process of the share pledge owing to the language of the Banking Law, hence enforcement of a share pledge by such agent is likely to be through a [longer] court-ordered auction process; and</li> <li>(iii) a security agent may not apply the statutory set-off right with respect to monies in the secured accounts in settlement of the secured loan.</li> </ul>

<sup>22</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Egypt

(N) Are security agent structures used in practice despite the lack of supporting legislation?		
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?		
<b>Subordination of claims</b>		
Are local law intercreditor agreements used in your jurisdiction?	✓	Intercreditor agreements are not specifically provided for by law. However, parties are free to agree based on the principle of freedom of contract.
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
Are intercreditor agreements enforceable in your jurisdiction?	✓	<p>However there is a weak doctrine of enforcing specific performance, thus a remedy for breach of contractual obligations would most likely be compensation for damages.</p> <p>The concept of subordination of debts is not expressly regulated under Egyptian law. Enforceability, especially in an insolvency context, has not been tested in the highest courts. However, the concept of intercreditor agreements has been recently adopted and upheld by certain regulators supervising banking and financial services activities, which supports its validity as commercial custom.</p>
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	The foreign governing law will be recognised by Egyptian courts only to the extent such law does not contravene Egyptian public policy or morals. Procedure of recognition is complex.

## New Financing in the EBRD Regions – Egypt

(Y) Has enforceability been tested before the courts?	✓	No leading case in this regard. The common interpretation of courts is that intercreditor agreements are enforceable as per their terms and the provisions of the Egyptian laws. Enforceability, especially in an insolvency context, has not been tested in the highest courts.
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	×	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	?	The concept of subordination of debts is not specifically regulated under Egyptian law. Although nothing under Egyptian law explicitly prevents the subordination of debts, its enforceability especially in an insolvency context has not been tested by the highest courts in Egypt. Moreover, the concept has been recently adopted and upheld by certain regulators supervising banking and financial services activities, which supports its validity as a commercial custom.
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?		
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	Within the framework of an adopted reorganisation plan. The law expressly prevents the debtor from taking any action which negatively affects the creditors' interests, including taking a loan in breach of the reorganisation plan.



## New Financing in the EBRD Regions – Egypt

Can the debtor grant security in respect of such new financing?	✓	Within the framework of an adopted reorganisation plan. The law expressly prevents the debtor from taking any action which negatively affects the creditors' interests, including creating any new security in breach of the reorganisation plan. However, in an insolvency of the debtor, no security can be granted over its assets.
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	Only if the new financing is secured. Priority is given based on the security ranking. Unsecured financings will not have priority.
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 borrowing entity?	✓	<p>Egyptian law recognises the concept of a 'suspect period' during which certain transactions entered into by the debtor may be set aside by the court. The 'suspect period' commences on the date the court declares that the debtor was no longer able to pay its debts, which date may not be earlier than two years before the declaration of insolvency, and it ends with the court declaration of insolvency. Permitted transactions during 'suspect period' are:</p> <ul style="list-style-type: none"> <li>(i) donations;</li> <li>(ii) payments of debts before their due date;</li> <li>(iii) payment of debts in other than the agreed method of payment; and/or</li> <li>(iv) the creation of a mortgage or any other security or guarantee in relation to pre-existing debts.</li> </ul> <p>In addition, any other transaction performed during the 'suspect period' is voidable by the court, if:</p> <ul style="list-style-type: none"> <li>(i) the transaction is harmful to the group of creditors; and</li> <li>(ii) the contractual counterparty had actual knowledge of the debtor's inability to pay its debts at the time the parties entered into the transaction.</li> </ul>

## New Financing in the EBRD Regions – Egypt

Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	✓	<p>Article 57 of the Banking Law requires for granting financings that the borrower must prove that it has a good reputation, sufficient resources and provide the expected cash flow for its activities in order to fulfil its obligations.</p> <p>The law requires the banks to abide by proper credit rating and risk assessment measures for extending facilities, including conducting credit rating search with the i-score date base.</p>
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	<p>The Central Bank of Egypt issued, on 15 March 2020, a Circular imposing precautionary measures on banks to counter the effects of COVID-19 and replace physical contact with more advanced online dealing. These include, but are not limited to, the extension of due dates for medium, small and micro companies for a period of 6 months, and suspension of application of late fees; banks' obligation to provide necessary credit limits for imports of strategic and essential goods, or to finance working capital, especially the payment of salaries.</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?	x	

## New Financing in the EBRD Regions – Egypt

Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	x	
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?		
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	The Financial Regulatory Authority issued the criteria for valuation of establishments by virtue of the Decree of the Financial Regulatory Authority's Chairman no. 1 of 2017.
What valuation standards have been implemented?		A decree regulates the criteria for valuation.

## New Financing in the EBRD Regions – Egypt

What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		Lack of accurate information.
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# New Financing in the EBRD Regions – Estonia

## Estonia

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Estonian legal counsels to the New Financing Survey conducted in 2020-2022<sup>23</sup>. Further information on the Estonian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/estonia](https://ebrd-restructuring.com/economy-profile/estonia).

### 1. General movable and immovable security legislation<sup>24</sup>

This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

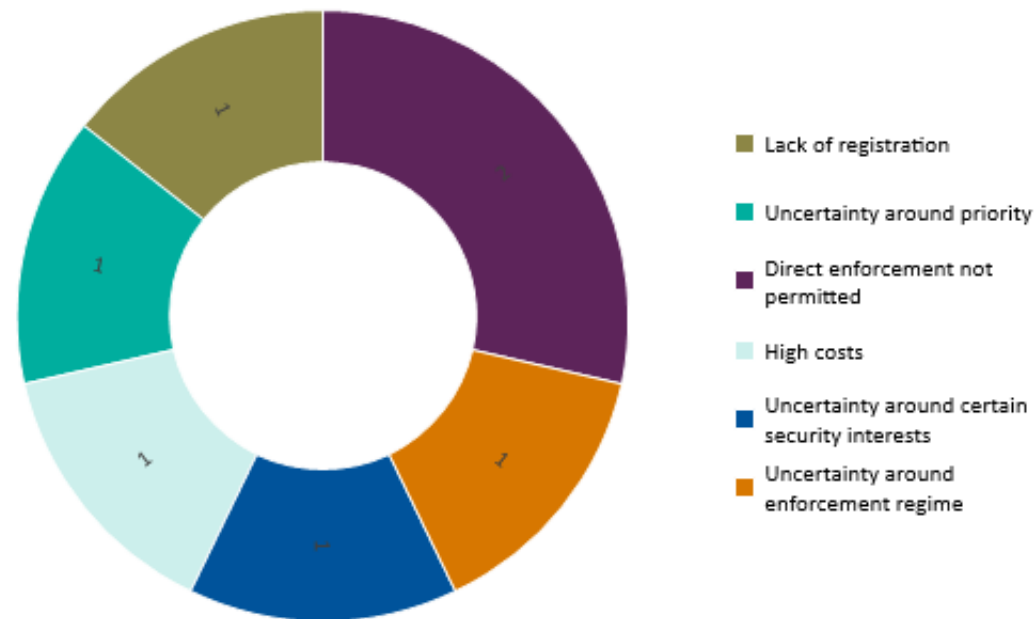
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<sup>23</sup> Please note that due to the transposition of Directive (EU) 2019/1023 on preventive restructuring frameworks, the laws and commentary with respect to new financing may have changed in this EU member state.

<sup>24</sup> Two law firms from Estonia participated in the New Financing Survey

## New Financing in the EBRD Regions – Estonia

According to the respondents, the main obstacles to taking security over movable assets in Estonia are:



**Note:** This illustrates the main obstacles cited by Estonian legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Estonia had two respondents from two different law firms.

# New Financing in the EBRD Regions – Estonia

With respect to taking security over immovable assets in Estonia, respondents cited high costs as the main obstacle in their economy's existing secured transactions framework. Estonia had two respondents from two different law firms.

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>25</sup> It follows the order of questions contained in the survey.

Estonia		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	

<sup>25</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Estonia

(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	✓	
<b>Subordination of claims</b>		
Are local law intercreditor agreements used in your jurisdiction?	✓	Rarely. Estonian law does not provide for intercreditor agreements, and there is a lack of experience among local banks.
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
Are intercreditor agreements enforceable in your jurisdiction?	✓	
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	



## New Financing in the EBRD Regions – Estonia

<p>Would subordination of creditor claims be enforceable in insolvency of the security grantor?</p>	<p>✓</p>	<p>There is no statutory ranking of claims under the insolvency law of Estonia. Subordination provisions may not be directly enforceable in bankruptcy proceedings of the debtor, but mechanisms exist to enforce intercreditor agreement in the case of insolvency of the debtor. Practical mechanisms of effecting subordination include the following:</p> <ul style="list-style-type: none"> <li>(i) a security agent collects and distributes bankruptcy proceeds pursuant to the intercreditor agreement,</li> <li>(ii) subordinated claims are assigned to senior creditor, who files the claim (senior claims inclusive) and collects and distributes bankruptcy proceeds among creditors pursuant to the contractual ranking;</li> <li>(iii) a subordinated creditor, as per the instruction of senior creditors, files its subordinated claim and collects the proceeds and subsequently redistributes proceeds to senior creditors.</li> </ul>
<p>(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?</p>	<p>✓</p>	
<p><b>New financing in insolvency</b></p>		
<p>Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?</p>	<p>✓</p>	<p>An insolvency practitioner may conclude transactions with special relevance to the bankruptcy proceedings only with the consent of the bankruptcy committee. Borrowing is deemed to be a transaction of special relevance. Under these conditions the insolvency practitioner could contract new financing and this will be protected (i.e. not challenged) and will have priority in payment before other unsecured creditors</p>
<p>Can the debtor grant security in respect of such new financing?</p>	<p>×</p>	<p>Formally, the debtor can grant security (the law does not expressly prohibit it), however, it would most probably be subject to avoidance actions in the event of</p>

## New Financing in the EBRD Regions – Estonia

		the insolvency of the debtor. This particularly the case in situations where the provider of new financing is aware of the insolvent status of the debtor.
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	x	The Estonian law does not provide for this matter. However, while damaging the interests of creditors can give grounds to terminate restructuring proceedings, it could be argued that obtaining new financing is in the mutual interests of the existing creditors, thus, should be allowed.
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 borrowing entity?	✓	Low risk. General avoidance provisions under the insolvency law may apply. Transactions harming the interests of the creditors (of an insolvent debtor) can be set aside, including loan transactions (even if made on a commercial, arm's length basis).
Are there any lender liability risks in granting new financing to a financially distressed borrower?	✓	
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	x	
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	The Estonian regulator has expressed a view that COVID-19 situation can be considered as a time of stress under CRR (Capital Requirements Regulation) and therefore temporarily the credit institutions may operate with LCR (Liquidity Coverage Ratio) below 100%. Moreover, EBA Guidelines on treatment of public and private moratoria in light of COVID-19 measures has been enforced in Estonia.

## New Financing in the EBRD Regions – Estonia

		The companies' obligation to file for bankruptcy has been eased.
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	✓	State owned foundation SA KredEx (export guarantee agency and financing arm of the Estonian government) offers crisis measures to aid sustainable undertakings whose difficulties are caused by the coronavirus crisis. These are intended for overcoming temporary liquidity difficulties. More information is available here: <a href="https://www.kredex.ee/covid19/en/">https://www.kredex.ee/covid19/en/</a> .
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	✓	
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	

## New Financing in the EBRD Regions – Estonia

Valuation of collateral		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	Easy in the case of immovables, but less common and relatively expensive in the case of movables.
Is the appraiser/valuation industry regulated in your jurisdiction?	×	Estonian Association of Appraisers is the association for specialists engaged in property valuation. The Association also awards professional qualifications to appraisers.
What valuation standards have been implemented?		Estonian Property Valuation Standards EVS 875, issued by the Estonian Association of Appraisers (EAA) in 2005.
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		The appraisers' extremely conservative approach results in low valuations and breach of financial covenants related to debt arrangements.

# New Financing in the EBRD Regions – Georgia

## Georgia

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Georgian legal counsel to the New Financing Survey conducted in 2020-2022. Further information on the Armenian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/georgia](https://ebrd-restructuring.com/economy-profile/georgia).

### 1. General movable and immovable security legislation<sup>26</sup>

This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

According to the respondent, the main obstacle to taking security over movable assets in Georgia is high costs. A further impediment identified is the impossibility to determine the ranking based on data in commercial registry if a company has several mortgages granted to various lenders over various assets. One law firm respondent participated from Georgia.

With respect to taking security over immovable assets in Georgia, the respondent cited high costs as the main obstacle in their economy’s existing secured transactions framework.

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<sup>26</sup> One law firm from Georgia participated in the New Financing Survey

# New Financing in the EBRD Regions – Georgia

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>27</sup> It follows the order of questions contained in the survey.

Georgia		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	By parallel debt structure. Rather cumbersome.
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	✓	Rather cumbersome.

<sup>27</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Georgia

Subordination of claims		
Are local law intercreditor agreements used in your jurisdiction?	x	
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
Are intercreditor agreements enforceable in your jurisdiction?	✓	Foreign law concepts may raise issues in Georgian courts. To overcome the lack of experience and knowledge of local courts, parties may expressly agree on submitting to UK courts of arbitration.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	If security interests are registered in respect to a subordinated claim, respective changes must be made to security documents/registry entries, otherwise parties would need to rely only on contractual arrangements which might not be enforceable against third parties.
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	✓	If subordination is perfected. See previous comment.

## New Financing in the EBRD Regions – Georgia

(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	✓	
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	x	In generic terms.
Can the debtor grant security in respect of such new financing?	✓	In generic terms.
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	In generic terms.
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 borrowing entity?	x	
Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	✓	



## New Financing in the EBRD Regions – Georgia

Specific COVID-19 measures		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	The National Bank of Georgia has eased some regulatory requirements imposed on banks. Programmes include co-financing of interest rate on loans for acquisition of real estate from developers.
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	×	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	×	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	✓	
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	✓	
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	×	
Valuation of collateral		

## New Financing in the EBRD Regions – Georgia

Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	Issues may arise due to the lack of prescribed valuation standards, particularly in the event of enforcement against non-conforming assets (assets that have no immediate or readily available equivalents).
Is the appraiser/valuation industry regulated in your jurisdiction?	×	
What valuation standards have been implemented?		All existing standards can be used.
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		Regular undervaluation and low liquidation values.

# New Financing in the EBRD Regions – Greece

## Greece

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Greek legal counsel to the New Financing Survey conducted in 2020-2022<sup>28</sup>. Further information on the Greek insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/greece](https://ebrd-restructuring.com/economy-profile/greece).

### 1. General movable and immovable security legislation<sup>29</sup>

This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

According to the respondent, the main obstacles to taking security over movable assets in Greece are:

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<sup>28</sup> Please note that due to the transposition of Directive (EU) 2019/1023 on preventive restructuring frameworks, the laws and commentary with respect to new financing may have changed in this EU member state.

<sup>29</sup> One law firm from Greece participated in the New Financing Survey

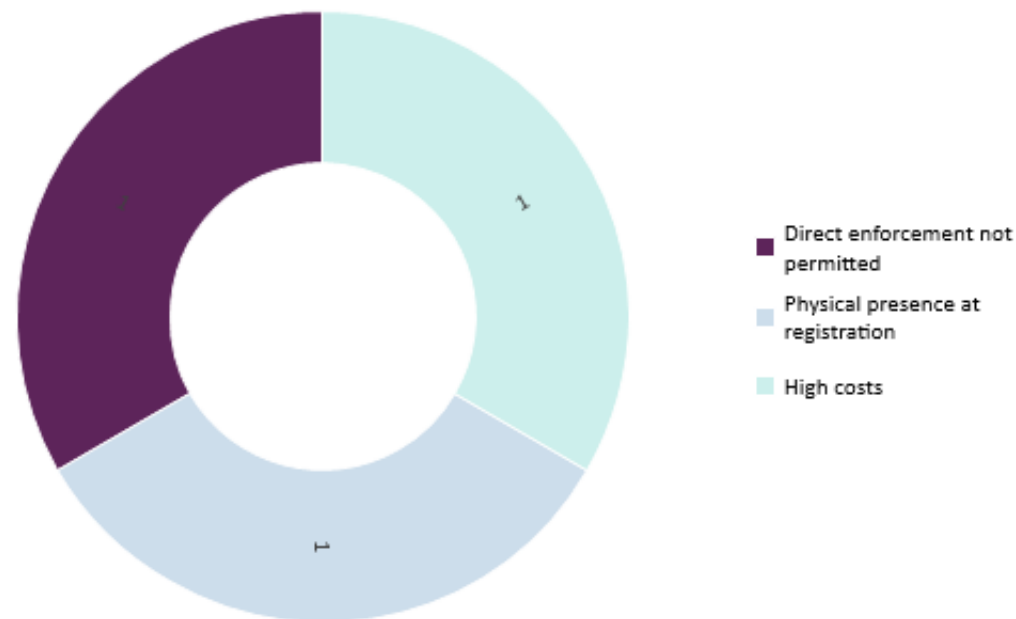
## New Financing in the EBRD Regions – Greece



**Note:** This illustrates the main obstacles cited by Greek legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Greece had one law firm respondent.

## New Financing in the EBRD Regions – Greece

With respect to taking security over immovable assets in Greece, the law firm respondent cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Greek legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Greece had one law firm respondent.

Impediments more specifically are, in respect of movables security legislation: (i) the lack of a central electronic security registry, (ii) the fact that no security can be granted over a business as a whole and over an administrative licence, and (iii) the ranking of certain employee

# New Financing in the EBRD Regions – Greece

claims ahead of the secured claims (in respect of immovables security legislation, certain employee claims rank ahead of the secured claims).

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>30</sup> It follows the order of questions contained in the survey.

Greece		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	✓	Security agents (called bondholder representatives) can only hold security if the loan is structured as a bond loan. Otherwise, it is necessary to create a parallel debt structure.
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?	✓	
(Y) Can the security agent enforce security on behalf of all secured lenders?	✓	In the case of a bond loan. See previous comment.
(N) Are security agent structures used in practice despite the lack of supporting legislation?		

<sup>30</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Greece

(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	✓	If the loan is structured other than as a bond loan.
<b>Subordination of claims</b>		
Are local law intercreditor agreements used in your jurisdiction?	✓	In most cases, intercreditor agreements are governed by foreign law.
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
Are intercreditor agreements enforceable in your jurisdiction?	✓	The majority view is that subordination provisions prevail as a matter of contract among the parties but do not override ranking in bankruptcy or enforcement proceedings.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	Among the parties to such agreement.
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	

## New Financing in the EBRD Regions – Greece

Would subordination of creditor claims be enforceable in insolvency of the security grantor?	✓	The majority view is that subordination provisions prevail among the contractual parties but do not override ranking in bankruptcy or enforcement proceedings. A subordinated creditor would be obliged to redistribute proceeds to achieve the aim of subordination agreement.
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	✓	
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	
Can the debtor grant security in respect of such new financing?	✓	
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	
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 borrowing entity?	×	Bank or bond loans, and related securities are exempt from avoidance actions. Also, if new financing is granted on an arm's length basis, the substantive conditions triggering avoidance would unlikely be met.



## New Financing in the EBRD Regions – Greece

Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	While in theory it is conceivable to construct a tort claim against a lender in those circumstances, the conditions for such a tort claim are unlikely to be met.
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	x	
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	✓	

## New Financing in the EBRD Regions – Greece

(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	x	
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	✓	
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	However, the lack of in-depth knowledge of the market may affect the reliability of such valuation.
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	
What valuation standards have been implemented?		According to Greek law 4152/2013 certified valuers must compile their valuations according to the European or International Valuation Standards.
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		Lack of liquidity of the market

# New Financing in the EBRD Regions – Hungary

## Hungary

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Hungarian legal counsels to the New Financing Survey conducted in 2020-2022<sup>31</sup>. Further information on the Hungarian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/hungary](https://ebrd-restructuring.com/economy-profile/hungary).

### 1. General movable and immovable security legislation<sup>32</sup>

This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

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<sup>31</sup> Please note that due to the transposition of Directive (EU) 2019/1023 on preventive restructuring frameworks, the laws and commentary with respect to new financing may have changed in this EU member state.

<sup>32</sup> Three law firms from Hungary participated in the New Financing Survey

## New Financing in the EBRD Regions – Hungary

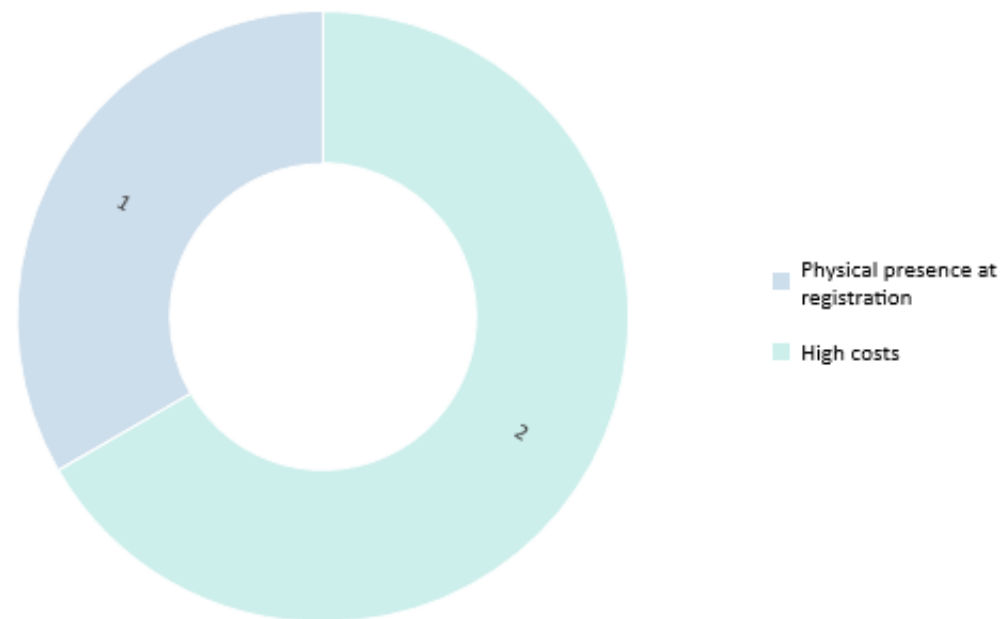
According to the respondents, the main obstacles to taking security over movable assets in Hungary are:



**Note:** This illustrates the main obstacles cited by Hungarian legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Hungary had two respondents from two different law firms and one anonymous respondent.

## New Financing in the EBRD Regions – Hungary

With respect to taking security over immovable assets in Hungary, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Hungarian legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Hungary had two respondents from two different law firms and one anonymous respondent.

# New Financing in the EBRD Regions – Hungary

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>33</sup> It follows the order of questions contained in the survey.

Hungary		
<b>Security agent</b>		
Are 'security agent' structures expressly permitted by legislation?	✓	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?	✓	Generally, yes. However, use is restricted to non-possessory, registered pledges. Not applicable to possessory, non-registered pledges, such as security deposit, moreover, in the case of fiduciary security (e.g. security assignment).
(Y) Can the security agent enforce security on behalf of all secured lenders?	✓	
(N) Are security agent structures used in practice despite the lack of supporting legislation?		
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?		
<b>Subordination of claims</b>		

<sup>33</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Hungary

Are local law intercreditor agreements used in your jurisdiction?	✓	
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
Are intercreditor agreements enforceable in your jurisdiction?	✓	However, in insolvency proceedings and enforcement proceedings intercreditor agreements contravening the mandatory ranking of claims and securities will not be enforced by the liquidator or bailiff.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	?	Uncertain. The liquidator may refuse to give effect to contractual subordination in the absence of clear case law obliging the liquidator to recognise contractual subordination of claims. In banking practice, however, a subordination agreement is generally executed to secure the priority of claims pursuant to the senior facilities agreement.

## New Financing in the EBRD Regions – Hungary

(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	✓	
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	Post-commencement finance is subject to the consent of the bankruptcy administrator in reorganisation proceedings; however, such finance is not widely used.
Can the debtor grant security in respect of such new financing?	✓	If the same asset is encumbered by multiple banks, the debtor may not be able to grant further security over it, unless existing security holders provide their consents.
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	In reorganisation proceedings, if new financing is obtained before the conclusion of the composition agreement, it shall be settled therein, whereas if it is provided afterwards, it should not take priority over unsecured creditors, unless collateral is provided. In contrast, in liquidation proceedings new financing has priority position over unsecured creditors.
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 borrowing entity?	✓	Both a creditor and the liquidator may contest an agreement concluded by the insolvent debtor in cases expressly prescribed by the insolvency law, provided that the transaction was concluded within a certain timeframe as stipulated therein. In general, these cases cover transactions made (i) with the aim to conceal from creditors the base of their satisfaction where the counterparty knew or should have knowledge of such intent; or



## New Financing in the EBRD Regions – Hungary

		(ii) without compensation or with gross disparity in values exchanged; or (iii) with the intention to give preference and privileges to a creditor; or (iv) for the purpose of transfer of ownership by way of guarantee, where the holder has exercised a right adversely affecting the debtor.
Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	✓	General risk management rules and prudential requirements apply.
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	A wide range of legislation has been introduced. Notably, a moratorium applies until 31 December 2020 to all credit facility, loan and financial leasing provided on a commercial basis during which period the borrower (who may be a natural or legal person with exceptions specified by law) shall not be obliged to pay any principal, interest and fees.
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	✓	In reorganisation proceedings, shareholders whose claims arise from a rescue loan of an amount described by law, are exempt from a specific calculation method that would decrease their number of votes at a rate of one-fourth. However, this rule was in place prior to COVID-19 crisis.

## New Financing in the EBRD Regions – Hungary

Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	✓	
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	?	
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	✓	The Hungarian National Bank (HNB) announced the launch of the NHP Hajra Programme on 20 April, 2020, under which the HNB will provide funds of up to HUF 1.5 trillion to credit institutions for new investment, working capital and refinancing loans, and for the pre-financing of certain EU subsidies, with 0% interest and a maximum maturity of up to 20 years. In line with the current economic situation the Hungarian National Bank (HNB) fine-tuned the Bond Funding for Growth Scheme (originally launched by the HNB in March 2019), which will provide funding opportunities for large Hungarian companies as an alternative to bank loans.
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	Fairly easy.
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	Act XXIX of 2016 regulates the appraisers appointed by courts. Appraisers are often chosen from official list of court appraisers.
What valuation standards have been implemented?		N/A

## New Financing in the EBRD Regions – Hungary

What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		N/A
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## Jordan

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Jordanian legal counsel to the New Financing Survey conducted in 2020-2022. Further information on the Jordanian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/jordan](https://ebrd-restructuring.com/economy-profile/jordan).

### 1. General movable and immovable security legislation<sup>34</sup>

This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

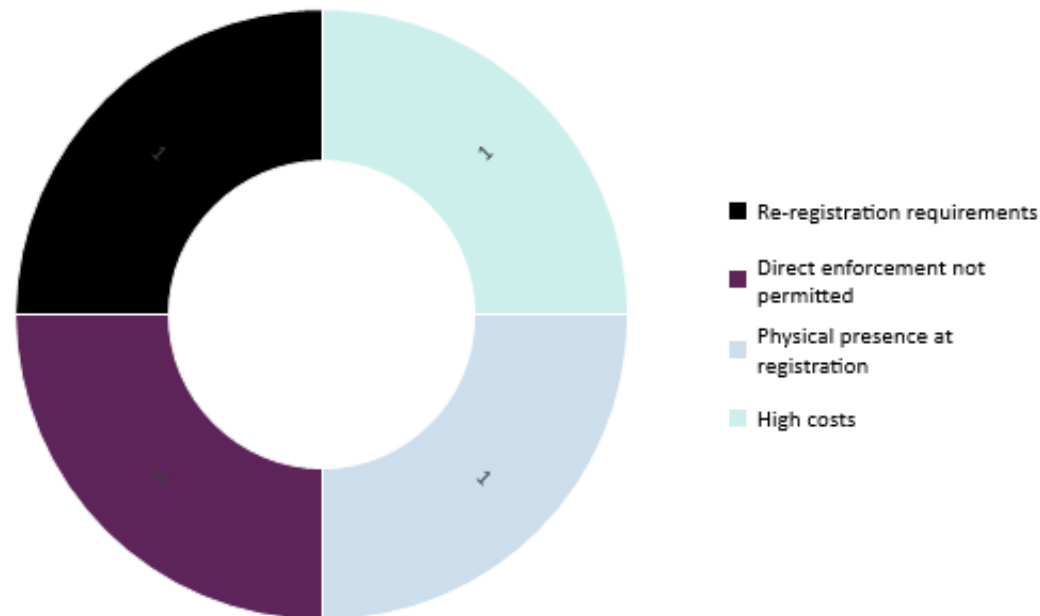
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<sup>34</sup> One law firm from Jordan participated in the New Financing Survey

## New Financing in the EBRD Regions – Jordan

According to the respondent, the main obstacle to taking security over movable assets in Jordan is high costs. One law firm respondent participated from Jordan.

With respect to taking security over immovable assets in Jordan, the law firm respondent cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Jordanian legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Jordan had one law firm respondent

# New Financing in the EBRD Regions – Jordan

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>35</sup> It follows the order of questions contained in the survey.

Jordan		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	x	

<sup>35</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Jordan

Subordination of claims		
Are local law intercreditor agreements used in your jurisdiction?	✓	
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
Are intercreditor agreements enforceable in your jurisdiction?	✓	
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	✓	

## New Financing in the EBRD Regions – Jordan

(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	✓	
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	Jordanian Insolvency Law No. (21) of 2018 recognises the ability to obtain financing in reorganisation-type insolvency proceedings.
Can the debtor grant security in respect of such new financing?	✓	It is considered that the above implies the ability of the debtor to grant security in respect of such new financing.
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	
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 borrowing entity?	✓	
Are there any lender liability risks in granting new financing to a financially distressed borrower?	×	
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	✓	



## New Financing in the EBRD Regions – Jordan

Specific COVID-19 measures		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	x	
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?		
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	

## New Financing in the EBRD Regions – Jordan

Valuation of collateral		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	
Is the appraiser/valuation industry regulated in your jurisdiction?	x	
What valuation standards have been implemented?		N/A
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		N/A

## Kazakhstan

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Kazakhstani legal counsels to the New Financing Survey conducted in 2020-2022. Further information on the Kazakhstani insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/kazakhstan](https://ebrd-restructuring.com/economy-profile/kazakhstan).

### 1. General movable and immovable security legislation<sup>36</sup>

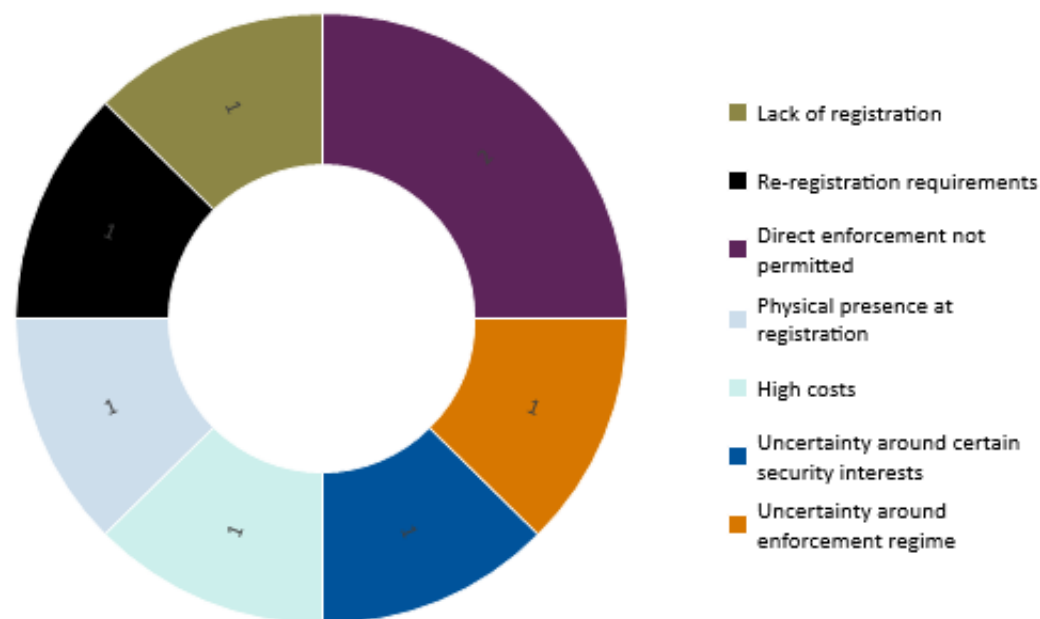
This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

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<sup>36</sup> Three law firms from Kazakhstan participated in the New Financing Survey

## New Financing in the EBRD Regions – Kazakhstan

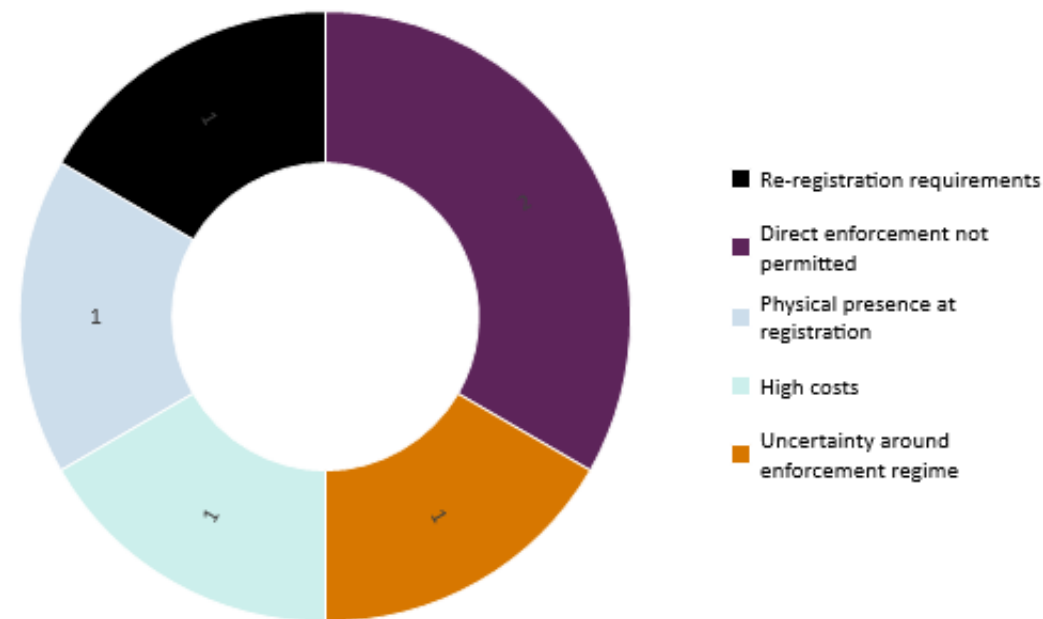
According to the respondents, the main obstacles to taking security over movable assets in Kazakhstan are:



**Note:** This illustrates the main obstacles cited by Kazakhstani legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Kazakhstan had three respondents from three different law firms.

## New Financing in the EBRD Regions – Kazakhstan

With respect to taking security over immovable assets in Kazakhstan, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Kazakhstani legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Kazakhstan had three respondents from three different law firms.

# New Financing in the EBRD Regions – Kazakhstan

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>37</sup> It follows the order of questions contained in the survey.

Kazakhstan		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	Under Kazakh law a right of pledge cannot be validly created in favour of a person who is not a beneficiary of the claim that the right of pledge purports to secure.
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	✓	'Parallel debt' structures are often stipulated in English law-governed facility agreements. They have not been tested before the courts. The risk of them being held void by the court cannot be excluded. Consequently, corresponding security rights may also be held to be invalid and therefore would be unenforceable.

<sup>37</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Kazakhstan

Subordination of claims		
Are local law intercreditor agreements used in your jurisdiction?	x	
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
Are intercreditor agreements enforceable in your jurisdiction?	✓	In the event of insolvency of the borrowing entity, the enforceability is questionable.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	In the event of insolvency of the borrowing entity, the enforceability is questionable.
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	✓	The concept of subordination in Kazakh law is not recognised. However, there are opinions that contractually established subordination arrangements should not be ignored in bankruptcy proceedings. This has not been tested.

## New Financing in the EBRD Regions – Kazakhstan

(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	✓	
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	The rehabilitation plan can provide for new loans as a source of financing for the debtor. Moreover, there is an instrument called “sanation” under which the owner of the debtor/creditor or any other persons may provide financial assistance to the debtor or perform any other complex of measures in order to mobilise reserves of the debtor and enhance the debtor’s financial and economic situation. On termination of the rehabilitation procedure due to achievement of the sanation purposes, the sanation participants are entitled to receive shares/capital interest of the debtor in proportion to the sum of financial assistance provided. Claims arising from a loan received by the insolvency practitioner during insolvent liquidation proceedings are of the second priority. These claims, however, cannot be satisfied unless all of the other claims of the same second priority are satisfied.
Can the debtor grant security in respect of such new financing?	?	Kazakh law does not expressly prohibit the debtor from granting any security in respect of a new financing.
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	Kazakh law does not expressly prohibit such financing.
Are there any risks that new financing and related security provided on a commercial,	✓	Transactions entered into by a company can be invalidated on specific grounds established by the Bankruptcy Law (‘avoidance of transactions’), provided that



## New Financing in the EBRD Regions – Kazakhstan

arm's length basis could be subject to avoidance actions and set aside in the event of the insolvency of the borrowing entity?		they have been concluded not earlier than three years prior to the initiation of rehabilitation/bankruptcy proceedings by the court (article 7.1 of the Bankruptcy Law).
Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	✓	Prudential norms.
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	The Kazakhstan Financial Market Regulation and Development Agency has introduced temporary emergency measures to support local borrowers in onshore bank lending transactions: <ul style="list-style-type: none"> <li>(i) no interest to accrue on loans entered into with individuals who delay payments of principal/interest for more than 90 days (except for loans secured by a pledge over property and/or cash collateral);</li> <li>(ii) penalties for late payments with respect to principal/interest shall not be charged for individuals and legal entities having financial difficulties due to COVID-19; and</li> <li>(iii) deferral of payments of principal and/or interest for up to 90 days shall be provided under loan agreements with the self-employed and SMEs in financial difficulty due to the state of emergency.</li> </ul>
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection	x	

## New Financing in the EBRD Regions – Kazakhstan

from avoidance actions or lender liability risks?		
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	✓	<p>In 2020, the guaranteed transfer to the republican transfer comprised KZT 4.77 trillion (Decree of the President of the Republic of Kazakhstan No. 299 dated 8 April 2020) instead of the initially planned KZT 2.7 trillion (Law of the Republic of Kazakhstan No. 274-VI dated 4 December 2019) due to the revision of the republican budget amid the coronavirus crisis.</p> <p>On 1 September 2020, the President ordered that additional KZT 1 trillion in designated transfer from the National Fund be used to meet the state obligations in social sphere and to support the economy. This additional transfer has been reflected in the draft of the republican budget for 2021-2023 (Resolution of the Government of the Republic of Kazakhstan No. 538 dated 27 August 2020).</p>
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	✓	
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	

## New Financing in the EBRD Regions – Kazakhstan

Valuation of collateral		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	Special law on appraisers.
What valuation standards have been implemented?		N/A
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		Transparency may be an issue.

# New Financing in the EBRD Regions – Kosovo

## Kosovo

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Kosovar legal counsels to the New Financing Survey conducted in 2020-2022. Further information on the Kosovo insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/kosovo](https://ebrd-restructuring.com/economy-profile/kosovo).

### 1. General movable and immovable security legislation<sup>38</sup>

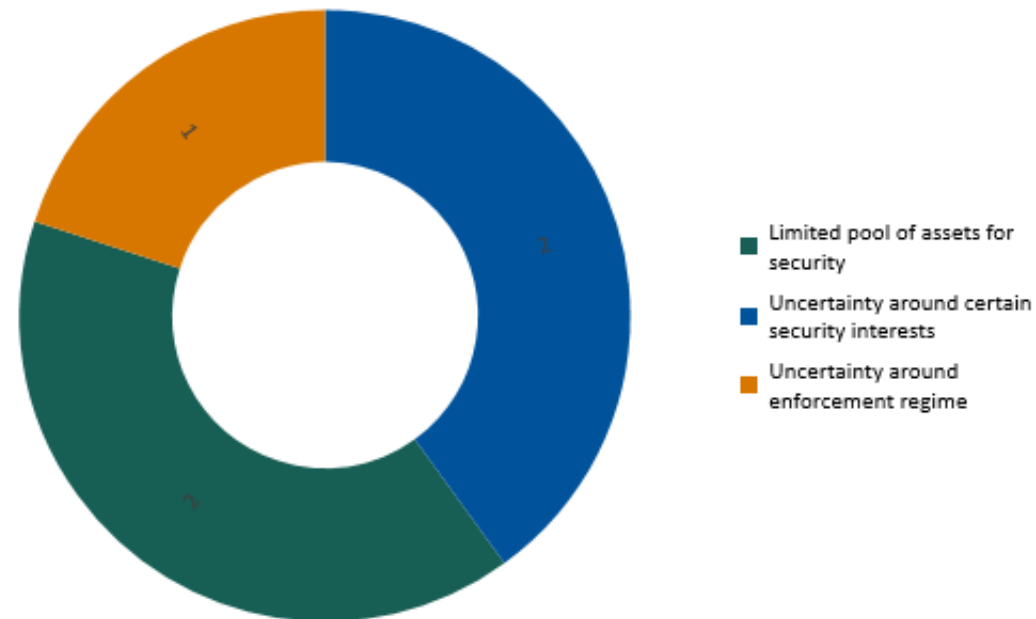
This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

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<sup>38</sup> Two law firms from Kosovo participated in the New Financing Survey

## New Financing in the EBRD Regions – Kosovo

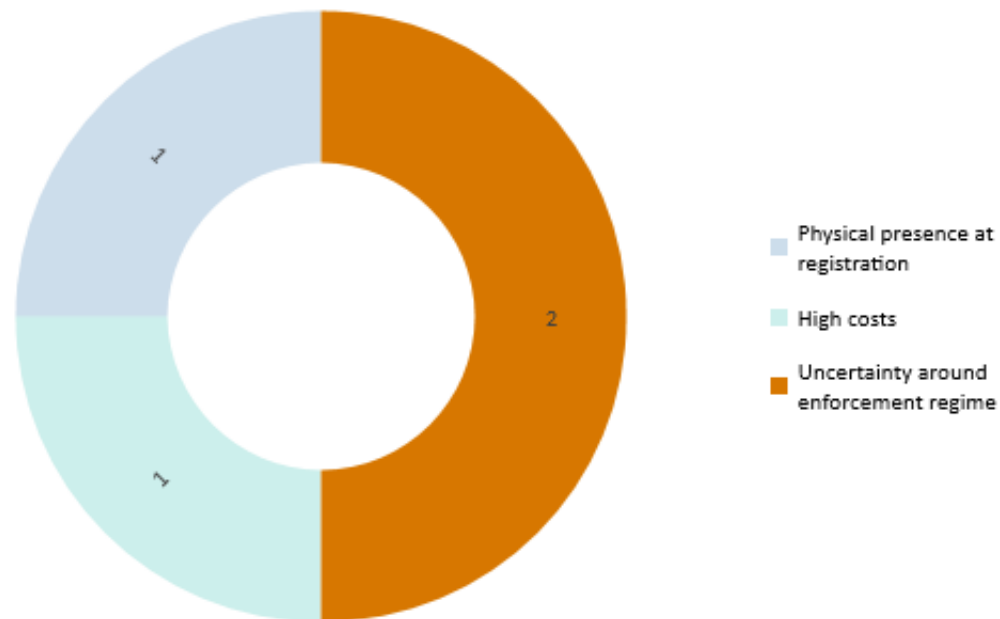
According to the respondents, the main obstacles to taking security over movable assets in Kosovo are:



**Note:** This illustrates the main obstacles cited by Kosovar legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Kosovo had two respondents from two different law firms.

## New Financing in the EBRD Regions – Kosovo

With respect to taking security over immovable assets in Kosovo, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Kosovar legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Kosovo had two respondents from two different law firms.

# New Financing in the EBRD Regions – Kosovo

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>39</sup> It follows the order of questions contained in the survey.

Kosovo		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	✓	The relevant law is the Law No. 2002/4 on Mortgages.
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?	×	
(Y) Can the security agent enforce security on behalf of all secured lenders?	✓	Not tested in the courts.
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	Mostly used for pledge.
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	☐	Information not available

<sup>39</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Kosovo

Subordination of claims		
Are local law intercreditor agreements used in your jurisdiction?	<input type="checkbox"/>	Information not available
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	Rarely
	✓	Theoretically enforceable, but not tested in the courts.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	Difficulties in enforcement proceedings. Enforcement authorities would observe registered rank of creditors only. The intercreditor agreement is considered as an internal agreement between the creditors and the rights under this agreement could be enforced only in litigation proceedings. This applies regardless the governing law of such agreement.
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	✓	According to Article 119, paragraph 1, of the Law No. 03/L-154 on “Property and other Real Rights”, a change with respect to the ranking of a security requires an agreement between security holders affected by the change and registration of such change in the immovable property rights registry. If a mortgage is to be lowered in ranking, the consent of the owner of the



## New Financing in the EBRD Regions – Kosovo

		immovable property is also required. If the right that is to be ranked lower was encumbered with the right of a third party, the consent of the third party is also required.
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	✓	However, not has been tested at the courts.
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	✓	
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	
Can the debtor grant security in respect of such new financing?	✓	
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	In reorganisation proceedings under the bankruptcy law.
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 borrowing entity?	✓	Low risk provided that new financing is obtained in court-controlled reorganisation proceedings (and approved by the court).

## New Financing in the EBRD Regions – Kosovo

Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	✓	Regulations of Central Bank of Kosovo
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	Certain guarantees provided by the Kosovo Credit Guarantee Fund.
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	✓	The Kosovo Credit Guarantee Fund (KCGF) has been established by the Law No. 05/L-057. According to the law, the Fund can cover up to 50% of the risk of the loans with the aim to facilitate the private sector's development and increase access to finance for MSMEs. The draft law for the Economic Recovery COVID-19, foresees that for the purpose of economic recovery, KCGF is authorised to issue credit guarantees with a coverage percentage of up to eighty percent

## New Financing in the EBRD Regions – Kosovo

		(80%). The draft law has been approved in the first reading by the assembly, but not yet in the second reading.
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	✓	
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	Relatively easy. Licensed valuation companies operate in Kosovo. Valuation is mostly accurate, however, there are difficulties with market value assessment.
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	Kosovo Chamber of Commerce - Kosovo Appraisers Association.
What valuation standards have been implemented?		The Kosovo Appraisers Association applies the European Valuation Standards (EVS).
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		Inconsistency in the application of valuation standards. Undervaluation.

# New Financing in the EBRD Regions – Kyrgyz Republic

## Kyrgyz Republic

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Kyrgyz legal counsel to the New Financing Survey conducted in 2020-2022. Further information on the Kyrgyz insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/kyrgyzstan](https://ebrd-restructuring.com/economy-profile/kyrgyzstan).

### 1. General movable and immovable security legislation<sup>40</sup>

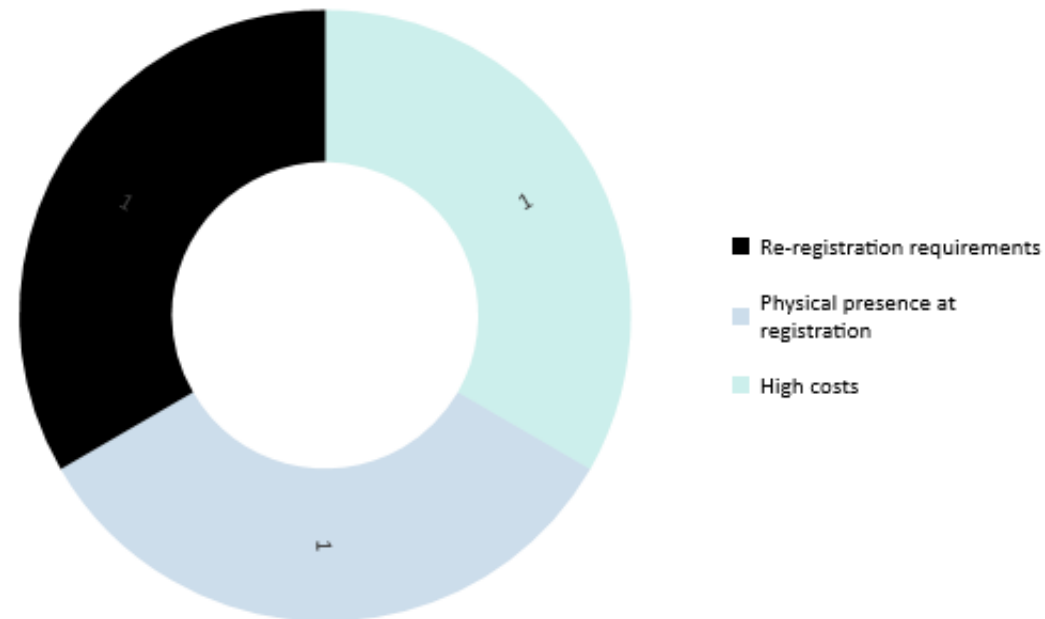
This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

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<sup>40</sup> One law firm from Kyrgyz Republic participated in the New Financing Survey

## New Financing in the EBRD Regions – Kyrgyz Republic

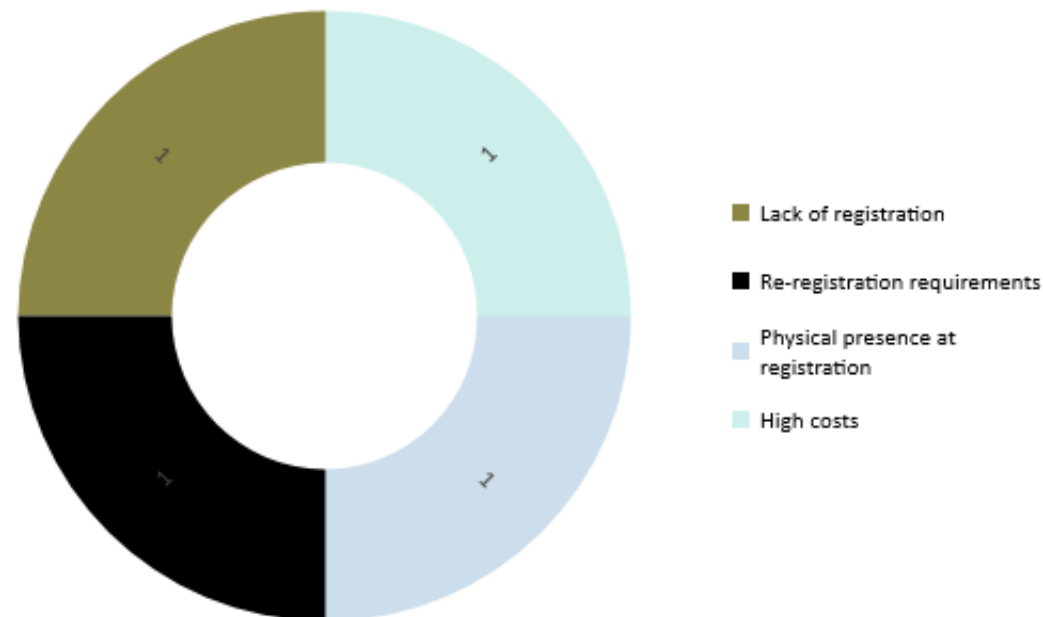
According to the respondent, the main obstacles to taking security over movable assets in Kyrgyz Republic are:



**Note:** This illustrates the main obstacles cited by Kyrgyz legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Kyrgyz Republic had one law firm respondent.

## New Financing in the EBRD Regions – Kyrgyz Republic

With respect to taking security over immovable assets in Kyrgyz Republic, the law firm respondent cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Kyrgyz legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Kyrgyz Republic had one law firm respondent.

# New Financing in the EBRD Regions – Kyrgyz Republic

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>41</sup> It follows the order of questions contained in the survey.

Kyrgyz Republic		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	x	
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	x	

<sup>41</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Kyrgyz Republic

Subordination of claims		
Are local law intercreditor agreements used in your jurisdiction?	✓	
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	x	
Are intercreditor agreements enforceable in your jurisdiction?	x	
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?		
(Y) Has enforceability been tested before the courts?		
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	x	
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?		
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	x	



## New Financing in the EBRD Regions – Kyrgyz Republic

(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?		
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	
Can the debtor grant security in respect of such new financing?	×	
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	For rehabilitation procedure only, unsecured new financing may have administrative expenses status, or if unsecured financing is not available, new financing may be secured on unencumbered assets with the court's prior approval if creditors consent
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 borrowing entity?	×	
Are there any lender liability risks in granting new financing to a financially distressed borrower?	×	

## New Financing in the EBRD Regions – Kyrgyz Republic

Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	x	
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	x	
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?		

## New Financing in the EBRD Regions – Kyrgyz Republic

Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	<input type="checkbox"/>	Information not available
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	
What valuation standards have been implemented?	<input type="checkbox"/>	Information not available
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?	<input type="checkbox"/>	Information not available

# New Financing in the EBRD Regions – Latvia

## Latvia

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Latvian legal counsels to the New Financing Survey conducted in 2020-2022<sup>42</sup>. Further information on the Latvian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/latvia](https://ebrd-restructuring.com/economy-profile/latvia).

### 1. General movable and immovable security legislation<sup>43</sup>

This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

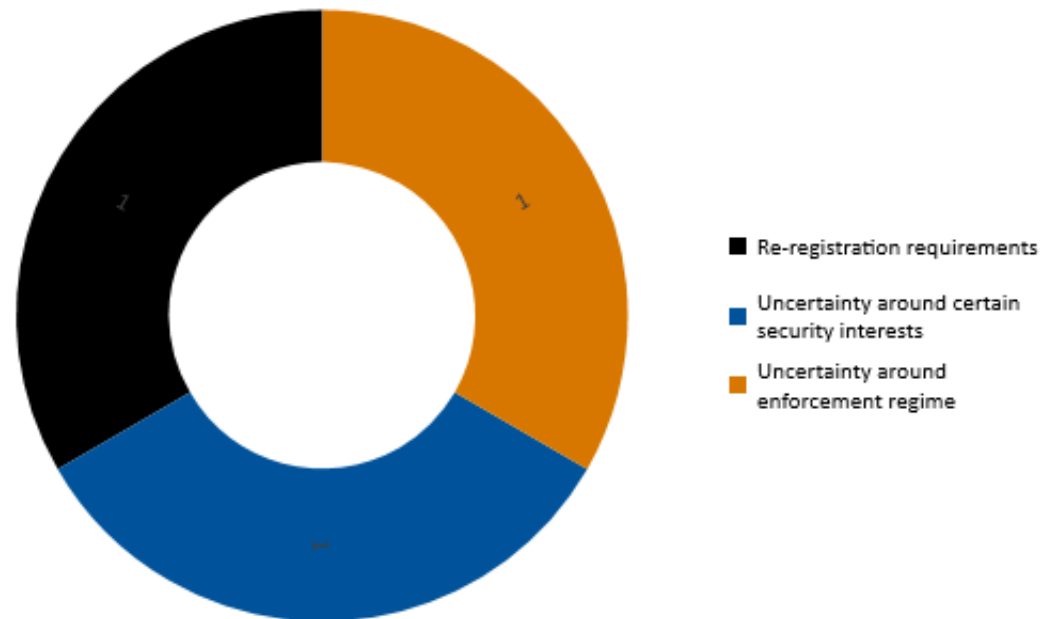
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<sup>42</sup> Please note that due to the transposition of Directive (EU) 2019/1023 on preventive restructuring frameworks, the laws and commentary with respect to new financing may have changed in this EU member state.

<sup>43</sup> Two law firms from Latvia participated in the New Financing Survey

## New Financing in the EBRD Regions – Latvia

According to the respondents, the main obstacles to taking security over movable assets in Latvia are:



**Note:** This illustrates the main obstacles cited by Latvian legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Latvia had two respondents from two different law firms.

# New Financing in the EBRD Regions – Latvia

With respect to taking security over immovable assets in Latvia, respondents cited high costs as the main obstacle in their economy's existing secured transactions framework. Latvia had two respondents from two different law firms.

Impediments more specifically are, in respect of movables security legislation: (i) the necessity to translate and file documents under which the secured rights arise (loan agreements etc.), (ii) the fact that a security agent structure is not recognised, and (iii) the lack of certainty around enforcement which applies to share pledges. Also, in respect of immovables security legislation, a security agent structure is not recognised.

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>44</sup> It follows the order of questions contained in the survey.

Latvia		
<b>Security agent</b>		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		

<sup>44</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Latvia

(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	x	Typically, parallel debt structures would be used.
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	✓	
<b>Subordination of claims</b>		
Are local law intercreditor agreements used in your jurisdiction?	✓	
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
Are intercreditor agreements enforceable in your jurisdiction?	✓	Nonetheless, contractual arrangements among the creditors are not recognised in the Latvian Insolvency Law. Hence, an insolvency administrator would apply the statutory waterfall provisions and would not be bound by any intercreditor agreement.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	See previous comment.
(Y) Has enforceability been tested before the courts?	x	

## New Financing in the EBRD Regions – Latvia

Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	x	
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?		
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	Under Latvian Insolvency Law, new financing may be granted on a preferential basis in the plan of measures of legal protection proceedings. In the case of the subsequent insolvency of the debtor, the claims of creditors granting new financing to the debtor will be included in the expenses of the insolvency proceedings and, thus, satisfied before unsecured creditors' claims.
Can the debtor grant security in respect of such new financing?	✓	
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	



## New Financing in the EBRD Regions – Latvia

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 borrowing entity?	✓	New financing is not expressly protected from avoidance actions. However, the risk of avoidance actions in the case of granting new financing on an arm's length basis is merely theoretical.
Are there any lender liability risks in granting new financing to a financially distressed borrower?	☐	Information not available
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	x	
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	The Financial and Capital Market Commission of Latvia (FCMC) has supported credit moratorium regimes developed by the Finance Latvia Association for corporate and individual customers. In addition, the FCMC has declared that it will implement an individual and flexible approach to the supervision of financial sector participants, based on the assessment of actual situation and the effects of COVID-19 and making use of options provided by the regulatory framework.
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection	x	

## New Financing in the EBRD Regions – Latvia

from avoidance actions or lender liability risks?		
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	✓	
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	x	
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	Much depends on the type of the collateral (e.g. it might be difficult to assess the value of shares).
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	In respect of the valuation of real estate.
What valuation standards have been implemented?		Latvian Valuation Standard 401:2013.

## New Financing in the EBRD Regions – Latvia

<p>What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?</p>		<p>Based on the previous financial crisis of 2008/2009: the lack of solid market data for valuation due to the ongoing sharp fall in prices and many forced sales taking place simultaneously, as well as longer queues for valuation. Another aspect would be the sometimes questionable previous valuations made during the economic boom and inflation of the real estate bubble.</p>
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# New Financing in the EBRD Regions – Lebanon

## Lebanon

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Lebanese legal counsel to the New Financing Survey conducted in 2020-2022. Further information on the Lebanese insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/lebanon](https://ebrd-restructuring.com/economy-profile/lebanon).

### 1. General movable and immovable security legislation<sup>45</sup>

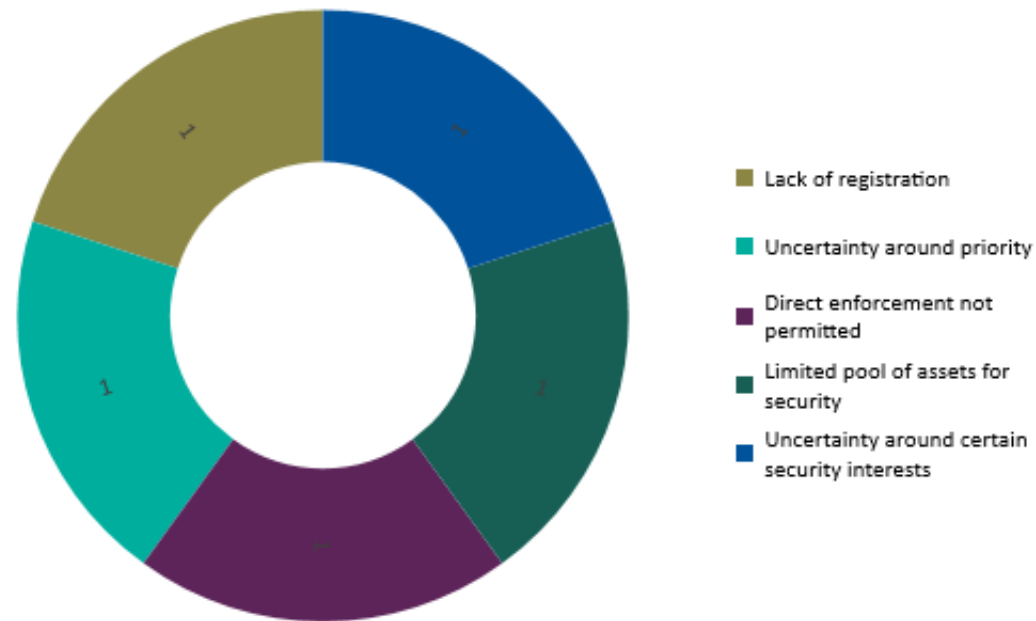
This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

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<sup>45</sup> One law firm from Lebanon participated in the New Financing Survey

## New Financing in the EBRD Regions – Lebanon

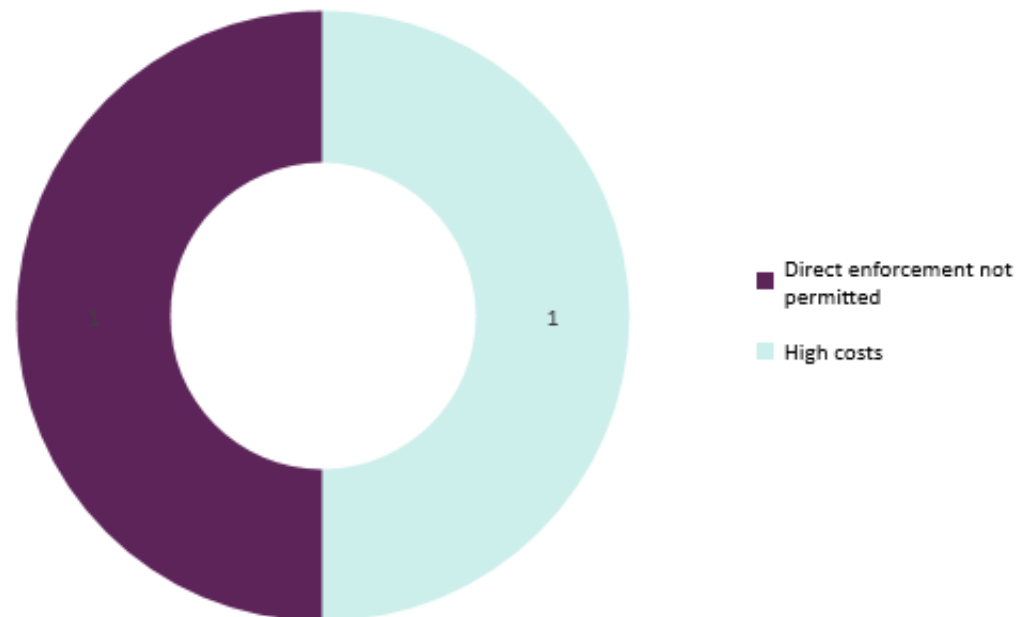
According to the respondent, the main obstacles to taking security over movable assets in Lebanon are:



**Note:** This illustrates the main obstacles cited by Lebanese legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Lebanon had one law firm respondent.

## New Financing in the EBRD Regions – Lebanon

With respect to taking security over immovable assets in Lebanon, the law firm respondent cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Lebanese legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Lebanon had one law firm respondent.

# New Financing in the EBRD Regions – Lebanon

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>46</sup> It follows the order of questions contained in the survey.

Lebanon		
<b>Security agent</b>		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	x	
<b>Subordination of claims</b>		

<sup>46</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Lebanon

Are local law intercreditor agreements used in your jurisdiction?	✓	
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
	✓	Provided that the provisions of the agreements are not contrary to public policy.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	✓	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	x	In general, following bankruptcy, privileged debts and mortgages would rank as follows, in descending order of priority: (i) Special privileged debts which are exempt from registration; (ii) Mortgages and special privileged debts (which are not exempt from registration), by order of seniority; (iii) General privileged debts, by order of seniority (such as treasury debt);



## New Financing in the EBRD Regions – Lebanon

		(iv) Unsecured debts.
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?		
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	x	However, with respect to the reorganisation procedure conducted in main insolvency proceedings, creditors will be consulted on whether the insolvent debtor may access some of the assets of the insolvency estate (Article 585). If the majority of the attending creditors have so consented, a sum may be granted to the insolvent debtor by way of assistance out of the available assets.
Can the debtor grant security in respect of such new financing?	x	No, unless it is authorised by the judge, when such financing is deemed useful.
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	x	
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 borrowing entity?	✓	
Are there any lender liability risks in granting new financing to a financially distressed borrower?	✓	

## New Financing in the EBRD Regions – Lebanon

Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	x	
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	x	
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?		
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans	x	

## New Financing in the EBRD Regions – Lebanon

secured with receivables or warehouse receipts?		
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	By appointment of an expert.
Is the appraiser/valuation industry regulated in your jurisdiction?	✗	
What valuation standards have been implemented?		N/A
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		In a financial crisis, there may be difficulties in enforcing against the collateral and recovering the debt, which may render any valuation of the collateral obsolete.

# New Financing in the EBRD Regions – Lithuania

## Lithuania

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Lithuanian legal counsels to the New Financing Survey conducted in 2020-2022<sup>47</sup>. Further information on the Lithuanian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/lithuania](https://ebrd-restructuring.com/economy-profile/lithuania).

### 1. General movable and immovable security legislation<sup>48</sup>

This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

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<sup>47</sup> Please note that due to the transposition of Directive (EU) 2019/1023 on preventive restructuring frameworks, the laws and commentary with respect to new financing may have changed in this EU member state.

<sup>48</sup> Two law firms from Lithuania participated in the New Financing Survey

# New Financing in the EBRD Regions – Lithuania

According to the respondents, the main obstacle to taking security over movable assets in Lithuania is high costs. Lithuania had two respondents from two different law firms.

With respect to taking security over immovable assets in Lithuania, respondents cited high costs as the main obstacle in their economy's existing secured transactions framework,

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>49</sup> It follows the order of questions contained in the survey.

Lithuania		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		

<sup>49</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Lithuania

(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	Para 4 of Article 4.186 of the Civil Code regulates the appointment of a creditors' representative. Parties may achieve a similar commercial effect to that of a security agent structure through using a creditors' representative and its use is widespread.
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	✓	
<b>Subordination of claims</b>		
Are local law intercreditor agreements used in your jurisdiction?	✓	
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
Are intercreditor agreements enforceable in your jurisdiction?	✓	Under the Lithuanian Civil Code, parties to a commercial arrangement are free to agree on the terms of contract, provided that mandatory provisions of Lithuanian law are met. Lithuanian law does not prohibit the conclusion of intercreditor agreements. Such agreements have been in use for decades.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	x	

## New Financing in the EBRD Regions – Lithuania

Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	Mandatory rankings may not be overridden in insolvency proceedings. However, creditors are free to agree on the distribution of funds collected from the debtor to achieve the intended commercial effect.
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	There is no registration requirement for the intercreditor agreement or subordination agreement. However, where such agreement forms part of a pledge or mortgage agreement, registration will necessarily take place in the Lithuanian Mortgage Registry. Also, if there are multiple security rights over the same asset with various ranking, such agreements are registered.
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	x	In bankruptcy proceedings, creditors' claims are subject to mandatory rankings set forth in Article 94 of the Law on Insolvency of Legal Entities of the Republic of Lithuania. An insolvency administrator would not be bound by the provisions of a subordination agreement if they are not aligned with the mandatory rules. The parties to a subordination agreement would have to redistribute the bankruptcy proceeds to achieve the intended commercial effect.
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?		
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	
Can the debtor grant security in respect of such new financing?	✓	

## New Financing in the EBRD Regions – Lithuania

Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	Unsecured new financing provided for a business in financial distress, in a subsequent bankruptcy, ranks in first place, along with employee and social security claims and, therefore, has a priority over other unsecured creditors' claims.
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 borrowing entity?	x	The Law on Insolvency of Legal Entities expressly states that transactions whereby new financing and/or intermediate financing was provided to a legal person may not be voided, except if concluded in breach of law or by deceit.
Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	The potential liability of lenders granting new financing may arise where the involvement of new financing to implement the restructuring plan is not justified, or where such new financing would unreasonably cause prejudice to the interest of dissenting creditors. The above circumstances must be assessed by the court. Approval of the restructuring plan involving new financing by the court would mitigate potential lender liability risk.
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	x	However, general credit risk management and prudential rules apply.
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	x	However, a moratorium on loans has been introduced according to the Guidelines No. EBA/GL/2020/02 of the European Banking Authority. Furthermore, the obligation to file for a bankruptcy procedure is waived for the period of the official lockdown (March-June 2020) and 3 months thereafter.



## New Financing in the EBRD Regions – Lithuania

Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	✓	
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	x	
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	✓	The Bank of Lithuania implemented various instruments, including temporary relief from prudential requirements, temporary reporting relief to reduce administrative burden on credit institutions and providers, and monetary policy measures (new and improved long term refinancing operations, extended public sector purchase programme).
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	Reasonably easy. There are several reliable and acknowledged valuation companies.
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	Law on the Assets and Business Valuation.

## New Financing in the EBRD Regions – Lithuania

What valuation standards have been implemented?		N/A
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		Potentially excessively cautious valuations.

# New Financing in the EBRD Regions – Moldova

## Moldova

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Moldovan legal counsels to the New Financing Survey conducted in 2020-2022. Further information on the Moldovan insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/moldova](https://ebrd-restructuring.com/economy-profile/moldova).

### 1. General movable and immovable security legislation<sup>50</sup>

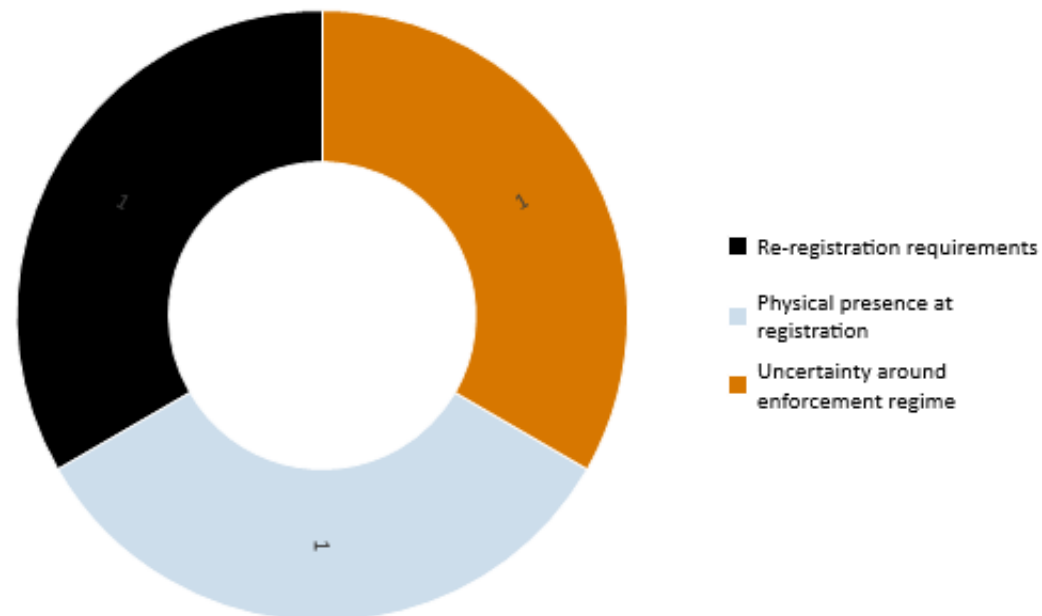
This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

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<sup>50</sup> One law firm from Moldova participated in the New Financing Survey

## New Financing in the EBRD Regions – Moldova

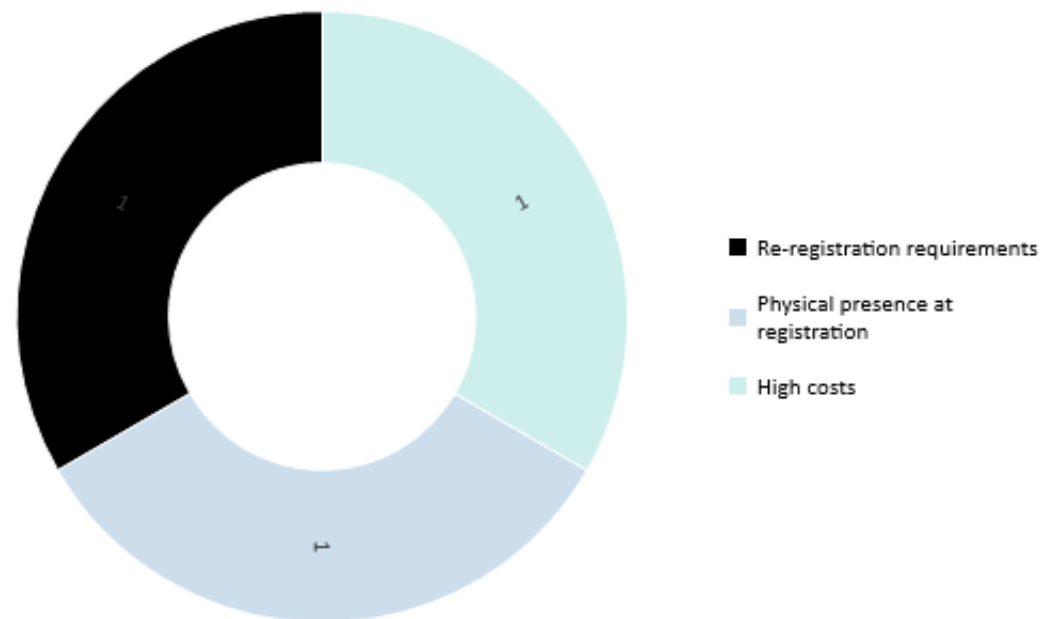
According to the respondents, the main obstacles to taking security over movable assets in Moldova are:



**Note:** This illustrates the main obstacles cited by Moldovan legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Moldova had one law firm respondent.

## New Financing in the EBRD Regions – Moldova

With respect to taking security over immovable assets in Moldova, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Moldovan legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Moldova had one law firm respondent.

Further impediments, mentioned in respect of the movables security legislation are: (i) the outdated registry which is not in line with new legislation, (ii) the difficulties in searching a registry, and (iii) the mandatory presence of both parties at registration.

# New Financing in the EBRD Regions – Moldova

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>51</sup> It follows the order of questions contained in the survey.

Moldova		
<b>Security agent</b>		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	x	
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	✓	Rarely. There is a risk of not being recognised by the courts.

<sup>51</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Moldova

Subordination of claims		
Are local law intercreditor agreements used in your jurisdiction?	✓	The Civil Code provides for the equivalent rank in priority of multiple creditors under a pledge agreement, in the absence of an agreement setting forth the ranking otherwise (Article 736(2) of the Civil Code), and for the proportional distribution of proceeds collected in enforcement from the debtor among the creditors, unless there are preferential causes or contracts between them on the priority (Article 889(1) of the Civil Code).
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
Are intercreditor agreements enforceable in your jurisdiction?	✓	Generally, but not tested.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	Generally, but not tested.
(Y) Has enforceability been tested before the courts?	×	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	The Civil Code provides for the proportional distribution of proceeds collected in enforcement from the debtor amongst the creditors, unless there are preferential causes or contracts between them on the priority (Article 889(1) of the Civil Code).
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	×	

## New Financing in the EBRD Regions – Moldova

Would subordination of creditor claims be enforceable in insolvency of the security grantor?	x	Subordination of secured creditor claims between secured creditors of the same rank are thought to be enforceable, unlike subordination of unsecured creditor claims.
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?		
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	The insolvency law stipulates that a reorganisation plan shall provide for financial means for its implementation, including third party loans (Article 190(5) let.c) of the Insolvency Law No. 149/2012). Moreover, post-commencement finance in insolvency proceedings are classified as an expense (Article 52(2) let.c) of the Insolvency Law as in force as of 14 September 2020).
Can the debtor grant security in respect of such new financing?	✓	The administrator/liquidator may grant securities in the insolvency proceedings with the prior approval of the creditors' committee (Article 75(1) let.c) of the Insolvency Law No. 149/2012).  The insolvency administrator may grant a first-priority security interest over the unencumbered assets, including after-acquired assets and assets recovered as the effect of avoidance of actions (Articles 104 and 105), or a lower ranking security interest in already encumbered assets. Security interests created to secure post-commencement finance obligations shall not take priority over already existing security interests, unless the secured creditors accept the change in priority (Article 52(5) of the Insolvency Law as in force as of 14 September 2020).



## New Financing in the EBRD Regions – Moldova

Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	See previous comment.
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 borrowing entity?	x	Article 104 of the Insolvency Law No.149/2012 regulates the right of the administrator/liquidator of an insolvent entity to request the annulment of certain agreements. However, a financing provided on a commercial, arm's length basis cannot be not subject to avoidance.
Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	x	According to the Regulation on Credit Risk Treatment for Banks According to the Standardized Approach, approved by the National Bank of Moldova Decision No. 111/2018, loans offered to financially distressed borrowers are considered to be high risk items. Banks' internal regulations may provide for prohibition of such loans.
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	The National Bank of Moldova has adopted several decisions allowing banks to ease debt repayment conditions and suspend deterioration of the loan category (these rules were valid until 30 June 2020 – for economic agents and 31 July 2020 – for individuals). Similar measures were adopted by the National Commission of the Financial Market (regulatory authority for non-bank lending organisations).
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection	x	

## New Financing in the EBRD Regions – Moldova

from avoidance actions or lender liability risks?		
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	x	
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?		
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	Rather easy. Pursuant to Article 24(2) of the Law on Valuation Activity No. 989/2002, the appraiser shall bear administrative or criminal liability for falsifying the results of the valuation, non-compliance with the principles of independence, conscientiousness and confidentiality of the valuation.
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	Law on Valuation Activity No. 989/2002.

## New Financing in the EBRD Regions – Moldova

What valuation standards have been implemented?		Implementation of international and European standards in accordance with Article 30(1) let.f) of the Law on Valuation Activity No.989/2002 is in process. Until then, the rules of Provisional Regulation on the Valuation of Immovable Property approved by the Government Decision No.958/2003 apply.
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		Lack of valuation standards; outdated laws and regulations; and lack of a regulatory/advisory body to standardise the practice of the appraisers.

## Mongolia

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Mongolian legal counsels to the New Financing Survey conducted in 2020-2022. Further information on the Mongolian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/mongolia](https://ebrd-restructuring.com/economy-profile/mongolia).

### 1. General movable and immovable security legislation<sup>52</sup>

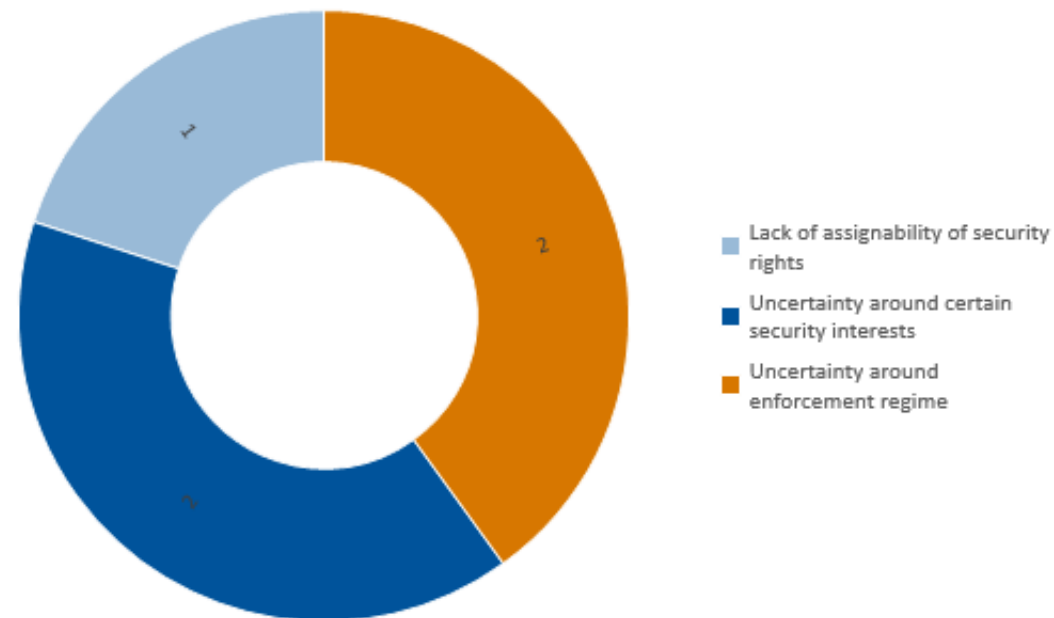
This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

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<sup>52</sup> Two law firms from Mongolia participated in the New Financing Survey

## New Financing in the EBRD Regions – Mongolia

According to the respondents, the main obstacles to taking security over movable assets in Mongolia are:



**Note:** This illustrates the main obstacles cited by Mongolian legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Mongolia had two respondents from two different law firms.

## New Financing in the EBRD Regions – Mongolia

With respect to taking security over immovable assets in Mongolia, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Mongolian legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Mongolia had two respondents from two different law firms.

# New Financing in the EBRD Regions – Mongolia

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>53</sup> It follows the order of questions contained in the survey.

Mongolia		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	Occasionally used by foreign lenders (e.g. IFIs) in bilateral or syndicate financings. A local commercial bank would be most likely appointed as agent.
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	x	

<sup>53</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Mongolia

Subordination of claims		
Are local law intercreditor agreements used in your jurisdiction?	x	
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	Used by foreign lenders (e.g. IFIs) on large scale projects.
Are intercreditor agreements enforceable in your jurisdiction?	✓	
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	✓	However, avoidance rules may apply.



## New Financing in the EBRD Regions – Mongolia

(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	✓	
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	x	
Can the debtor grant security in respect of such new financing?	?	Uncertain. The Mongolian law language is not conclusive. The security thus may be challenged in the court.
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	But claims arising from contracts concluded during the rehabilitation procedure are required to be satisfied before unsecured creditors.
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 borrowing entity?	✓	
Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	x	

## New Financing in the EBRD Regions – Mongolia

Specific COVID-19 measures		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	Temporary measures to defer loan repayment for consumers. Temporary measures to reschedule business loans and suspend downgrading in classification of loan.
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	×	It should be noted that the Government of Mongolia is contemplating the adoption of a new Insolvency Law which is expected to contain protections for creditors who extend new financing to distressed debtors.
Have regulatory measures relating to connected creditors been eased to encourage new financing?	×	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	×	However, the Credit Guarantee Fund of Mongolia has been permitted to increase its leverage.
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?		
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	×	

## New Financing in the EBRD Regions – Mongolia

Valuation of collateral		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	x	Not easy. Issues with reliability. Possible legal challenges.
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	Licensed activity. The regulator is the Ministry of Finance. Upon licensing, valuers must join the Association of Asset Valuers.
What valuation standards have been implemented?		A combination of local and international standards.
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		Issues with reliability and competence.

## Montenegro

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Montenegrin legal counsels to the New Financing Survey conducted in 2020-2022. Further information on the Montenegrin insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/montenegro](https://ebrd-restructuring.com/economy-profile/montenegro).

### 1. General movable and immovable security legislation<sup>54</sup>

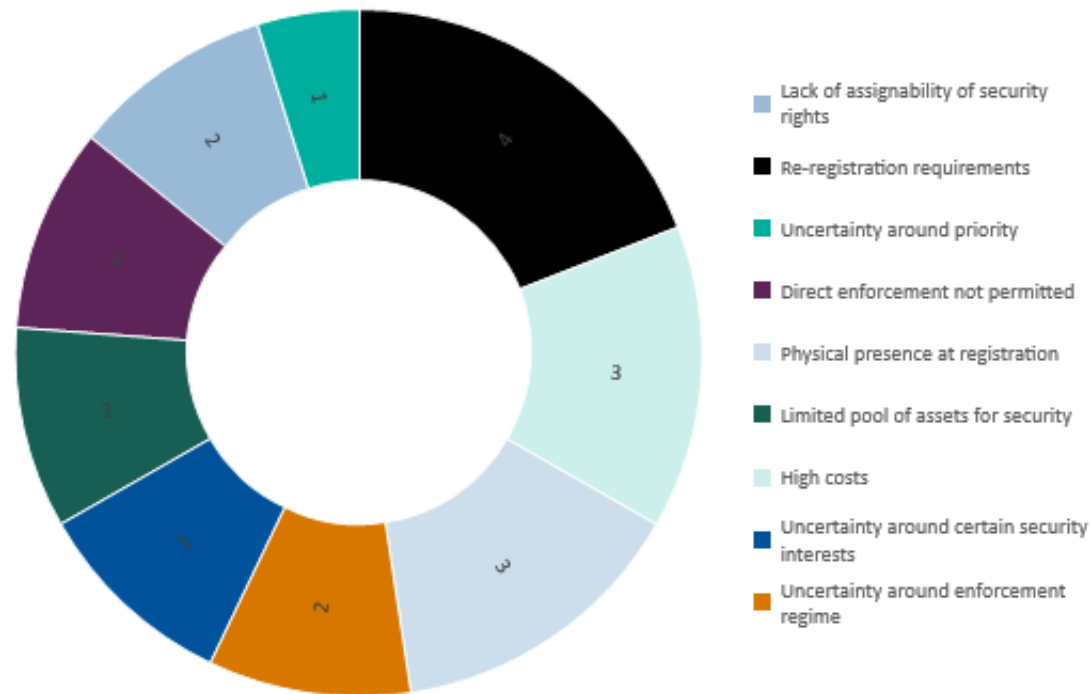
This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

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<sup>54</sup> Two law firms from Montenegro participated in the New Financing Survey

# New Financing in the EBRD Regions – Montenegro

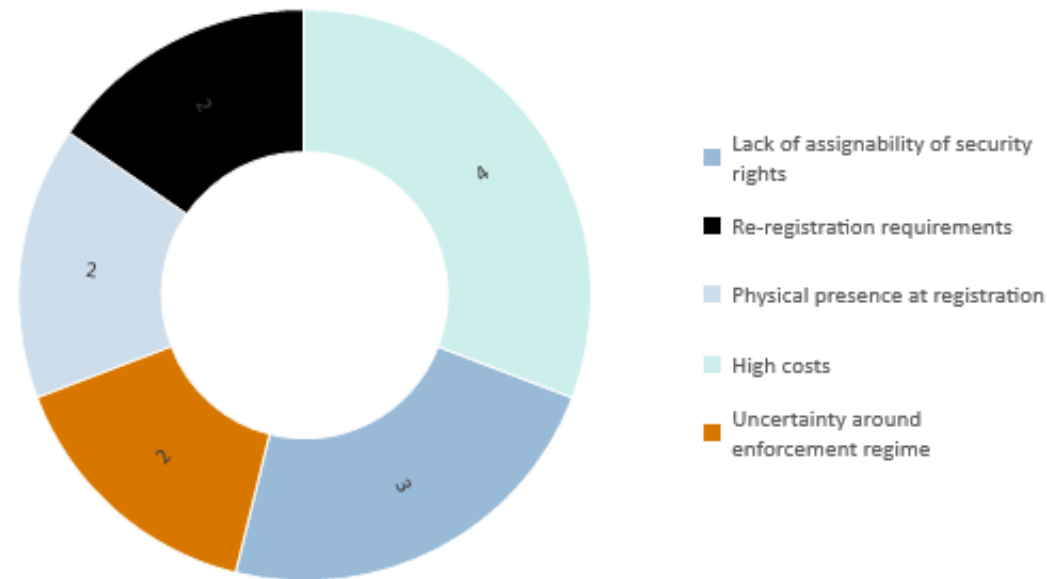
According to the respondents, the main obstacles to taking security over movable assets in Montenegro are:



**Note:** This illustrates the main obstacles cited by Montenegrin legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Montenegro had two respondents from two different law firms.

## New Financing in the EBRD Regions – Montenegro

With respect to taking security over immovable assets in Montenegro, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Montenegrin legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Montenegro had two respondents from two different law firms.

A further impediment identified is the fact that the Law on Pledges as Means of Securing Claims is considered inconsistent, outdated, and somewhat ambiguous.

# New Financing in the EBRD Regions – Montenegro

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>55</sup> It follows the order of questions contained in the survey.

Montenegro		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	The Montenegrin law does not explicitly recognise the concept of a security agent. Under the Obligations Act, however, a joint creditorship (solidarni poverioci) may be established whereby the debtor can discharge its entire obligation by paying it to a co-creditor(s), while other co-creditors would have a recourse claim against such co-creditor(s). There is no established case law.
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	✓	

<sup>55</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Montenegro

Subordination of claims		
Are local law intercreditor agreements used in your jurisdiction?	x	Intercreditor agreements are generally permitted by law. Local loan transactions are rarely syndicated therefore local law intercreditor agreements are very rarely used.
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	Syndicated loans are commonly granted by foreign creditors and therefore governed by foreign law.
Are intercreditor agreements enforceable in your jurisdiction?	✓	
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	Choice of foreign law is upheld by the courts in transactions involving a foreign element.
(Y) Has enforceability been tested before the courts?	x	In respect of foreign-law governed intercreditor agreements.
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	Registration is not required. However, given that documents supporting the registration of a pledge or mortgage must be provided, such agreements may necessarily be submitted.
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	?	It is thought to be enforceable, however, there seems to be some uncertainty around this matter. Under the Insolvency Act, secured creditors are to be satisfied in accordance with their priority, however, the law is silent on the matter of whether this applies alike to the priority of registration and to priority



## New Financing in the EBRD Regions – Montenegro

		contractually agreed between the parties by virtue of a subordination agreement. There is no established case law. This applies in situations where the security grantor is not the debtor.
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	✓	See previous comment.
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	x	
Can the debtor grant security in respect of such new financing?	✓	
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	As part of the reorganisation plan adopted by the creditors.
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 borrowing entity?	✓	In accordance with the Montenegrin Insolvency Act, pre-insolvency actions/transactions may be subject to avoidance actions and set aside if a transaction was concluded, within a timeframe as prescribed by law and if the aim of such actions/transactions was: (i) to provide a security interest/settlement to a specific creditor, where the debtor was insolvent at the time and the creditor knew or ought to have known of debtor's insolvent status, (ii) to provide a security interest/settlement to a creditor not entitled to request them, or entitled to request it but not in the manner and at the time it was provided, (iii) to directly damage the creditors, inter alia, if the debtor was

## New Financing in the EBRD Regions – Montenegro

		insolvent at the time and the counterparty was aware of the debtor's insolvent status, (iv) to cause intentional harm if the counterparty was aware of the debtor's intent, (vi) without compensation or only provided negligible compensation. Moreover, transactions concluded to create a security interest to a creditor within 60 days before the opening of insolvency proceedings shall not be valid and such creditors shall not be considered secured creditors under automatic avoidance rules.
Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	x	Banks must comply with credit risk management standards.
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	Temporary measures, including a moratorium on loan and financial leasing repayments. The Central Bank of Montenegro has introduced time-limited measures aimed at mitigating the adverse effects of COVID-19 such as: <ul style="list-style-type: none"> <li>(i) sector specific moratorium on loan repayment, and loans granted or restructured loans may be treated as loans of the highest class in the procedure of calculation of provisions for potential losses;</li> <li>(ii) restructured loans to borrowers operating in other sectors may be treated as new loans in the procedure of classification of assets and calculation of provisions for potential losses if certain requirements are met;</li> </ul>

## New Financing in the EBRD Regions – Montenegro

		<p>(iii) the fee that banks are obliged to pay to CBM for the use of the prescribed amount the amount of required reserves that are not returned on the same day is reduced by 50%, from 12% to 6% on an annual basis; and</p> <p>(iv) banks may, with the prior approval of the CBM, grant a loan or other exposure to one person or group of related parties, so that the total exposure to that person or group of related parties exceeds the prescribed exposure limits.</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?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	x	
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?		
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	

## New Financing in the EBRD Regions – Montenegro

<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	Fairly easy.
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	The appraiser/valuation industry is partially regulated by the Accounting Act (Official Gazette of Montenegro, no. 52/16) which prescribes certain licensing requirements and appraisal methodologies. However, several provisions have not been implemented yet.
What valuation standards have been implemented?		Valuations are made pursuant to the Methodology issued by the Ministry of Finance which is based on the International Valuation Standards adopted by the International Valuation Standards Council (IVSC) and European Valuation Standards adopted by The European Group of Valuers' Associations (TEGoVA).
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		N/A

# New Financing in the EBRD Regions – Morocco

## Morocco

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Moroccan legal counsel to the New Financing Survey conducted in 2020-2022. Further information on the Moroccan insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/morocco](https://ebrd-restructuring.com/economy-profile/morocco).

### 1. General movable and immovable security legislation<sup>56</sup>

This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

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<sup>56</sup> One law firm from Morocco participated in the New Financing Survey

# New Financing in the EBRD Regions – Morocco

According to the respondent, the main obstacle to taking security over movable assets in Morocco is the uncertainty around the enforcement regime. One law firm respondent participated from Morocco.

With respect to taking security over immovable assets in Morocco, the law firm respondent cited the uncertainty around the enforcement regime as the main obstacle in their economy's existing secured transactions framework,

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>57</sup> It follows the order of questions contained in the survey.

Morocco		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		

<sup>57</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Morocco

(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	Rarely, with parallel debt structure.
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	✓	
<b>Subordination of claims</b>		
Are local law intercreditor agreements used in your jurisdiction?	✓	
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	x	
Are intercreditor agreements enforceable in your jurisdiction?	✓	
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of	✓	

## New Financing in the EBRD Regions – Morocco

an intercreditor agreement or subordination agreement?		
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	✓	
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	✓	
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	
Can the debtor grant security in respect of such new financing?	✓	
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	



## New Financing in the EBRD Regions – Morocco

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 borrowing entity?	✓	
Are there any lender liability risks in granting new financing to a financially distressed borrower?	✓	
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	x	
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	x	
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	

## New Financing in the EBRD Regions – Morocco

Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	x	
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?		
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	
Is the appraiser/valuation industry regulated in your jurisdiction?	x	
What valuation standards have been implemented?	<input type="checkbox"/>	Information not available

## New Financing in the EBRD Regions – Morocco

What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?	<input type="checkbox"/>	Information not available
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# New Financing in the EBRD Regions – North Macedonia

## North Macedonia

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from North Macedonian legal counsels to the New Financing Survey conducted in 2020-2022. Further information on the North Macedonian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/northmacedonia](https://ebrd-restructuring.com/economy-profile/northmacedonia).

### 1. General movable and immovable security legislation<sup>58</sup>

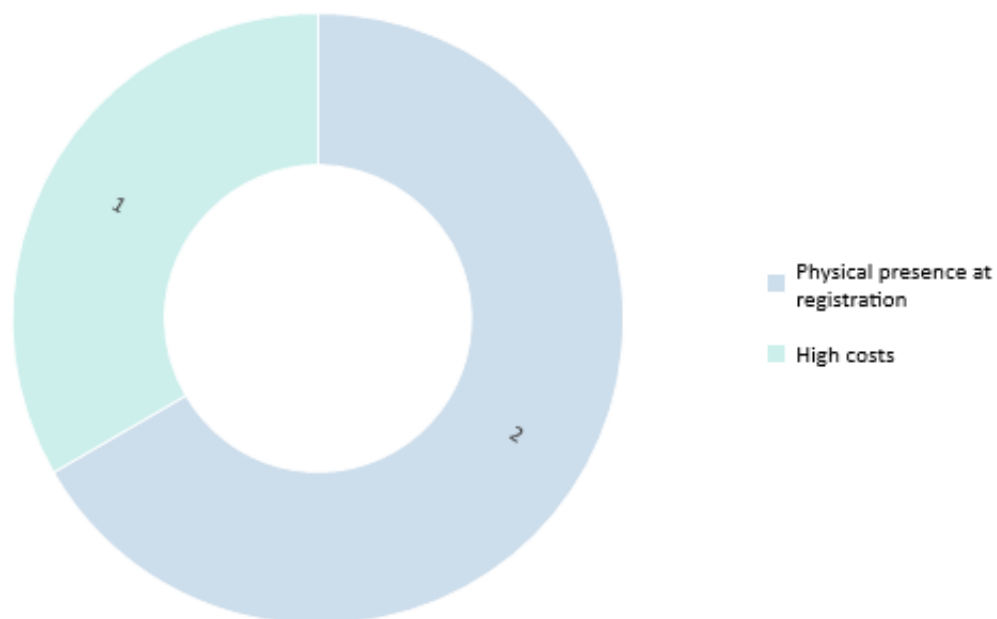
This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

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<sup>58</sup> Two law firms from North Macedonia participated in the New Financing Survey

## New Financing in the EBRD Regions – North Macedonia

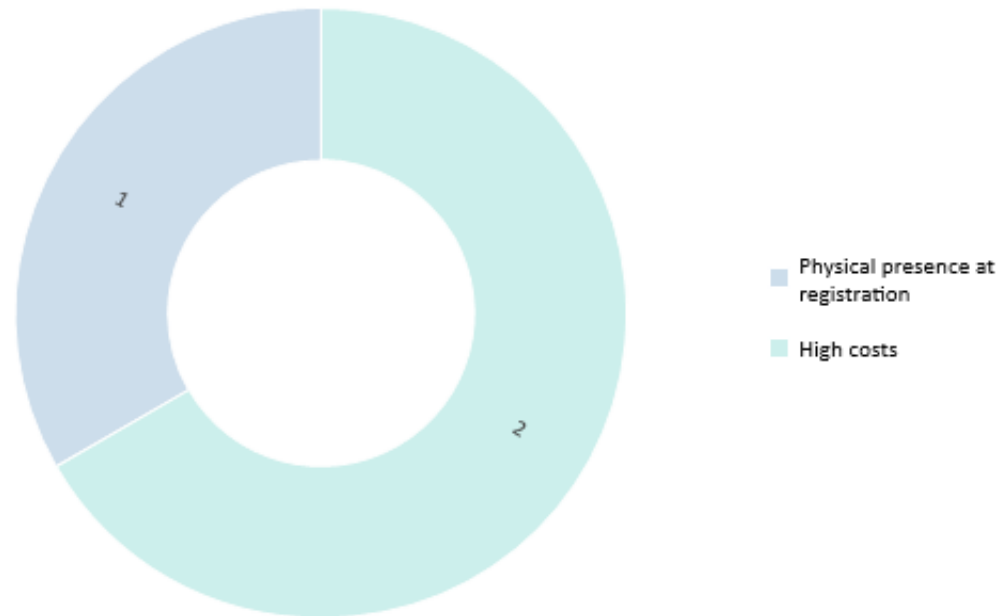
According to the respondents, the main obstacles to taking security over movable assets in North Macedonia are:



**Note:** This illustrates the main obstacles cited by North Macedonian legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. North Macedonia had two respondents from two different law firms.

## New Financing in the EBRD Regions – North Macedonia

With respect to taking security over immovable assets in North Macedonia, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by North Macedonian legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. North Macedonia had two respondents from two different law firms.

# New Financing in the EBRD Regions – North Macedonia

Further impediment is the lack of recognition of trust concept. A third party cannot be the holder of a security right on behalf of creditors, and each security right must be registered separately which is burdensome.

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>59</sup> It follows the order of questions contained in the survey.

North Macedonia		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	Lenders of a syndicated loan agreement are free to agree that one of the lenders will act as facility agent, entitled to perform various actions (e.g. distribution of proceeds to other lenders and other administrative tasks).

<sup>59</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – North Macedonia

(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	✓	The parallel debt structure is mainly used in cross-border financing governed by foreign laws. Foreign laws are enforceable in so far as they are not contrary to the public policy of the Republic of North Macedonia. They are rarely used in local law-governed transactions.
<b>Subordination of claims</b>		
Are local law intercreditor agreements used in your jurisdiction?	✓	Local law-governed intercreditor agreements are rarely used.  The Law on Obligations recognises the concept of joint creditorship which can be established by agreement entered into by the creditors and the borrower or by virtue of law whereby each joint creditor can request settlement of the entire obligation from the borrower. If the borrower satisfies the entire obligation towards one creditor, the obligation is considered discharged against all other creditors. Those creditors have a recourse claim against the one creditor that received the proceeds.
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	Intercreditor agreements are usually entered into by banks and foreign lenders and are therefore governed by foreign law.
Are intercreditor agreements enforceable in your jurisdiction?	✓	No established case law however.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	x	



## New Financing in the EBRD Regions – North Macedonia

Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	Contractual subordination is not expressly recognised by law. Nevertheless, the borrower, the senior lender and junior lender may contractually agree that the junior lender refrains from collecting its claim from the borrower until the senior lender's claim is fully satisfied.
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	x	Subordination shall be enforceable as a contractual claim. In insolvency, the mandatory rules of ranking apply. Two main categories are the higher ranking and lower ranking categories. Both include further classes, where creditors in a certain class are satisfied before the creditors in the next lower-ranking class.
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?		
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	<p>Provided it is in the interest of creditors, the insolvency administrator may obtain new unsecured credit and classify it as an expense of the insolvency proceedings. Such new financing requires the consent of the Board of Creditors and must be approved by the court. If no such credit is available, it is possible to obtain a secured credit, with the prior approval of the Creditors' Assembly, as an expense, or by charging an unencumbered asset or by charging an already encumbered asset with a lower-ranking security right.</p> <p>As part of the reorganisation plan, the rank of the bankruptcy creditors may be lowered against the rank of creditors providing finance during the supervised period of implementation of the reorganisation plan. The amount of loan and</p>

## New Financing in the EBRD Regions – North Macedonia

		other credits is limited by law and must be determined in the reorganisation plan. The approval of the bankruptcy trustee is required. Other loans and credits provided post-conclusion of the reorganisation plan are subordinated.
Can the debtor grant security in respect of such new financing?	✓	See previous comment.
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	New financing provided as part of the reorganisation plan takes priority over other insolvency creditors' claims in the event of a subsequent insolvency proceedings.
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 borrowing entity?	✓	<p>If a financial collateral/security agreement is concluded after the filing of the proposal to initiate the bankruptcy proceeding and the creditor knew or must have known of debtor's insolvent status or of such proceedings, such agreement may be challenged.</p> <p>Furthermore, actions/transactions may be challenged if they were concluded, within a timeframe as prescribed by law and with the aim:</p> <ul style="list-style-type: none"> <li>(i) to provide security interest/settlement to a creditor not entitled to request them, or entitled to request them but not in the manner and at the time they were provided; and</li> <li>(ii) to directly damage the creditors. In various cases, it must be considered whether the creditor knew or must have known of debtor's insolvent status or of the initiation of bankruptcy proceedings.</li> </ul>
Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	

## New Financing in the EBRD Regions – North Macedonia

Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	x	General credit risk management and prudential rules apply.
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	In March 2020, a Decree has been adopted allowing banks and savings houses to offer to citizens and businesses an extension on loan repayments and other favourable loan terms in respect of a wide range of credit products.
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	✓	A third Package" adopted on 17 May 2020 envisaged measures for state guarantee funds. The measures included the following:  (i) state guarantee for commercial loans – the state will make available funds for support of start-ups, small and micro companies through commercial banks with EUR 10 million of initial capital for easier access to financial resources to support the private sector, by assuming part of the credit risk; and

## New Financing in the EBRD Regions – North Macedonia

		(ii) a state guarantee for the provision of customs debt – the state will make available EUR 3 million state guarantee for securing of the customs debt. This measure is intended to support exports and facilitate access to raw materials for further processing of Macedonian companies, through the Development Bank of the Republic of North Macedonia.
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	<input type="checkbox"/>	Information not available
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	✓	Measures adopted by the government include subsidising the Development Bank of North Macedonia JSC Skopje, thus enabling the bank to provide loans at a low interest rate to commercial banks. Consequently, the commercial banks can offer loans with lower interest rates (around 1.5%) to SMEs.
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	The appraisal is performed by an independent appraiser. A valuation may be requested by any interested person or in specific cases determined by law.
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	Regulated by Valuation Act. Chamber of Valuers of the Republic of North Macedonia.
What valuation standards have been implemented?		IVSC and TEGOVA

## New Financing in the EBRD Regions – North Macedonia

What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		The value of asset may be underestimated.
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# New Financing in the EBRD Regions – Poland

## Poland

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Polish legal counsel to the [New Financing Survey](#) conducted in 2020-2022<sup>60</sup>. Further information on the Polish insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/poland](http://ebrd-restructuring.com/economy-profile/poland).

### 1. General movable and immovable security legislation<sup>61</sup>

Impediments identified by the survey in respect of movables security legislation and practice are:

- (i) the contractual requirement to regularly provide updated lists of assets often imposed in enterprise pledge agreements, which can be burdensome for borrowers;
- (ii) the need to verify prior to signing of the registered pledge agreement that there are no existing registered pledges over the assets to be pledged. If there are existing pledges, and the consent of the existing pledgee has not been obtained, the new registered pledge would be null and void;
- (iii) in order to register the pledge, the pledge agreement which is filed to the registry court shall be drawn up in a Polish language version. In practice, both English and Polish language versions are prepared in course of the transaction;
- (iv) certain types of registered pledges and assignment agreements require notarised signatures thereunder; and
- (v) a registered pledge is effective upon its registration in the court register, not upon signing of the pledge agreement. The registration period depends on the registry court and takes from three to even eight weeks.

Impediments identified in respect of immovables securities legislation are:

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<sup>60</sup> Please note that due to the transposition of Directive (EU) 2019/1023 on preventive restructuring frameworks, the laws and commentary with respect to new financing may have changed in this EU member state.

<sup>61</sup> One law firm respondent from Poland participated in the New Financing Survey

## New Financing in the EBRD Regions – Poland

- (i) the rule that legal title to a receivable secured by a mortgage only passes when the transfer of mortgage is registered can be problematic, especially in relation to distressed debt trading;
- (ii) the mortgage statement must be executed in a form of a notarial deed, but only by the owner of the property, as the lender's presence is not required; (iii) the process of registration of the mortgage is lengthy in Poland. It mostly depends on the court and the judge who processes the application. It may take from four months to even eight to nine months. Pursuant to Polish law, the mortgage is created once it is registered in the land and mortgage register (LMR), however it takes effect from the date of filing of the application.

### 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>62</sup> It follows the order of questions contained in the survey.

Poland		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	✓	The legislation allows a mortgage or a pledge administrator to be appointed. However, there is no general concept of a security agent who could take all kinds of security on behalf of creditors. This causes uncertainties.
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?	✓	In respect of mortgages on immovable property, under Article 682 of the Land Register and Mortgage Act, lenders can appoint a mortgage administrator.

<sup>62</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Poland

		In respect of registered pledges on movable property, under Article 4 of the Registered Pledge Act, lenders can appoint a pledge administrator. In other cases, a security agent is governed by contractual provisions agreed between the secured lenders.
(Y) Can the security agent enforce security on behalf of all secured lenders?	✓	Under relevant law or according to contractual agreement.
(N) Are security agent structures used in practice despite the lack of supporting legislation?		
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?		However, parallel debt structures governed by foreign law (typically English law) may be recognised by the Polish court.
<b>Subordination of claims</b>		
Are local law intercreditor agreements used in your jurisdiction?	✓	
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
Are intercreditor agreements enforceable in your jurisdiction?	✓	As long as it is consistent with the mandatory provisions of Polish law, and in particular, with mandatory ranking rules. Otherwise, conflicting provisions may be challenged, and the application of such provisions may be refused by the court. Provisions on choice of governing law may also be challenged.



## New Financing in the EBRD Regions – Poland

(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	×	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	Such arrangements will be effective only between the parties to the subordination or intercreditor agreement, and not against all creditors of the debtor.
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	×	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	×	However, some commentators argue that the contractual subordination may be also enforceable in bankruptcy if it is not detrimental to other creditors.
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?		
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	Under certain conditions.
Can the debtor grant security in respect of such new financing?	✓	Under certain conditions.

## New Financing in the EBRD Regions – Poland

Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	Under certain conditions, a new financing may be secured by the debtor's existing assets, and if so it will take priority of satisfaction from these assets over unsecured creditors.
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 borrowing entity?	✓	There is such risk in two out of five types of restructuring proceedings. Namely, in proceedings for approval of the arrangement, and in simplified court restructuring. The latter has been introduced as a COVID-19 measure. In simplified court restructuring, the risk can be eliminated if the new financing and related security is notified in the restructuring application and the court accepts the application.
Are there any lender liability risks in granting new financing to a financially distressed borrower?	✓	There are no specific regulations which would stipulate that granting financing to a distressed borrower results in a lender's liability. Nevertheless, the general rules regarding the lender's or its managers' liability might apply in case the given transaction involved too much risk or put at risk the investors' or depositaries' money. Therefore, usually the Polish banks are not eager to provide financing to distressed borrowers and the financing thereto is mostly granted by the various funds or other non-bank lenders.
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	✓	There are no specific regulations which would prevent the bank from granting new financing specifically to a distressed borrower. Nevertheless, due to the strict capital requirements imposed on banks, requirements on credit assessment of the prospective creditor, the potential non-performance of such financing and the possible detailed audit from the Polish regulator (Polish Financial Supervision Authority), the Polish banks are not particularly eager to provide the financing to the distressed borrowers.

## New Financing in the EBRD Regions – Poland

Specific COVID-19 measures		
<p>Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?</p>	<p>✓</p>	<p>Certain new measures have been implemented. In particular they consist of various types of guarantee schemes (e.g. to grant guarantees for investment and working capital loans), direct subsidizing of advances on loans, forgivable loans or providing a liquidity financing for entrepreneurs who find themselves in a difficult financial situation because of the COVID-19 pandemic.</p> <p>From the regulatory standpoint, certain capital requirements for the banks were eased (e.g. the systemic risk buffer). Moreover, the Polish Financial Supervision Authority declared that it will apply an individualised approach to liquidity measures, considering external circumstances, and individually tailor its regulatory reaction should the bank's short-term LCR liquidity ratio fall below the CRR requirements. In addition, certain reporting deadlines for banks were prolonged.</p> <p>In order to support the liquidity of banks, the National Bank of Poland engaged on a greater scale in repo transactions and more actively purchased treasury bonds on the secondary market as part of structural open-market transactions. The National Bank of Poland also offered discount facilities to banks to refinance loans granted by banks to businesses outside the financial sector.</p>
<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>✓</p>	<p>A new court restructuring procedure, i.e. simplified court restructuring, has been enacted as an anti-COVID-19 restructuring measure. The procedure provides that there is no risk of avoidance actions in further court restructuring and bankruptcy if the new financing and related security have been notified in the restructuring application and the court has accepted the application.</p>

## New Financing in the EBRD Regions – Poland

Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	✓	<p>Through the state-owned bank – Bank Gospodarstwa Krajowego (BGK). One of the guarantee schemes consists in enabling BGK to grant guarantees for investment and working capital loans. The estimated budget of this programme is PLN 22 billion (approx. EUR 4.8 billion). This amount is to allow BGK to grant guarantees of up to PLN 100 billion (approx. EUR 22 billion). The estimated amount of the guarantee scheme may be used to cover a total amount of loans up to PLN 125 billion (approx. EUR 27 billion). Moreover, the Polish legislator introduced a mechanism to subsidise the interest rate on working capital credits for entrepreneurs who find themselves in a difficult financial situation because of the COVID-19 pandemic. This mechanism is aimed at ensuring the financial liquidity of these entrepreneurs, both in the short and medium term, which has been lost or is threatened because of the COVID-19 pandemic. The surcharge mechanism may apply to both "old" credit facilities (i.e. those granted before the date of entry into force of the COVID-19 laws, if the credit agreement is annexed accordingly) and "new" credits (i.e. those granted after that date, but until 31 December 2020). The mechanism covers only working capital credits (revolving and non-revolving) which were granted in Polish zloty. The applications of entrepreneurs are assessed and considered by lender-bankers which have concluded a relevant cooperation agreement with BGK. In the event of a positive credit decision, the parties will conclude a credit agreement with an additional payment, or they will annex the already functioning credit agreement accordingly.</p>

## New Financing in the EBRD Regions – Poland

(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	<input type="checkbox"/>	Information not available
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	✓	
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	The valuation of real property as well as machines and fixtures which are permanently connected to real property is a regulated activity and must be performed by licensed appraisers.
What valuation standards have been implemented?		In Poland, the appraisers use and comply with both international valuation standards (IVSC, TEGoVA, RICS) and Polish Valuation Standards.
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		Assessing the market value involves a significant challenge. It is difficult to obtain a reliable assessment.

# New Financing in the EBRD Regions – Romania

## Romania

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Romanian legal counsels to the New Financing Survey conducted in 2020-2022<sup>63</sup>. Further information on the Romanian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/romania](https://ebrd-restructuring.com/economy-profile/romania).

### 1. General movable and immovable security legislation<sup>64</sup>

This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

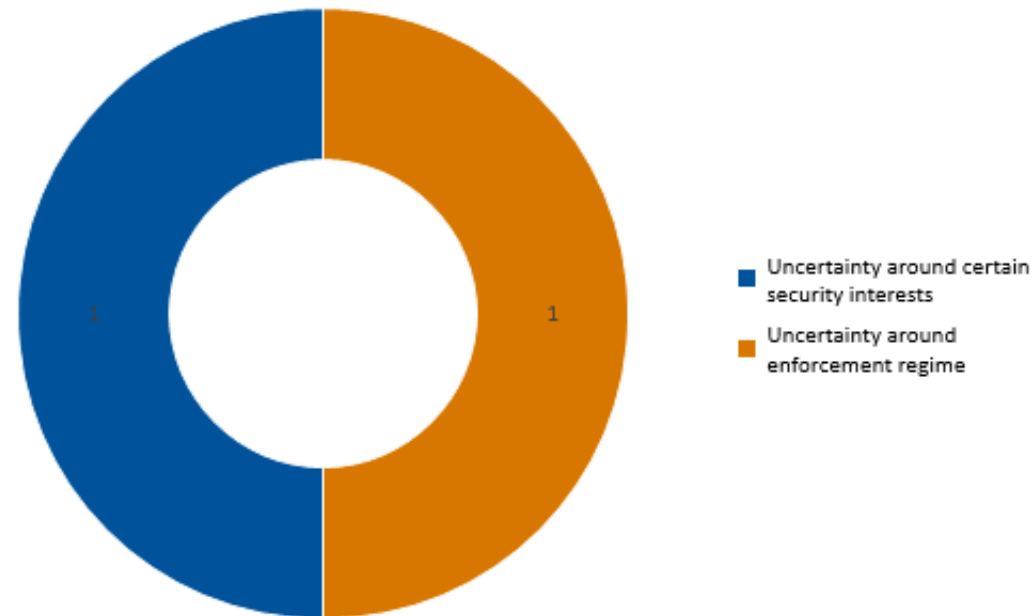
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<sup>63</sup> Please note that due to the transposition of Directive (EU) 2019/1023 on preventive restructuring frameworks, the laws and commentary with respect to new financing may have changed in this EU member state.

<sup>64</sup> Two law firms from Romania participated in the New Financing Survey

## New Financing in the EBRD Regions – Romania

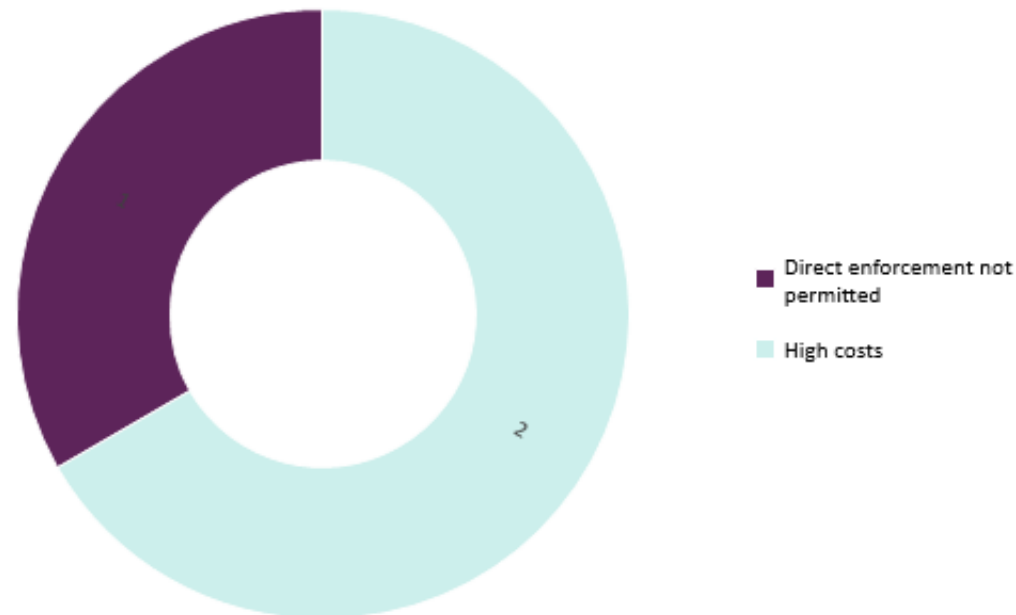
According to the respondents, the main obstacles to taking security over movable assets in Romania are:



**Note:** This illustrates the main obstacles cited by Romanian legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Romania had two respondents from two different law firms.

## New Financing in the EBRD Regions – Romania

With respect to taking security over immovable assets in Romania, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Romanian legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Romania had two respondents from two different law firms.



# New Financing in the EBRD Regions – Romania

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>65</sup> It follows the order of questions contained in the survey.

Romania		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	✓	In respect of movable security.
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?	×	Foreign/English law governed security agent structures (parallel debt, trust, joint creditorship) are applicable to both movable and immovable security. Romanian law governed security agent is applicable to movable security only.
(Y) Can the security agent enforce security on behalf of all secured lenders?	✓	
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	See previous comment.
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	✓	See previous comment.

<sup>65</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Romania

Subordination of claims		
Are local law intercreditor agreements used in your jurisdiction?	✓	In principle, creditors can agree on ranking of their claims/security which will be binding between them. It is debatable whether such arrangements are binding for the insolvency officials managing the liquidation waterfall process.
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
Are intercreditor agreements enforceable in your jurisdiction?	✓	
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	?	In principle creditors can agree on ranking of their claims/security and it is binding on such creditors. It is uncertain whether such arrangements are binding for the insolvency officials managing the liquidation waterfall process.

## New Financing in the EBRD Regions – Romania

(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	<input type="checkbox"/>	Information not available
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	<p>Law No. 85/2014 on pre-insolvency and insolvency proceedings (Insolvency Law) expressly provides for the access of the debtor to sources of financing in pre-insolvency procedures and during the observation and reorganisation period, by creating an adequate regime for protecting new financing.</p> <p>The debtor is explicitly authorised under the Insolvency Law to obtain new financing during the observation period to conduct its current activities. Scholar opinions have confirmed that the provisions also apply to the reorganisation period. Current activities are defined as activities of production, trade or provision of services and financial operations, proposed to be carried out by the debtor during the observation period and the reorganisation period, in the normal course of its activity.</p>
Can the debtor grant security in respect of such new financing?	✓	<p>The financing granted to the debtor during the observation period to conduct current activities, with the approval of the creditors' assembly, benefits from priority ranking. These financings may be secured by unencumbered assets, or, in the absence of the same, by assets already encumbered in favour of other creditors, with the consent of such secured creditors. In the absence of creditor consent, the priority for repayment of new financing will diminish the regime of satisfaction of the creditors benefiting from the already existent security, pro-rata, by reference to the entire value of the assets or rights subject to the pre-existent causes of preference.</p>

## New Financing in the EBRD Regions – Romania

		The unsecured part of the new financier's claim, will benefit from the priority expressly provided by law (i.e. in case of bankruptcy, the creditors financing the debtor during the observation period are ranked ahead of all other claims, except for the fees, stamps or any other expenses related to the insolvency procedure). Scholar opinions confirm that the above applies to the reorganisation period as well.
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	See previous comment.
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 borrowing entity?	x	<p>The Insolvency Law expressly provides that all acts, operations and payments made by the debtor after the opening of the insolvency procedure are null and void, except for the new financing granted to the debtor and authorised by the syndic judge or endorsed by the judicial administrator.</p> <p>Moreover, any transactions concluded between the date of confirmation of the reorganisation plan and the entry into bankruptcy are presumed as defrauding the other creditors' interests and will be annulled, unless the co-contractor proves his good faith at the time of concluding the act, except for the acts permitted under the reorganisation plan and acts concluded in relation to the current activities of the debtor, the payments made to known creditors and any acts, operation or payments authorised by the judicial administrator as part of supervisory duties. The judicial administrator shall convene a meeting of the creditors' committee in order to submit for approval such request.</p>
Are there any lender liability risks in granting new financing to a financially distressed borrower?	✓	During the course of the insolvency proceedings, at the request of the insolvency practitioner, the judge may order that part of the liabilities of the company be borne by the members of the debtor's supervisory or

## New Financing in the EBRD Regions – Romania

		<p>management bodies, as well as by any other person who caused the debtor to become insolvent (together the "Responsible Persons"), as a result of one of the following actions by a Responsible Person:</p> <ul style="list-style-type: none"><li>(i) using the assets or credits of the debtor for their own benefit or for the benefit of another person;</li><li>(ii) using the debtor to conclude commercial transactions in their personal interest;</li><li>(iii) ordering, in their personal interest, the continuation of an activity that was obviously leading the debtor to financial default;</li><li>(iv) keeping fictitious accounting books, causing the disappearance of certain accounting documents or not keeping the accounting books in accordance with the law;</li><li>(v) embezzling or concealing part of the debtor's assets or fictitiously increasing its liabilities;</li><li>(vi) using harmful methods to obtain funds for the debtor, with a view to delaying the financial default;</li><li>(vii) paying or ordering the payment to a creditor, to the detriment of the other creditors, during the month before the debtor entered into a state of insolvency;</li><li>(viii) undertaking any other act which constitutes wilful misconduct and which has contributed to the debtor's insolvency.</li></ul> <p>The scope of the persons who can be liable for the state of insolvency (i.e. the Responsible Persons) is very broad and vague and is determined on a case-by-case basis by the insolvency judge. According to legal doctrine, Responsible Persons may also include, in exceptional cases, financial institutions which have over-leveraged the debtor and the parent company or affiliated</p>
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## New Financing in the EBRD Regions – Romania

		<p>companies which were involved in the management of the debtor or entered into financial arrangements with the debtor (e.g. cash-pooling).</p> <p>Taking into consideration that any financing during the insolvency proceedings must be approved by the creditors' assembly, there are views that the above risk of being considered as Responsible Person is lower in a post-insolvency compared with a pre-insolvency scenario.</p>
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	x	For the purpose of this survey, special legislation that may be applicable to credit institutions, insurers or other special categories of debtors have not been examined.
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	Some of the most important measures have been implemented through the Emergency Ordinance No. 37/2020 (the Moratorium Ordinance) where, amongst others, legal entities (except credit institutions) affected by the COVID-19 pandemic can submit a request to their lenders and/or leasing providers (credit institutions or non-banking financial institutions and Romanian branches thereof) to postpone due loan and/or leasing payments (principal as well as interest and/or fees) for up to 9 months. The borrower may benefit from the Moratorium Ordinance provisions subject to several conditions provided therein. Conditions related to the level of indebtedness, the loan-to-value limit and the maximum maturity of consumer credit would not apply.
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection	x	Law no. 55/2020 contains amendments to legal provisions for regular insolvency during the state of alert, but it does not refer to any protection rules in order to encourage new financing to distressed businesses, as the main

## New Financing in the EBRD Regions – Romania

<p>from avoidance actions or lender liability risks?</p>		<p>concern seems to have been the easing of the procedural obligations of the debtor in case of insolvency proceedings.</p> <p>The most important amendments include a deferral of the obligation to file for insolvency, an increase in the threshold for petitioning for insolvency, extension of the duration for the reorganisation plan and an extension of other procedural deadlines. Moreover, creditors may file for insolvency for their debtors during the state of alert only if they can document an attempt to conclude a payment agreement with the debtor, which failed.</p>
<p>Have regulatory measures relating to connected creditors been eased to encourage new financing?</p>	<p>x</p>	
<p>Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?</p>	<p>✓</p>	<p>New pieces of legislation have been passed to regulate the state guarantees regime under the current crisis, implementing provisions regarding the procedure and conditions for granting, monitoring and settlement of payment requests for state guarantees, as well as for awarding state grants, with a view to support small and medium-sized enterprises (SMEs) during the economic crisis generated by the COVID-19 pandemic.</p> <p>As a general preview, microenterprises and small enterprises obtaining working capital credits can either be granted the state guarantee for:</p> <ul style="list-style-type: none"> <li>(i) up to 80% of the value of the financing, for credits below the value of RON 5 million (in case of working capital loans) or RON 10 million (in case of investment loans), or, in case of micro and small enterprises;</li> <li>(ii) up to 90% of the value of the financing, for credits below the value of RON 500,000 or 1 million respectively, in both cases. They can, however, cumulate a state-guaranteed working capital credit with</li> </ul>

## New Financing in the EBRD Regions – Romania

		<p>state-guaranteed investment credits in both forms, if the total value of the credits is below RON 10 million.</p> <p>Nevertheless, the maximum amounts provided above are not absolute, as any eligible beneficiary will be able to actually access only a loan equal to the highest of:</p> <ul style="list-style-type: none"> <li>(i) double the amount of wage expenses (including mandatory social contributions due by the SME), registered in 2019 (without exceeding the estimated amount of wage expenses for the first two years of activity, in case of SMEs established after 1 January 2019);</li> <li>(ii) 25% of the net turnover for 2019 (or of the gross income/ the annual income normative, for individuals earning income from independent activities, according to the sole return submitted with the tax authorities for the year 2019);</li> <li>(iii) the amount of the liquidity needs (including working capital and investment expenses) attested by documentary evidence, for a period of up to 18 months from the date when the credit has been granted to the SME.</li> </ul>
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	✓	
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	<p>The National Bank of Romania has not passed any special (re)financing programmes following the COVID-19 pandemic by the date of this survey, but it has taken several measures to adapt the banking sector to the new necessities imposed by such crisis</p> <ul style="list-style-type: none"> <li>(i) monetary policy measures,</li> <li>(ii) measures to make the regulatory framework more flexible so that credit institutions and NFIs can help borrowers: lenders will be able to</li> </ul>



## New Financing in the EBRD Regions – Romania

		<p>defer payments to any natural and legal person affected by the COVID-19 crisis, without applying the conditions for the degree of indebtedness, credit limitation according to the value of the guarantee and the maximum duration of the consumer loans,</p> <p>(iii) measures regarding the resolution of credit institutions and</p> <p>(iv) various operational measures.</p> <p>In addition, the National Bank of Romania announced that the payment obligations of debtors to credit institutions and non-banking financial institutions suspended in accordance with the provisions of the Moratorium Law are not recorded at the Credit Risk Centre (CRC) as outstanding amounts.</p>
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	<p>Under Romanian law, the valuation activity can be carried out only by authorised appraisers that have been accredited as per the applicable law and have become members of the National Association of Authorised Evaluators in Romania (the National Association).</p> <p>The parties to a collateral agreement may encounter difficulties in appointing an appraiser if the agreement includes provisions limiting the acceptable evaluators to Big Four accounting companies, due to conflict of interest cases.</p>
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	<p>The most relevant pieces of legislation applicable to the valuation industry are:</p> <ul style="list-style-type: none"> <li>(i) Ordinance No. 24/2011 regarding measures in the field of property valuation;</li> <li>(ii) Law No. 99/2013 for approving the Ordinance No. 24/2011 regarding measures in the field of property valuation;</li> </ul>

## New Financing in the EBRD Regions – Romania

		<p>(iii) Government Decision No. 353/2012 regarding the approval of the Regulation on the organization and functioning of the National Union of Authorized Appraisers in Romania.</p> <p>(iv) Insolvency Law; and</p> <p>(v) Romanian Civil Procedure Code as republished in the Official Gazette No. 247 of 10 April 2015, as originally approved by Law No. 134/2010 regarding the Civil Procedure Code and as amended, inter alia, by Law No. 76/2012 for the application of Law No. 134/2010 regarding the Civil Procedure Code (the Romanian Civil Procedure Code).</p>
What valuation standards have been implemented?		The National Association has just passed a decision approving new “Valuation Standards of Goods”, which are mandatory for the conduct of the valuation activity. They shall be implemented from 1 September 2020. In accordance with such decision, the new “Valuation Standards of Goods” shall be made available to those interested by the National Association and have been drafted in accordance with the International Valuation Standards (IVS) and the European Valuation Standards (EVS).
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		The volatility of the valuation result is a main flaw. Taking into consideration the instability generated by a financial crisis, information on comparable transactions or offers that are used in valuation reports may reduce the reliability of a valuation in the case of major price fluctuations.

# New Financing in the EBRD Regions – Russia

## Russia<sup>66</sup>

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Russian legal counsel to the New Financing Survey conducted in 2020-2022. Further information on the Russian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/russia](https://ebrd-restructuring.com/economy-profile/russia).

### 1. General movable and immovable security legislation<sup>67</sup>

This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

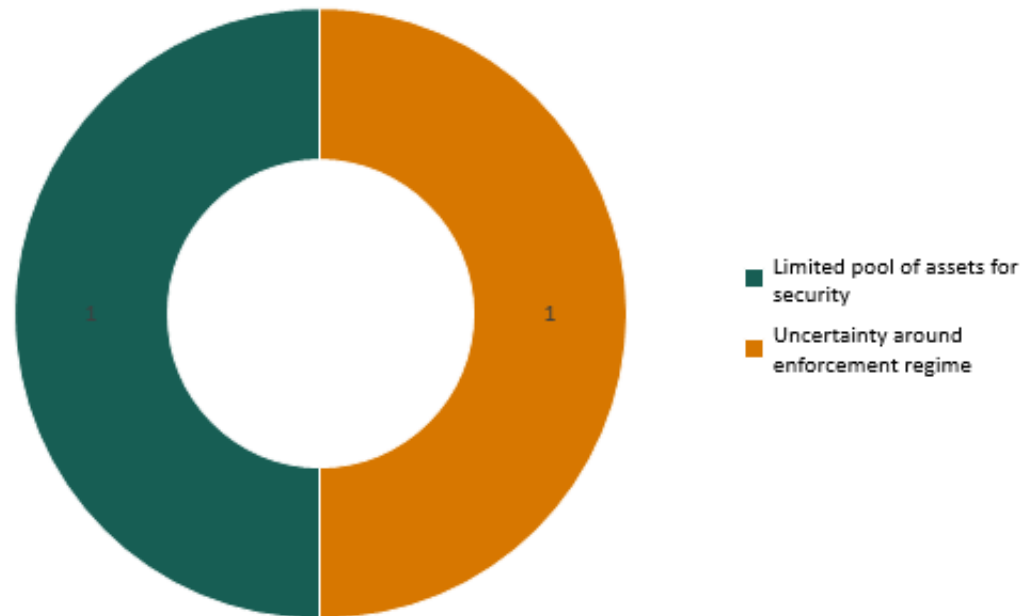
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<sup>66</sup> The EBRD New Financing Survey includes Russia and Belarus. However, since April 2022, Russia and Belarus no longer have access to the EBRD’s resources. The EBRD currently invests in 36 economies.

<sup>67</sup> One law firm from Russia participated in the New Financing Survey

## New Financing in the EBRD Regions – Russia

According to the respondent, the main obstacles to taking security over movable assets in Russia are:



**Note:** This illustrates the main obstacles cited by Russian legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Russia had one law firm respondent.

## New Financing in the EBRD Regions – Russia

With respect to taking security over immovable assets in Russia, the law firm respondent cited the uncertainty around the enforcement regime as the main obstacle in their economy's existing secured transactions framework. One law firm respondent participated from Russia.

### 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>68</sup> It follows the order of questions contained in the survey.

Russia		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	✓	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?	✓	
(Y) Can the security agent enforce security on behalf of all secured lenders?	✓	
(N) Are security agent structures used in practice despite the lack of supporting legislation?		

<sup>68</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Russia

(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?		
<b>Subordination of claims</b>		
Are local law intercreditor agreements used in your jurisdiction?	✓	
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	x	
Are intercreditor agreements enforceable in your jurisdiction?	✓	
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	x	Not directly enforceable, but may be enforced in a court procedure.
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	x	
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?		

## New Financing in the EBRD Regions – Russia

Would subordination of creditor claims be enforceable in insolvency of the security grantor?	x	
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?		
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	Formally. Rarely implemented in practice.
Can the debtor grant security in respect of such new financing?	✓	
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	
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 borrowing entity?	✓	
Are there any lender liability risks in granting new financing to a financially distressed borrower?	✓	

## New Financing in the EBRD Regions – Russia

Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	x	
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	x	
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?		



## New Financing in the EBRD Regions – Russia

Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	✓	
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	
What valuation standards have been implemented?	<input type="checkbox"/>	Information not available
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?	<input type="checkbox"/>	Information not available

# New Financing in the EBRD Regions – Serbia

## Serbia

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Serbian legal counsels to the New Financing Survey conducted in 2020-2022. Further information on the Serbian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/serbia](https://ebrd-restructuring.com/economy-profile/serbia).

### 1. General movable and immovable security legislation<sup>69</sup>

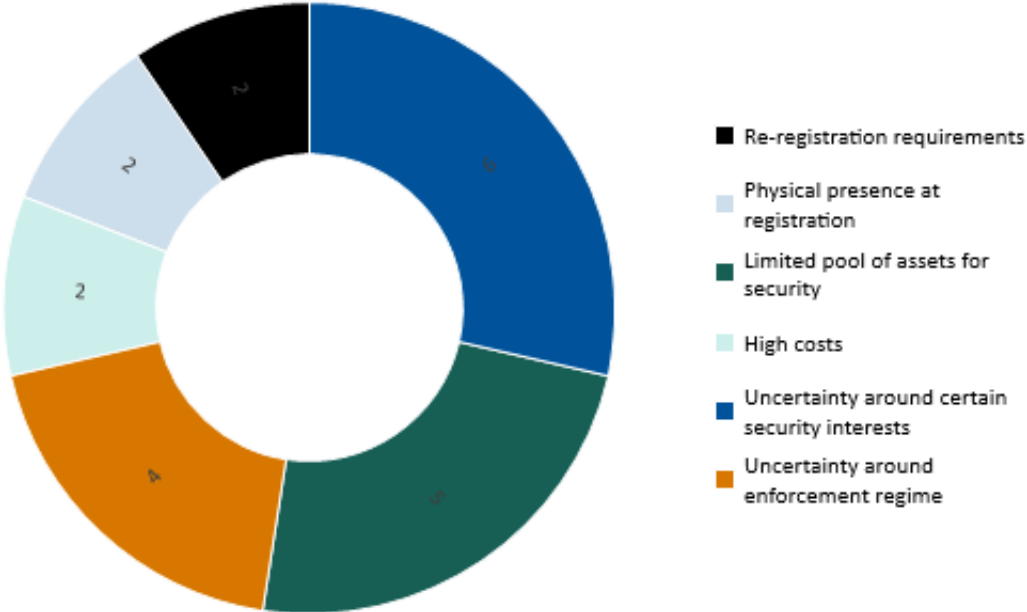
This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

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<sup>69</sup> Five law firms from Serbia participated in the New Financing Survey

# New Financing in the EBRD Regions – Serbia

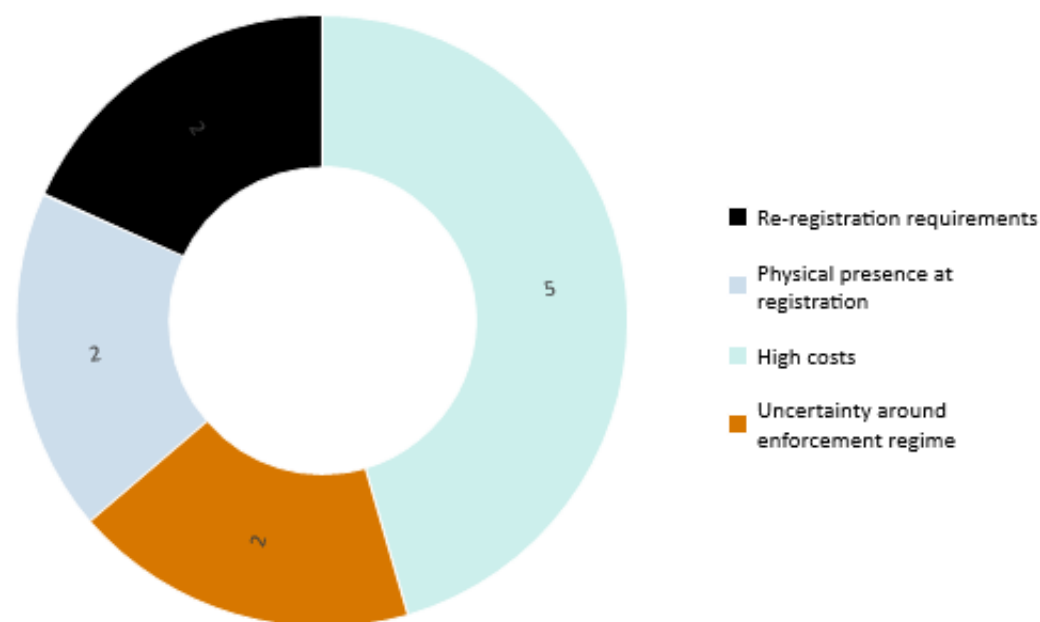
According to the respondents, the main obstacles to taking security over movable assets in Serbia are:



**Note:** This illustrates the main obstacles cited by Serbian legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Serbia had five respondents from five different law firms.

## New Financing in the EBRD Regions – Serbia

With respect to taking security over immovable assets in Serbia, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Serbian legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Serbia had five respondents from five different law firms.

## New Financing in the EBRD Regions – Serbia

Further and more specifically impediments identified are, in respect of movables security legislation:

- (i) the lack of pledge over bank accounts (current legislation allows pledges only over existing cash balances at registration, with certain exceptions),
- (ii) the lack of recognition of the concept of floating charge (although a charge may be established over a sum of movable assets such as inventory which extends to all movable assets that become part of such sum subsequently),
- (iii) foreign exchange issues in the case of a pledge over receivables, (iv) extensive documentation is required at registration and documents must be originals,
- (iv) a separate notarised power of attorney is required to register a security agent, moreover, and
- (v) issues may arise in relation to the practice of Serbian Pledge Registry where a special statement of the expert monitoring the implementation of the reorganisation plan is needed for the inscription of the transferee in case of the assignment of receivables covered by such plan which are secured by the pledge.

In respect of immovables, similar issues arise, such as:

- (i) lengthy procedures, extensive documentation, a requirement to submit original documents and separate power of attorney to the security agent,
- (ii) Serbian immovables security legislation does not expressly recognise some forms of mortgages such as the so called "continuing" mortgages (covering receivables arising from legal transactions entered into after the mortgage was established),
- (iii) the legislation is silent in relation to the possibility and effects of annexing existing mortgage documents, which causes issues in practice primarily in relation to the registration of changes to the mortgage (especially in cases where lower ranking mortgages are registered),
- (iv) uncertainties in practice may arise in relation to the registration of a single mortgage as collateral securing multiple claims on different grounds by multiple creditors, since such possibility has not yet been expressly regulated.

# New Financing in the EBRD Regions – Serbia

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>70</sup> It follows the order of questions contained in the survey.

Serbia		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	✓	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?	✓	Not applicable for pledges over shares in joint stock companies and for promissory notes (bills of exchange), although used in practice in both cases.
(Y) Can the security agent enforce security on behalf of all secured lenders?	✓	Under the relevant laws, the lenders are entitled to appoint one of multiple creditors/lenders or a "third party" (security agent) to act on their behalf in respect of enforcement and collection of the collateral securing their claims. Only such actions may be taken on behalf of the lenders which actions the lenders otherwise would have to take jointly. The security agent figure in respect of mortgages is not yet sufficiently tested as it was introduced in the regulations relatively recently.
(N) Are security agent structures used in practice despite the lack of supporting legislation?		

<sup>70</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Serbia

(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?		
<b>Subordination of claims</b>		
Are local law intercreditor agreements used in your jurisdiction?	✓	Rarely. Intercreditor agreements are generally used in cross-border transactions involving foreign lenders therefore are governed by foreign law (usually English law).
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	In cross-border syndicated lending structures.
Are intercreditor agreements enforceable in your jurisdiction?	✓	Intercreditor agreements are not expressly recognised by law, however, they are thought to be enforceable under general rules of Serbian law. They have not been tested in the court.  As a general comment, the enforceability of an agreement does not necessarily guarantee that a judgment would award specific performance, as Serbian court or arbitral tribunal may make an award of damages if it considers this an adequate remedy for breach of legal obligations.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	Subject to the rules on enforcement of foreign court judgments / arbitral awards.
(Y) Has enforceability been tested before the courts?	×	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of	✓	Although subordination of claims is not expressly recognised by law, subordination agreements are concluded regularly. In case of bankruptcy,

## New Financing in the EBRD Regions – Serbia

an intercreditor agreement or subordination agreement?		contractual subordination has effect erga omnes (and not only towards a specific creditor) and is explicitly recognised by Serbian Law on Bankruptcy, by stipulating that the unsecured bankruptcy creditors who agreed before the opening of the bankruptcy proceedings to be settled only after the full settlement of claims of one or more bankruptcy creditors, shall be settled only after the full settlement of the third payment rank comprising of claims of all 'other' unsecured creditors. It should be noted that a specific regime may apply to certain types of debtor, such as banks.
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	✓	
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	✓	
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	Serbian bankruptcy regulations expressly recognise the possibility to prescribe the entering into loan agreement(s) (i.e. new financing) in a reorganisation plan, as one of the measures. In such case, relevant terms of such new financing are determined by the reorganisation plan. It should be noted that a specific regime may apply to certain types of debtor, such as banks.
Can the debtor grant security in respect of such new financing?	✓	Serbian law does not expressly provide for this matter. However, granting a security in respect of new financing may form part of the reorganisation plan



## New Financing in the EBRD Regions – Serbia

		and it should be specified therein. It should be noted that a specific regime may apply to certain types of debtor, such as banks.
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	Serbian bankruptcy regulations do not prescribe that new financing provided as part of the measures for the implementation of a reorganisation plan will have priority ahead of unsecured creditors. Such new financing would be provided under a separate loan agreement and would be repaid under the terms of that loan agreement without affecting the reorganisation plan applicable to other secured/unsecured creditors. However, if the loan agreement is concluded by the bankruptcy administrator within the opened insolvency proceedings (i.e. not as part of reorganisation plan), Serbian bankruptcy regulations prescribe that such new financing will have priority in repayment over all unsecured creditors.
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 borrowing entity?	x	Under Serbian bankruptcy regulations, there is a detailed regulatory framework setting out contesting of legal transactions/actions within opened bankruptcy proceedings which were entered into or taken before the opening of the bankruptcy proceedings, and are interfering with the equal settlement of bankruptcy creditors or damaging the creditors, as well as transactions and actions putting some creditors in a more favourable position over the others. However, those transaction/actions cannot be contested which were concluded or taken in order to take a credit facility or a loan: <ul style="list-style-type: none"> <li>(i) within the bankruptcy proceedings (not under the reorganisation plan), including in relation to provided collaterals under such transaction - if, after the termination of the bankruptcy proceedings in which such credit facility or loan has been taken bankruptcy proceedings against the same bankruptcy debtor are opened, and</li> <li>(ii) as a measure prescribed by the reorganisation plan, including in relation to provided collateral under such legal transaction - if, after</li> </ul>

## New Financing in the EBRD Regions – Serbia

		the termination of a bankruptcy proceedings i.e. preliminary bankruptcy proceedings in which the reorganisation plan has been finally adopted, bankruptcy proceedings have been opened against the same bankruptcy debtor.
Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	✓	General credit risk management and capital adequacy rules apply.
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	Throughout and after the State of Emergency Serbian Government and relevant authorities (including National Bank of Serbia) have introduced numerous measures aiming to support the economy – including measures specific to credit / loans. Generally, most notable measures relating to credit / loans consist of granting a moratorium on loan repayments (applying only to local banks). Also, the National Bank of Serbia recently adopted decisions to ease repayment conditions for loans extended by local banks (relating to capital adequacy and risk management requirements for local banks).
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	

## New Financing in the EBRD Regions – Serbia

Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	✓	As part of a package of economic measures worth EUR 5.1 billion, the Serbian Government adopted a decree on 16 April 2020 establishing a guarantee scheme for loans to be provided by local banks to businesses to reduce the effects of the COVID-19 pandemic. The scheme provides for a framework under which the state will act as a guarantor for the benefit of Serbian banks that extend loans for liquidity financing and working capital to businesses during 2020 to deal with negative economic and financial consequences of the COVID-19 pandemic. The state guarantee is unconditional and payable on first demand. Banks may place up to EUR 2 billion in loans to businesses within this program, while the maximum amount of the state guarantee for a covered portfolio is EUR 480 million.
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	✓	
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	

## New Financing in the EBRD Regions – Serbia

Valuation of collateral		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	Relatively easy. Global companies operating the in the field of audit and evaluation are present on the local market.
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	In respect of immovable assets. Law on Appraisers of Immoveable Assets adopted in 2016. Appraisers must be duly licensed by the Ministry of Finance. On the other hand, appraisers evaluating moveable assets are usually court experts duly licensed by the Ministry of Justice in line with the Law on Court Experts and relevant bylaws.
What valuation standards have been implemented?		Serbia adopted National Standards and Code of Ethics relating to evaluation of assets, in line with international standards issued by, inter alia, European Group of Valuers' Associations, Royal Institution of Chartered Surveyors – RICS and International Valuation Standards Council.
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		From a legal point of view, it seems that sometimes and in some cases appraisers are not fully taking into account legal complexity surrounding immovable / movable assets that are subject to valuation.

## Slovak Republic

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Slovakian legal counsel to the New Financing Survey conducted in 2020-2022<sup>71</sup>. Further information on the Slovakian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/slovakrepublic](https://ebrd-restructuring.com/economy-profile/slovakrepublic).

### 1. General movable and immovable security legislation<sup>72</sup>

This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

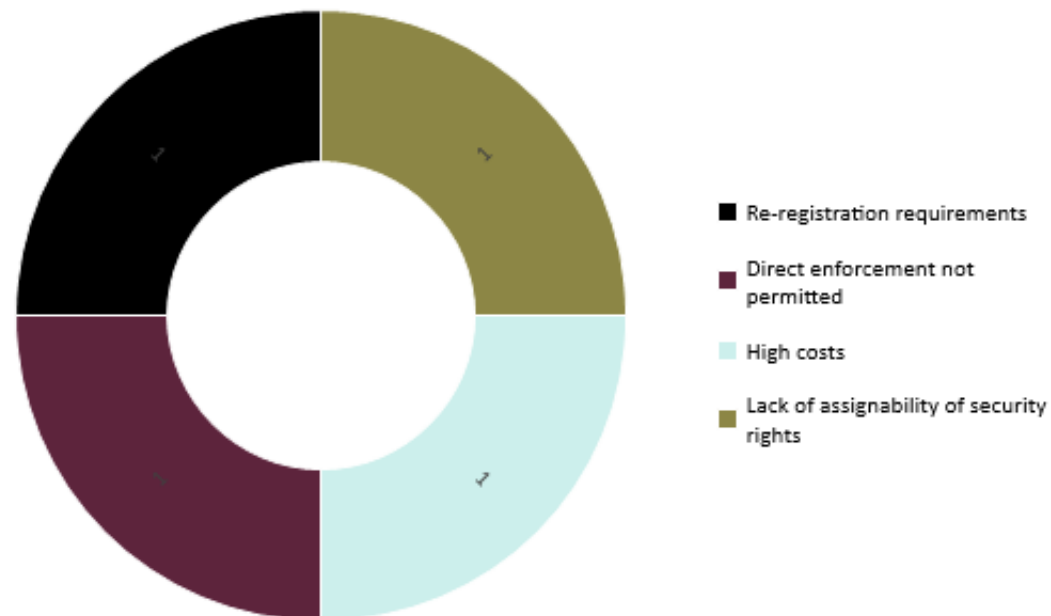
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<sup>71</sup> Please note that due to the transposition of Directive (EU) 2019/1023 on preventive restructuring frameworks, the laws and commentary with respect to new financing may have changed in this EU member state.

<sup>72</sup> One law firm from Slovak Republic participated in the New Financing Survey

## New Financing in the EBRD Regions – Slovak Republic

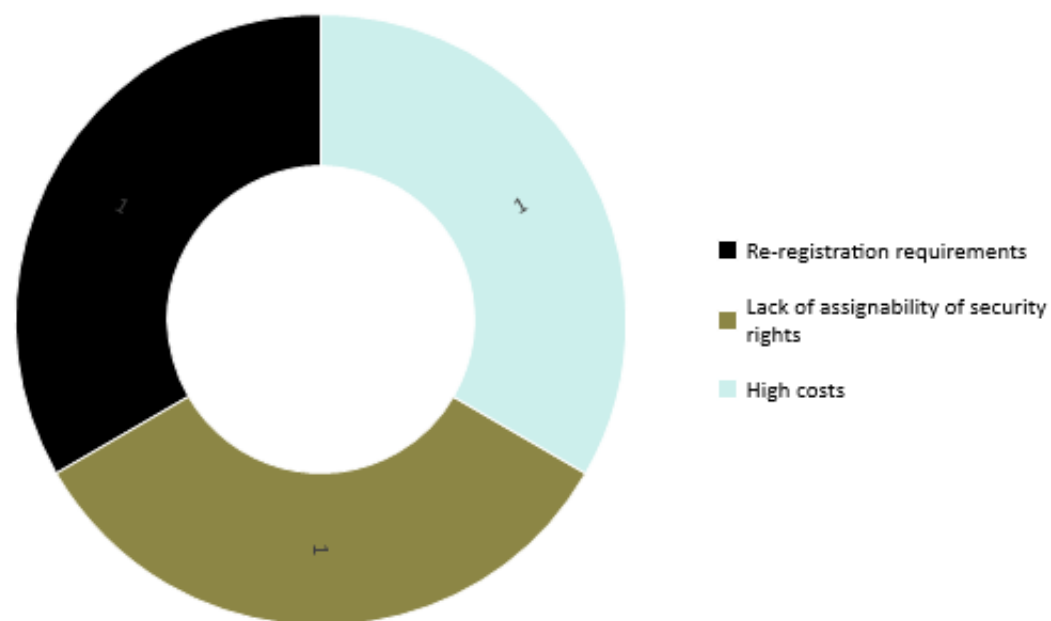
According to the respondent, the main obstacles to taking security over movable assets in Slovak republic are:



**Note:** This illustrates the main obstacles cited by Slovakian legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Slovak Republic had one law firm respondent.

## New Financing in the EBRD Regions – Slovak Republic

With respect to taking security over immovable assets in Slovak Republic, the law firm respondent cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Slovakian legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Slovak Republic had one law firm respondent.

# New Financing in the EBRD Regions – Slovak Republic

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>73</sup> It follows the order of questions contained in the survey.

Slovak Republic		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	Joint and several creditorship is used as the exclusive legal concept for sharing security among multiple lenders
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	x	

<sup>73</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.



## New Financing in the EBRD Regions – Slovak Republic

Subordination of claims		
Are local law intercreditor agreements used in your jurisdiction?	✓	
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
Are intercreditor agreements enforceable in your jurisdiction?	✓	
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	✓	

## New Financing in the EBRD Regions – Slovak Republic

(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	x	
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	
Can the debtor grant security in respect of such new financing?	✓	
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	
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 borrowing entity?	x	
Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	x	Apart from general obligation under Capital Requirements Regulation.

## New Financing in the EBRD Regions – Slovak Republic

Specific COVID-19 measures		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	The Central Bank of the Slovak Republic introduced deferment of loan repayments for consumers and also for small entrepreneurs and other entrepreneurs at the beginning of the pandemic.
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	×	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	×	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	✓	Almost EUR 2.2 billion were invested in the First Aid System in Slovakia by December 2021, of which EUR 481 million in the first wave of the pandemic. The highest number of supported companies were from the sectors of trade, industry, accommodation and catering facilities.
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	×	
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	×	The Central Bank of Slovakia only introduced the deferment of loan repayments for consumers and also for small entrepreneurs and other entrepreneurs.

## New Financing in the EBRD Regions – Slovak Republic

Valuation of collateral		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	Regulation no. 492/2004 Coll. about the determination of the general value of assets.
What valuation standards have been implemented?		There are various methods such as the property method, the business method, the combined method, the liquidation method or the comparative method.
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		In the business method an appraiser sets forth the multiple of EBITDA based on segment. Overall, the value can be significantly different. The fact that there are various methods such as the property method, the business method, the combined method, the liquidation method or the comparative method.

# New Financing in the EBRD Regions – Slovenia

## Slovenia

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Slovenian legal counsels to the New Financing Survey conducted in 2020-2022<sup>74</sup>. Further information on the Slovenian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/slovenia](https://ebrd-restructuring.com/economy-profile/slovenia).

### 1. General movable and immovable security legislation<sup>75</sup>

This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

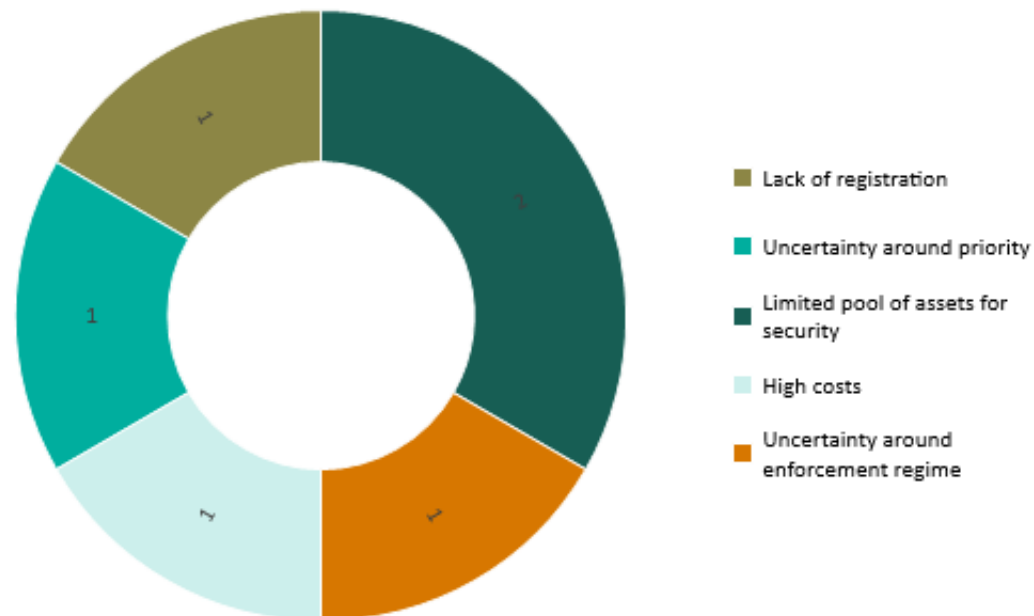
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<sup>74</sup> Please note that due to the transposition of Directive (EU) 2019/1023 on preventive restructuring frameworks, the laws and commentary with respect to new financing may have changed in this EU member state.

<sup>75</sup> Three law firms from Slovenia participated in the New Financing Survey

## New Financing in the EBRD Regions – Slovenia

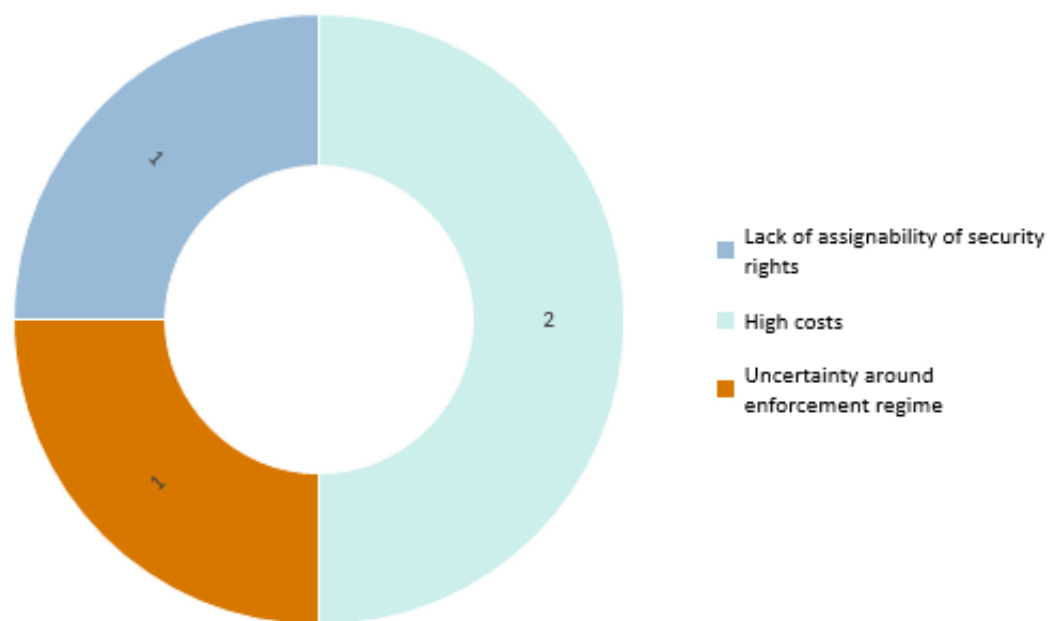
According to the respondents, the main obstacles to taking security over movable assets in Slovenia are:



**Note:** This illustrates the main obstacles cited by Slovenian legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Slovenia had three respondents from three different law firms.

## New Financing in the EBRD Regions – Slovenia

With respect to taking security over immovable assets in Slovenia, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Slovenian legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Slovenia had three respondents from three different law firms.

# New Financing in the EBRD Regions – Slovenia

More specifically, in respect of movables security legislation, the priority rules are considered rather clear, however, the location of the movable asset may be difficult to describe which can be an impediment to defining the pledge. Moreover, the floating charge as such is not recognised in Slovenia. To a certain extent, similar effects can be achieved by other (multiple) types of security, however, these structures do not appear to be sufficient. Finally, the relatively lengthy enforcement procedure over certain movables securities is thought to reduce the lenders' interest in such structures.

In respect of immovables security legislation, the lack of assignability pertains to the maximum amount of mortgage where assignability issues arise. Impediments concerning the enforcement regime include, except in some specific situations, the lack of the possibility to offset the purchase price against a creditor's claim at an auction as creditors must pay the full purchase price to repossess the collateral (i.e. creditors are double-exposed) and the lack of regulation of out-of-court foreclosure (or at least the lack of fast track enforcement).

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>76</sup> It follows the order of questions contained in the survey.

Slovenia		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		

<sup>76</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.



## New Financing in the EBRD Regions – Slovenia

(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	Rarely, in syndicated loan transactions and larger financing. However, ‘pure’ security agent/trust structures are not used unless the governing law is a foreign law, and they would most likely involve a structure resembling a parallel debt structure (see below). The reason for this lies in the principle of accessory under which only a creditor can be a holder of the security.
(N) Is the ‘parallel debt’ structure used in syndicated transactions as an alternative to the security agent structure?	✓	Such structures are very rarely used and have not been tested in the court. According to known law practices, in syndicated transactions a collateral would be established for the benefit of each creditor separately for their part in the syndicate and an agent would be appointed to administer the loan. Banks would secure such syndicate by registering different collaterals for different syndicate members (so each member would have first rank lien on at least one collateral), or would create a “community, joint and several” pursuant to Slovenian Obligation Act and register the same ranking mortgage in favour of all members.
<b>Subordination of claims</b>		
Are local law intercreditor agreements used in your jurisdiction?	✓	Often, in particular, in out-of-court restructuring. Intercreditor agreements must be concluded between the borrower and lenders to be recognised in insolvency proceedings. Otherwise, it would have effect only inter partes between the lenders.
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	

## New Financing in the EBRD Regions – Slovenia

Are intercreditor agreements enforceable in your jurisdiction?	✓	<p>It has not been widely tested in the court whether the statutory rules pertaining to priority of various security interests would prevail over contractually agreed ranking. Also, Slovenian law does not allow parties to waive rights to legal remedies in advance.</p> <p>Under Slovenian insolvency legislation, subordination against an unsecured claim is allowed, and such subordinated claim would be subordinated erga omnes against all other unsecured creditors. Otherwise, unsecured claims are per se subordinated against secured claims (up to the amount of the security). However, in a structure where a junior lender is subordinated against a senior lender, where both lenders hold a security right of different rank in the same asset, should the senior lender or junior lender not be fully satisfied from the proceeds of the collateral, the unsettled part of their claims would be treated as an ordinary claim, equally with all other unsecured creditors' claims.</p>
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	See previous comments.
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	It is not necessary to register the intercreditor agreement, however, it is necessary to register supporting security documentation if such security is subject to registration (e.g. real estate as security).

## New Financing in the EBRD Regions – Slovenia

Would subordination of creditor claims be enforceable in insolvency of the security grantor?	✓	See previous answers on the insolvency aspect.
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	✓	
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?		After compulsory settlement proceedings are initiated, the debtor may obtain new financing but only in the amount of liquid assets that are necessary to finance the regular business operation of the debtor and for covering the costs of compulsory settlement proceedings. Court approval is required.
Can the debtor grant security in respect of such new financing?	✓	The Slovenian Insolvency Act limits the possibility of a debtor to acquire new financing in the case of the compulsory settlement procedure. If new financing does not form part of the restructuring plan, the law does not explicitly allow the debtor to provide a security for new financing. In principle, the debtor may be allowed to encumber its assets only to the extent that such security is necessary for conducting its regular operations. If granting a collateral would meet these criteria than such security may be allowed and the court decision is not necessary (the insolvency law requires a court decision only for obtaining a new loan and sale of collaterals).
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	New financing granted to a debtor during compulsory settlement proceedings has super-priority (i.e. shall be treated as costs of bankruptcy proceedings) over other unsecured and priority creditors' claims in the event of a subsequent bankruptcy proceedings. Similar priority may also be granted in the case of

## New Financing in the EBRD Regions – Slovenia

		preventive restructuring proceedings. Also, when a bank is part of a financial restructuring of a company and a haircut is agreed, the bank may file the claim in full (without the agreed haircut) if an insolvency procedure is initiated within 12 months following the conclusion of the financial restructuring agreement.
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 borrowing entity?	x	No, if such new financing is granted in accordance with the Article 151 of the Slovenian Insolvency Act.
Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	No, if business judgement rule is observed.
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	x	However, general credit risk management and prudential rules apply.
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	Unilateral deferral of credit obligations. State guarantee scheme relating to debts subject to moratoria and relating to certain new loans. Also, certain legislation has been introduced easing obligation to declare insolvency of a company.
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	

## New Financing in the EBRD Regions – Slovenia

Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	✓	The maximum aggregate amount of the sureties for debts which are subject to mandatory moratoria is EUR 200 million and the maximum aggregate amount of the sureties for new loans is EUR 2 billion. Various conditions and restrictions for the borrowers apply.
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	x	
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	Fairly easy. Licensed appraisers providing reliable valuations pursuant to international valuation standards are widely available. Banks established internal processes of engaging reliable licensed third-party appraisers. However, in practice, valuations may vary significantly.
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	Two types of real estate appraiser operate in Slovenia: (i) court appointed appraisers under Court Experts, Certified Appraisers and Court Interpreters Act and (ii) appraisers that are members of the Slovenian Institute of Auditors established pursuant to the Slovenian Auditing Act. An expert witness opinion in court may only be provided by court appointed appraisers.

## New Financing in the EBRD Regions – Slovenia

What valuation standards have been implemented?		International Valuation Standards adopted by the International Valuation Standards Council, or other valuation rules adopted by the Slovenian Auditing Institute, or other rules and laws governing valuation of specific types of assets.
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		Following the last financial crisis, valuation of collateralised assets (involving the banks as creditors) came under intense scrutiny by the authorities. The collateral valuation was needed for the estimation of bad debt in banks (namely, it was later discovered that the amount of bad debt was grossly overestimated, which lead to over-recapitalisation of banks by the state budget/taxpayers).

# New Financing in the EBRD Regions – Tajikistan

## Tajikistan

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Tajikistani legal counsel to the New Financing Survey conducted in 2020-2022. Further information on the Tajikistani insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/tajikistan](https://ebrd-restructuring.com/economy-profile/tajikistan).

### 1. General movable and immovable security legislation<sup>77</sup>

This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

In respect of movables security legislation in Tajikistan, impediments identified by the survey are difficulties in the sale of secured property during enforcement proceedings due to potential frailties in performance of duties by authorised state enforcement services. Moreover, some deficiencies in legislation and practice in respect of online pledge registration appear to exist. In respect of immovables security legislation, uncertainties around the enforcement through an out-of-court procedure has been identified.

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<sup>77</sup> One law firm from Tajikistan participated in the New Financing Survey

# New Financing in the EBRD Regions – Tajikistan

With respect to taking security over immovable assets in Tajikistan, the law firm respondent cited the uncertainty around the enforcement regime as the main obstacle in their economy’s existing secured transactions framework. One law firm respondent participated from Tajikistan.

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>78</sup> It follows the order of questions contained in the survey.

Tajikistan		
Security agent		
Are ‘security agent’ structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	x	

<sup>78</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.



## New Financing in the EBRD Regions – Tajikistan

(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	x	
<b>Subordination of claims</b>		
Are local law intercreditor agreements used in your jurisdiction?	x	The Tajik law does not provide for intercreditor agreements. The application of such structures is unclear.
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	Not involving local entities.
Are intercreditor agreements enforceable in your jurisdiction?	x	Enforceability may be assessed on a case-by-case basis.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?		
(Y) Has enforceability been tested before the courts?		
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	?	Such agreements between local entities are unknown. Validity under Tajik law is uncertain.
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	

## New Financing in the EBRD Regions – Tajikistan

Would subordination of creditor claims be enforceable in insolvency of the security grantor?	?	Such agreements between local entities are unknown. Validity under Tajik law is uncertain.
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	<input type="checkbox"/>	Information not available
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	x	
Can the debtor grant security in respect of such new financing?	x	
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	x	
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 borrowing entity?	x	
Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	

## New Financing in the EBRD Regions – Tajikistan

Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	✓	As a general rule, if the borrower is in default of the loan agreement the banks may not provide a new loan to such a borrower.
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	As part of the response to the Covid-19, the National Bank of Tajikistan reduced the refinancing rate by 1% from 1 May 2020 and set it at 11.75 % per annum, and also recommended banks to extend and restructure their clients' loans depending on their financial conditions.
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	×	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	×	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	×	
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?		
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans	✓	The National Bank of Tajikistan reduced the refinancing rate by 1% from 1 May 2020 and set it at 11.75 % per annum, and also recommended banks to

## New Financing in the EBRD Regions – Tajikistan

secured with receivables or warehouse receipts?		extend and restructure their clients' loans depending on their financial conditions.
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	The appraiser/valuation activity is a licensed activity as specified by the Law "On licensing of certain types of activities" dated 17 May 2004.
What valuation standards have been implemented?		N/A
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		N/A

# New Financing in the EBRD Regions – Tunisia

## Tunisia

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Tunisian legal counsels to the New Financing Survey conducted in 2020-2022. Further information on the Tunisian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/tunisia](https://ebrd-restructuring.com/economy-profile/tunisia).

### 1. General movable and immovable security legislation<sup>79</sup>

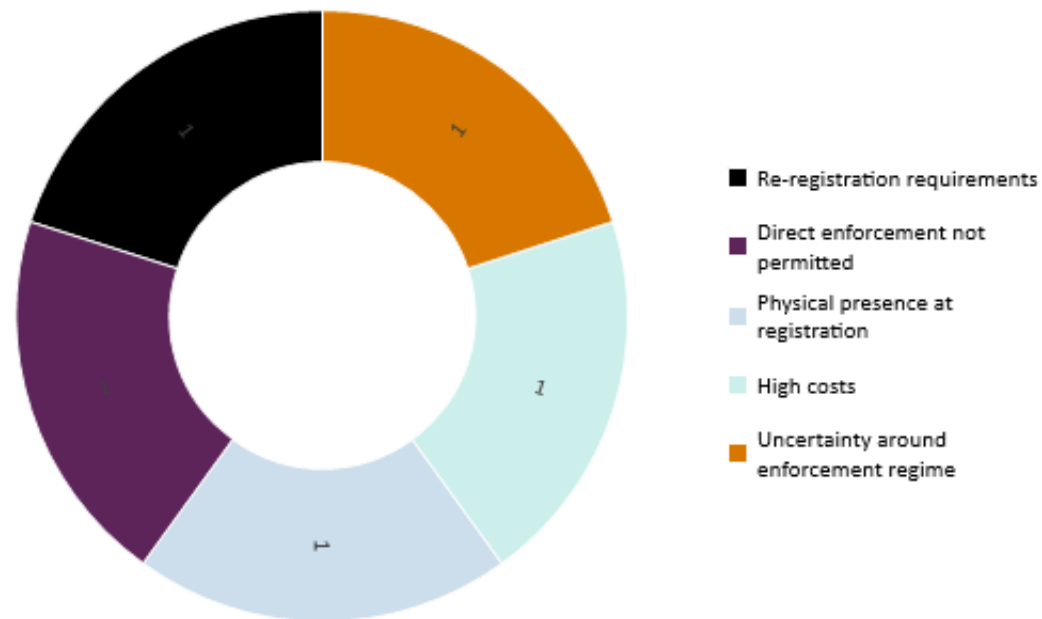
This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

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<sup>79</sup> One law firm from Tunisia participated in the New Financing Survey

## New Financing in the EBRD Regions – Tunisia

According to the respondents, the main obstacles to taking security over movable assets in Tunisia are:



**Note:** This illustrates the main obstacles cited by Tunisian legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Tunisia had one law firm respondent.

## New Financing in the EBRD Regions – Tunisia

With respect to taking security over immovable assets in Tunisia, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Tunisian legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Tunisia had one law firm respondent.

# New Financing in the EBRD Regions – Tunisia

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>80</sup> It follows the order of questions contained in the survey.

Tunisia		
<b>Security agent</b>		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	<input type="checkbox"/>	Information not available

<sup>80</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.



## New Financing in the EBRD Regions – Tunisia

Subordination of claims		
Are local law intercreditor agreements used in your jurisdiction?	x	
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
Are intercreditor agreements enforceable in your jurisdiction?	✓	
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	x	

## New Financing in the EBRD Regions – Tunisia

(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?		
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	
Can the debtor grant security in respect of such new financing?	✓	
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	
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 borrowing entity?	✓	
Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	<input type="checkbox"/>	Information not available

## New Financing in the EBRD Regions – Tunisia

Specific COVID-19 measures		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	x	
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	✓	
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	<input type="checkbox"/>	Information not available
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	<input type="checkbox"/>	Information not available

## New Financing in the EBRD Regions – Tunisia

Valuation of collateral		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	<input checked="" type="checkbox"/>	Moderate
Is the appraiser/valuation industry regulated in your jurisdiction?	<input checked="" type="checkbox"/>	
What valuation standards have been implemented?	<input type="checkbox"/>	Information not available
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?	<input type="checkbox"/>	Information not available

## Türkiye

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Turkish legal counsels to the New Financing Survey conducted in 2020-2022. Further information on the Turkish insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/turkey](https://ebrd-restructuring.com/economy-profile/turkey).

### 1. General movable and immovable security legislation<sup>81</sup>

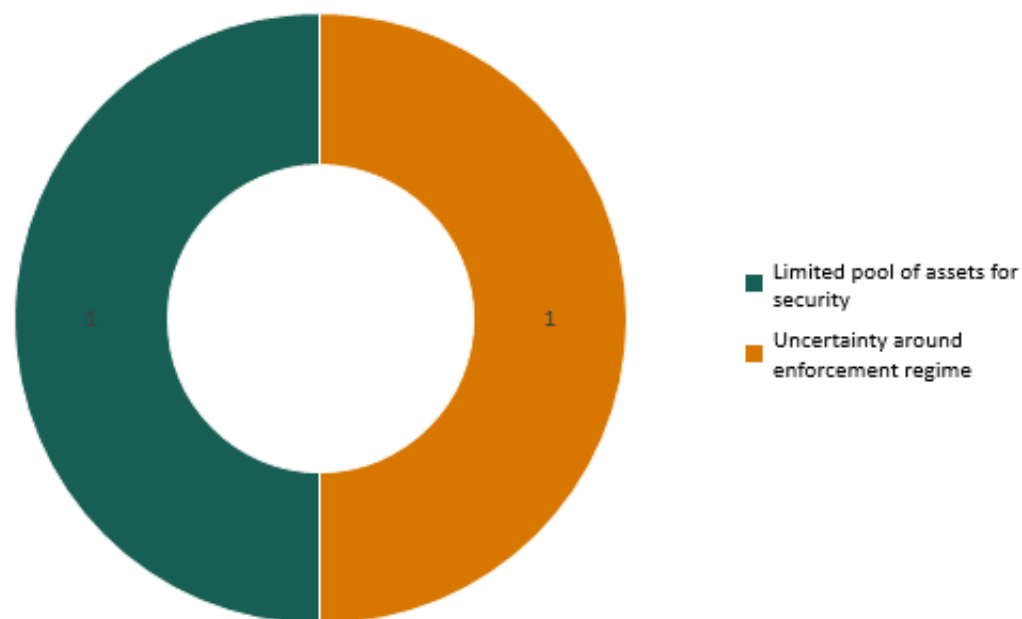
This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

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<sup>81</sup> Two law firms from Türkiye participated in the New Financing Survey

## New Financing in the EBRD Regions – Türkiye

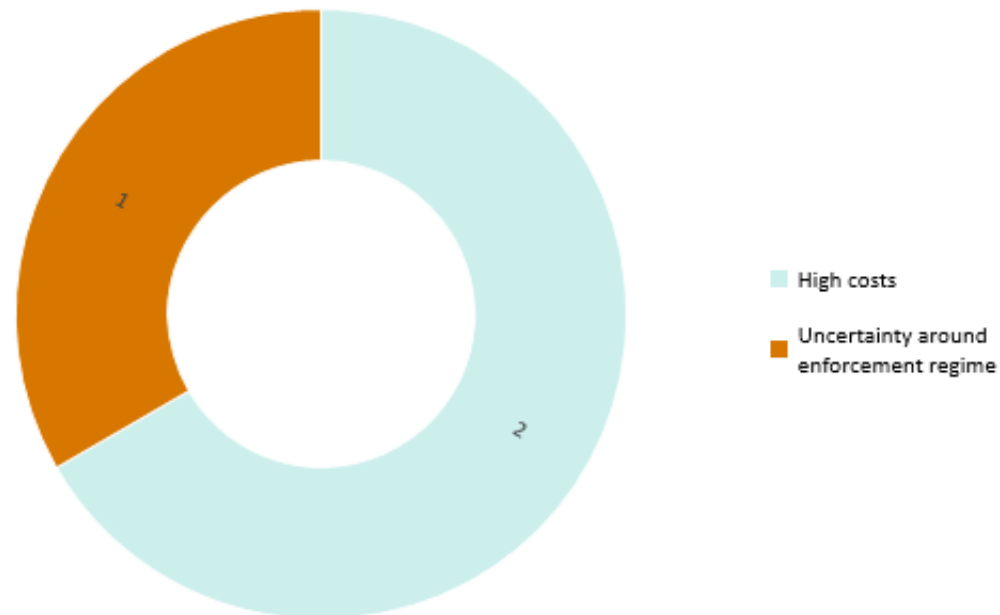
According to the respondents, the main obstacles to taking security over movable assets in Türkiye are:



**Note:** This illustrates the main obstacles cited by Turkish legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Türkiye had two respondents from two different law firms.

## New Financing in the EBRD Regions – Türkiye

With respect to taking security over immovable assets in Türkiye, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Turkish legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Türkiye had two respondents from two different law firms.

# New Financing in the EBRD Regions – Türkiye

More specifically and further impediments are, in respect of movables security legislation, that enforcement procedures can be lengthy in Türkiye, which leads to practical difficulties while preserving the value of secured movable assets. It is not possible to amend or update a pledge at the online registry called TARES. Therefore, every amendment/update is made in the form of a new agreement. Pledging inventory (a floating charge) is possible according to the movable pledge law but is practically very difficult.

In respect of immovables security legislation, FX mortgages (mortgages with a maximum limit in foreign currency) are available to banks and financial institutions only. They are not available to other lenders such as hedge funds etc. There are no taxes and duties applicable to mortgages for banks and qualified financial institutions, but duties are applicable to other lenders such as hedge funds, distressed funds.

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>82</sup> It follows the order of questions contained in the survey.

Türkiye		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	Turkish law does not expressly provide for security agent structures.
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		

<sup>82</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.



## New Financing in the EBRD Regions – Türkiye

(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	<p>The law does not prohibit security agent structures and they are commonly used in the local market. Issues arise due to the ancillary nature of security interests, according to which a security can only be provided for the benefit of an entity to which the security provider owes a debt. This issue may be overcome by a joint creditorship mechanism regulated under the Code of Obligations, where the security agent is legally authorised to collect the entire debt owing to the lenders from the borrower.</p> <p>The proxy rules of the Code of Obligations would be applied to the relationship between a lender and an agent to afford recognition of the security agent. In a Turkish law governed security agent mechanism, the proxy rules would be referred to the extent a matter is not contractually regulated.</p>
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	✓	A parallel debt mechanism may be established based on an independent and abstract debt declaration by the borrower to the security agent. Parallel debt mechanism is considered more efficient than joint creditorship mechanism, however, it is not regulated and tested.
<b>Subordination of claims</b>		
Are local law intercreditor agreements used in your jurisdiction?	✓	
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	Where a foreign element is involved.

## New Financing in the EBRD Regions – Türkiye

Are intercreditor agreements enforceable in your jurisdiction?	✓	Enforceable between the creditors.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	Subject to the nationality of the parties, the presence of a foreign component and certain qualifications based on recognition and enforceability, they are enforceable.
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	x	This is not recognised in insolvency proceedings if it interferes with the mandatory ranking rules as set out in Article 206 of the Bankruptcy and Execution Code. It is considered a validity issue rather than an issue of recognition.
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?		
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	✓	It is considered to be enforceable if created by assignment (given that contractual subordination is not recognised by law, the current market practice is that subordination is created by assigning a receivable where the assignee accepts to return the receivable to the assignor once its claims are satisfied.)
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	✓	
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new	✓	In respect of financial restructuring Article VII, Paragraph 11 of the Framework Agreement for Large Scale Restructurings regulates the principles of new financing. Moreover, under the 'concordat' regime "Debts that are executed

## New Financing in the EBRD Regions – Türkiye

financing in reorganisation-type insolvency proceedings?		during the concordat term with the permission of the administrator, including loans granted by credit institutions, are not subject to the concordat terms in the ordinary concordat” (308 (c) of the Execution and Bankruptcy Code).
Can the debtor grant security in respect of such new financing?	✓	The granting of a new security ahead of other unsecured creditors or for an existing debt may be subject to cancellation if granted within the relevant clawback periods.
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	x	
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 borrowing entity?	✓	Gratuitous disposals made by the debtor, or transactions with excessive imbalance in consideration value, may be deemed null and void if made within a specific period as prescribed by law. Furthermore, certain dispositions/payments made within the period prescribed by law may be deemed null and void if the debtor was insolvent at the time of the relevant transaction, with the presumption that the creditor knew of debtor’s insolvent status. Finally, dispositions made with the intent to harm (mostly fraudulently), may also be subject to avoidance actions.
Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	x	General credit risk management and prudential rules apply. It should be noted that historically bankers could face criminal liability on the ground of embezzlement if giving out a loan to natural or legal persons knowing that their financial capabilities are insufficient, or the repayment will not take place. An amendment made to the relevant law in 2018, however, made it clear that granting loans, extending maturity or additional loans, instalments,

## New Financing in the EBRD Regions – Türkiye

		accepting securities or conducting restructuring operations through other methods which are in compliance with banking legislation and banking methods and principles do not constitute embezzlement. There are opinions that given the historic implementation of embezzlement, potential criminal liability would still need to be considered.
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	The Banking Regulatory and Supervision Authority (the “BRSA”) amended the classification rules of defaulted exposures as non-performing loans (“NPL”). On 17 March 2020 the BRSA declared that, until 31 December 2020, the 90-day period of failure to pay the principal or interest of a loan, after the lapse of which, the banks are required to classify such loan as an NPL, will be replaced with a 180-day period. It further stated that, for such loans, the provisioning requirements would remain the same. Certain public banks deferred payments of principal and interest on certain loans granted to SMEs principally. Further measures were announced to boost credit growth such as the implementation of asset ratio for all banks. A presidential decree <ul style="list-style-type: none"> <li>(i) ordered the suspension of all pending enforcement and bankruptcy proceedings until 15 June 2020, and</li> <li>(ii) preventing the initiation of new enforcement and bankruptcy proceedings and execution of preliminary attachment decisions until 15 June 2020.</li> </ul>
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection	×	

## New Financing in the EBRD Regions – Türkiye

from avoidance actions or lender liability risks?		
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	✓	The Credit Guarantee Fund (“CGF”) was originally established to facilitate access to finance to SMEs, and later expended its scope to larger corporations. On 30 March 2020, the amount available under the CGF program was increased from TL 25 billion (approx. EUR 3.2 billion) to TL 50 billion (approx. EUR 6.5 billion) and the total amount of guarantees that may be given by the CGF was increased from TL 250 billion (approx. EUR 32.5 billion) to TL 500 billion (approx. EUR 65 billion) (along with increases in the guarantee limits with respect to individual borrower groups). This means that the CGF have had a further available limit of TL 250 billion (approx. EUR 32.5 billion) to provide guarantees for loans borrowed from Turkish banks. Additional measures were introduced to encourage credit support through the CGF.
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	✓	As per the Presidential Decree dated 29 March 2020 and numbered 2325 published in the Official Gazette dated 30 March 2020 amending the Decree (“Amendments to the Decree”), the limits on the funds transferred to the CGF by the Ministry for the purposes of the guarantees provided to the lenders was increased from TRY 25 Billion to TRY 50 Billion, creating an additional fund for businesses as part of Covid-19 measures adopted. The limit on total amount of guarantee that can be provided by the CGF within the scope of the Decree was also increased from TRY 250 Billion to TRY 500 Billion. As for the collateral requirement with respect to the CGF guarantees extended from funds provided by the Ministry, while there is no explicit requirement to

## New Financing in the EBRD Regions – Türkiye

		provide collateral in order to benefit from the CGF guarantees, the banks should require collaterals from borrowers to extend loans in order to meet the requirements that they are subject to under the banking legislation.
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	In a bid to stimulate the economy, the Central Bank of Republic of Türkiye (the “CBRT”) reduced its one-week repo rate progressively. The CBRT also introduced certain measures regarding rediscount loans for export and F/X-generating services to mitigate the likely adverse impacts of recent global economic uncertainties and adversities in international trade on real sector firms. Several monetary measures were also announced jointly by the CBRT and the BRSA to encourage loan growth of banks, mainly in Turkish lira.
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	Real estate valuation firms authorised by the Capital Markets Board operate in the local market. For other assets, experts are be employed subject to the approval of creditors.
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	Only in respect of real estate.
What valuation standards have been implemented?		Standards for real estate valuation firms set by the Capital Markets Board.
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		Inefficient supervision of the liability of valuation firms.

## Turkmenistan

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Turkmenistani legal counsels to the New Financing Survey conducted in 2020-2022. Further information on the Turkmenistani insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/turkmenistan](https://ebrd-restructuring.com/economy-profile/turkmenistan).

### 1. General movable and immovable security legislation<sup>83</sup>

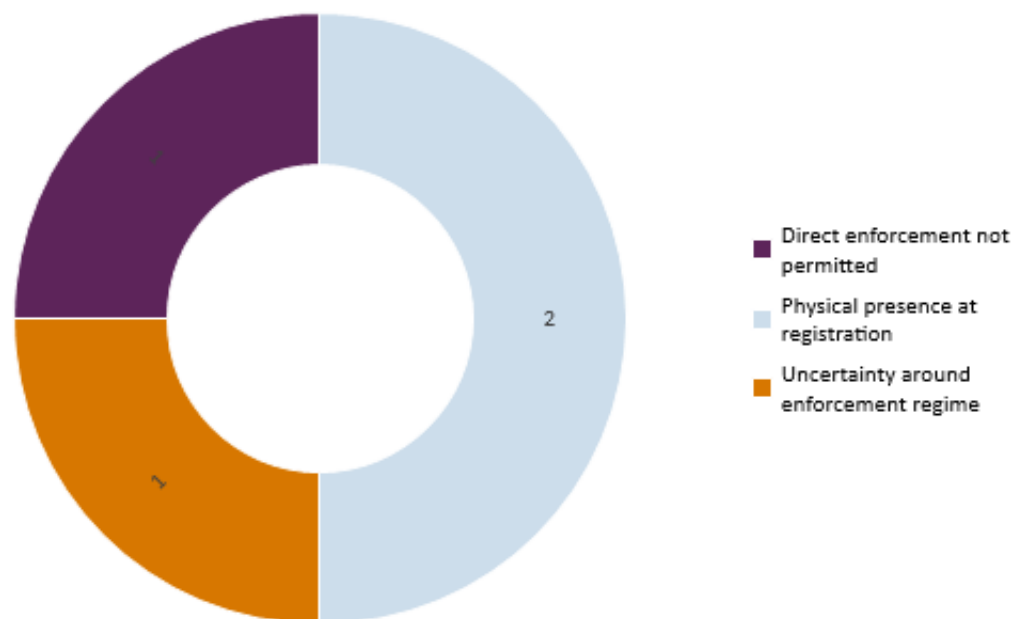
This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

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<sup>83</sup> Two law firms from Turkmenistan participated in the New Financing Survey

## New Financing in the EBRD Regions – Turkmenistan

According to the respondents, the main obstacles to taking security over movable assets in Turkmenistan are:

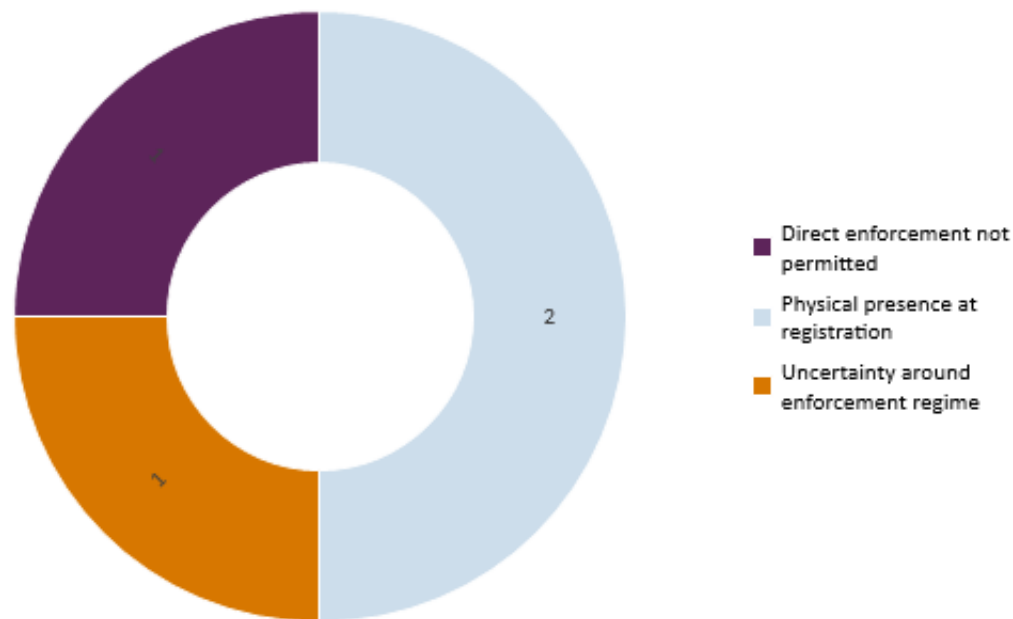


**Note:** This illustrates the main obstacles cited by Turkmenistani legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Turkmenistan had two respondents from two different law firms.



## New Financing in the EBRD Regions – Turkmenistan

With respect to taking security over immovable assets in Turkmenistan, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Turkmenistani legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Turkmenistan had two respondents from two different law firms.

# New Financing in the EBRD Regions – Turkmenistan

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>84</sup> It follows the order of questions contained in the survey.

Turkmenistan		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	x	
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	x	

<sup>84</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Turkmenistan

Subordination of claims		
Are local law intercreditor agreements used in your jurisdiction?	x	
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	x	
Are intercreditor agreements enforceable in your jurisdiction?	✓	It appears that theoretically such agreements may be enforceable. Turkmen law does not prohibit intercreditor agreements and the freedom of contract principle under the Civil Code applies. Furthermore, Chapter 7 (Assignment of claim) of the Civil Code (Articles 465-473) provides several provisions related to intercreditor agreements.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	x	
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?		

## New Financing in the EBRD Regions – Turkmenistan

Would subordination of creditor claims be enforceable in insolvency of the security grantor?	x	
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?		
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	x	
Can the debtor grant security in respect of such new financing?	x	
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	x	
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 borrowing entity?	x	
Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	

## New Financing in the EBRD Regions – Turkmenistan

Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	x	
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	x	
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	x	
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?		

## New Financing in the EBRD Regions – Turkmenistan

Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	
What valuation standards have been implemented?		Local and international standards.
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		Various valuation techniques are applied.

# New Financing in the EBRD Regions – Ukraine

## Ukraine

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Ukrainian legal counsels to the New Financing Survey conducted in 2020-2022. Further information on the Ukrainian insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/ukraine](https://ebrd-restructuring.com/economy-profile/ukraine).

### 1. General movable and immovable security legislation<sup>85</sup>

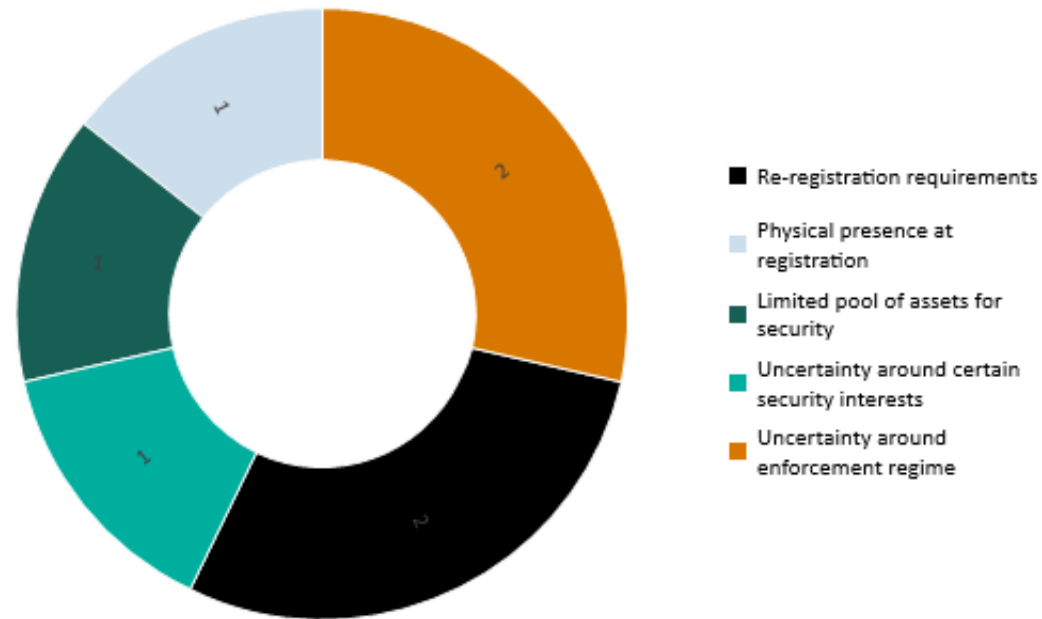
This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

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<sup>85</sup> Two law firms from Ukraine participated in the New Financing Survey

## New Financing in the EBRD Regions – Ukraine

According to the respondents, the main obstacles to taking security over movable assets in Ukraine are:

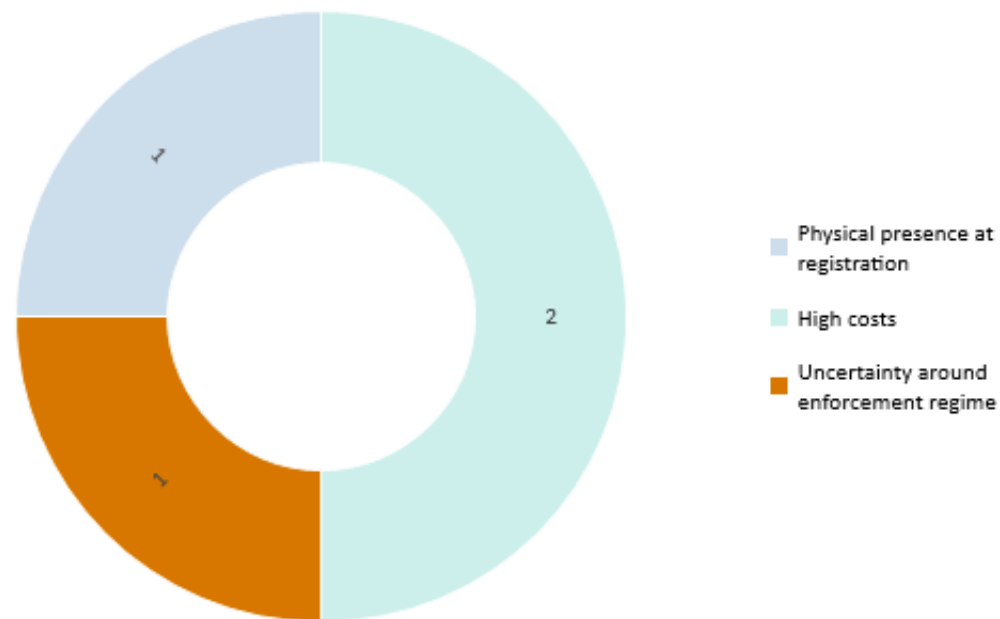


**Note:** This illustrates the main obstacles cited by Ukrainian legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Ukraine had two respondents from two different law firms.



## New Financing in the EBRD Regions – Ukraine

With respect to taking security over immovable assets in Ukraine, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Ukrainian legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Ukraine had two respondents from two different law firms.

# New Financing in the EBRD Regions – Ukraine

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>86</sup> It follows the order of questions contained in the survey.

Ukraine		
Security agent		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	Under Ukrainian law, a pledgee/mortgagee must be a creditor under the underlying secured obligation. In structures where the pledgee/mortgagee acts as a security agent for the benefit of other parties under English law governed loan documentation, the above test is satisfied through such English law concepts as "joint and several creditor" and/or "parallel debt" entitling such security agent to claim all amounts due in full. However, the enforceability in relation to Ukrainian law security documents has not been sufficiently tested in Ukrainian courts.

<sup>86</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Ukraine

(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	✓	Ukrainian law does not recognise the concept of "parallel debt". The validity and enforceability of such structures is questionable under the local law. At the same time, such structures are used in transactions involving local obligors.
<b>Subordination of claims</b>		
Are local law intercreditor agreements used in your jurisdiction?	×	Ukrainian law does not provide for syndicated loans, or for security sharing arrangements, reservation and risk sharing arrangements. Therefore, local law governed agreements are generally not used. Local banks may participate in syndication along with foreign banks, but those would be governed by foreign law.
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
Are intercreditor agreements enforceable in your jurisdiction?	✓	Provided that the provisions do not contradict Ukrainian law.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	✓	
(Y) Has enforceability been tested before the courts?	×	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of	✓	Ukrainian law does not provide for contractual subordination, however, such agreements are widely used. Where they involve a foreign lender, foreign law would be governing. In the absence of local regulation of contractual

## New Financing in the EBRD Regions – Ukraine

an intercreditor agreement or subordination agreement?		subordination of creditors' claims or established court practice on the matter, there is a risk that enforcement of the local law subordination arrangements in Ukrainian courts may not be straightforward.
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	x	Creditor claims must be satisfied in line with the statutory priority rules. The claims of secured creditors are satisfied out of the statutory priority (which effectively means the highest ranking of secured creditors' claims) from the value of collateral of an insolvent Ukrainian obligor.
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?		
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	x	No, there are no express provisions protecting new financing. However, new financing can be treated as having super-priority but this status will need to be agreed among creditors in the (pre- insolvency) rehabilitation plan
Can the debtor grant security in respect of such new financing?	✓	Not regulated by law. However, it is considered to be possible, provided that it forms part of a duly approved rehabilitation plan.
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	Unsecured new financing cannot be provided on a priority basis without the consent of all other existing unsecured creditors. If it is secured, then the claims of the new financier as secured creditor will have priority over existing unsecured creditors' claims according to statutory security interests ranking rules.

## New Financing in the EBRD Regions – Ukraine

<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 borrowing entity?</p>	<p>✓</p>	<p>If the lending entity is a Ukrainian non-bank lender, grounds for the application of avoidance actions include:</p> <ul style="list-style-type: none"> <li>(i) grounds that require proof of losses caused to the debtor or a creditor; and</li> <li>(ii) grounds that do not require such proof of losses. The earlier includes transactions without any consideration; waiver of claims on property rights; transactions with related party; and donations. The latter includes prepayments; assuming obligations resulting in insolvency of the debtor or inability to satisfy creditors' claims; sale or purchase of assets under or above market value resulting in inability to satisfy creditors' claims; payment to a creditor or receipt of assets as satisfaction of monetary claims when the amount of the creditor's claims exceeded the value of such assets; or granting security over assets. Different rules apply for a Ukrainian bank lender.</li> </ul>
<p>Are there any lender liability risks in granting new financing to a financially distressed borrower?</p>	<p>✓</p>	
<p>Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?</p>	<p>×</p>	<p>Ukrainian law provides for the general rule that the financing must be provided based on the solvency of the debtor and subject to compliance with risk management rules applicable to Ukrainian banks. If the National Bank of Ukraine determines that the respective rules were violated it may apply restrictive measures to such Ukrainian bank.</p>
<p><b>Specific COVID-19 measures</b></p>		
<p>Have regulatory authorities introduced new COVID measures specific to credit, such as</p>	<p>✓</p>	<p>Ukrainian Parliament passed the Law of Ukraine "On Amendments to the Tax Code of Ukraine and Other Laws of Ukraine Regarding Taxpayers Support During the Period of Measures Aimed at Preventing the Onset and Spread of</p>

## New Financing in the EBRD Regions – Ukraine

forgivable loans or easing of some regulatory measures?		Coronavirus Disease (COVID-19)" No. 533-IX dated 17 March 2020 and the Law of Ukraine "On Amendments to the Laws of Ukraine Aimed at Additional Social and Economic Guarantees Due to the Spread of Coronavirus Disease (COVID-2019)" No. 540 dated 30 March 2020, which, among other things, prohibited Ukrainian banks to increase interest rates and to apply sanctions for the failure to perform the obligations in the timely manner under the consumer loans. This prohibition to increase interest rate was further extended to all loans provided by Ukrainian banks.
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	x	
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?		
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	

## New Financing in the EBRD Regions – Ukraine

Valuation of collateral		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	Quick and straightforward. Registers of individual and corporate appraisers are publicly accessible.
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	The valuation industry is regulated by the Law of Ukraine "On valuation of property, property rights and professional valuation activities in Ukraine", the Law of Ukraine "On land valuation" and other normative and regulatory acts issued by the Cabinet of Ministers of Ukraine, the State Property Fund of Ukraine and the State Geocadastre.
What valuation standards have been implemented?		There are four national valuation standards (NVS) approved by the Cabinet of Ministers of Ukraine. These NVS address both market-based and non-market-based valuations. Basic valuation methodologies of sales comparison, cost, and income approaches to value are effectively identical to the International Valuation Standards and Uniform Standards of Professional Appraisal Practice.
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		In the beginning of 2020, the State Property Fund of Ukraine and ProZorro.Sale launched a free service for submitting information to the Unified Database of Valuation Reports, which significantly improved the valuation regime. However, unreliable appraisers still operate on the market.

## Uzbekistan

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from Uzbek legal counsel to the New Financing Survey conducted in 2020-2022. Further information on the Uzbek insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/uzbekistan](https://ebrd-restructuring.com/economy-profile/uzbekistan).

### 1. General movable and immovable security legislation<sup>87</sup>

This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

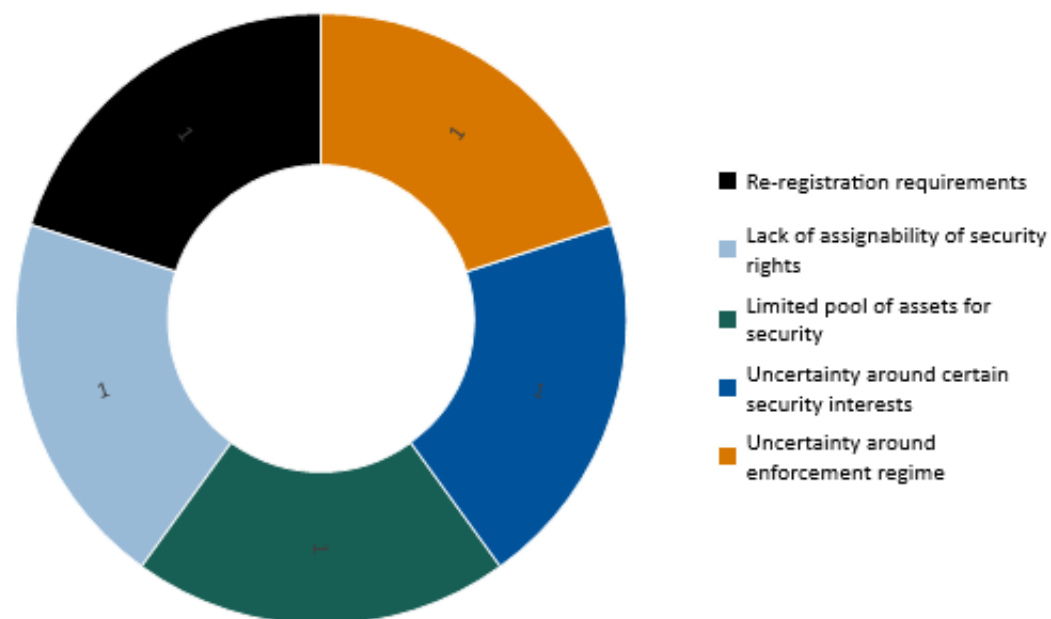
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<sup>87</sup> One law firm from Uzbekistan participated in the New Financing Survey



## New Financing in the EBRD Regions – Uzbekistan

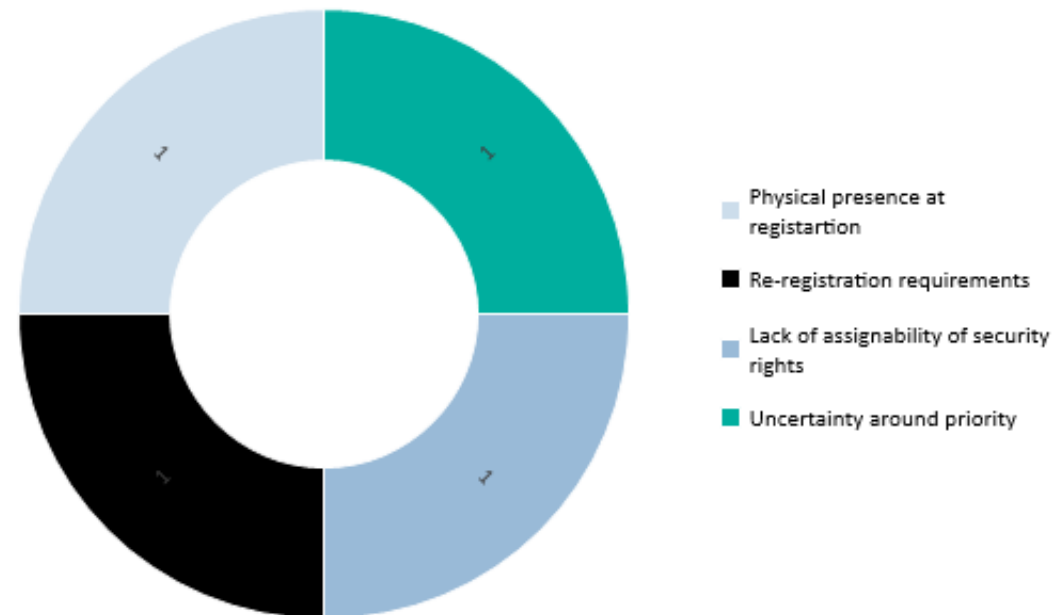
According to the respondent, the main obstacles to taking security over movable assets in Uzbekistan are:



**Note:** This illustrates the main obstacles cited by Uzbek legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Uzbekistan had one law firm respondent.

## New Financing in the EBRD Regions – Uzbekistan

With respect to taking security over immovable assets in Uzbekistan, the law firm respondent cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by Uzbek legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. Uzbekistan had one law firm respondent.

# New Financing in the EBRD Regions – Uzbekistan

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>88</sup> It follows the order of questions contained in the survey.

Uzbekistan		
<b>Security agent</b>		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	✓	
<b>Subordination of claims</b>		

<sup>88</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – Uzbekistan

Are local law intercreditor agreements used in your jurisdiction?	x	
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
Are intercreditor agreements enforceable in your jurisdiction?	x	Arrangements under foreign law intercreditor agreements may be disallowed by the liquidator in the insolvency proceeding of an Uzbekistan debtor if they are violating the established rank of creditors or other principles of Uzbekistan insolvency rules.
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?		
(Y) Has enforceability been tested before the courts?		
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	x	Subordination of claims may be disallowed by the liquidator in the insolvency proceeding of an Uzbekistan debtor if they are violating the established rank of creditors or other principles of Uzbekistan insolvency rules.

## New Financing in the EBRD Regions – Uzbekistan

(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?		
<b>New financing in insolvency</b>		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	✓	Provision of "financial aid" or "state financial support" (as may be applicable) is specifically provided by the insolvency law in the pre-judicial sanation stage (before the insolvency court proceedings are opened by the court). At the judicial sanation stage (after the insolvency court proceedings are opened by the court) the insolvency law allows the debtor to obtain a security from third parties in the amount of 120% of debtor's total liabilities specified in the balance sheet. Such security shall be provided in relation to assets that are not in ownership / in rem rights of the debtor.
Can the debtor grant security in respect of such new financing?	×	
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	✓	Also before secured creditors if all property of debtor was taken as collateral and money received from property sale was less than or equal to amount of claims of creditors secured by debtor's property.
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 borrowing entity?	×	

## New Financing in the EBRD Regions – Uzbekistan

Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	
Are there any regulatory restrictions preventing banks from granting new financing to a financially distressed borrower?	x	
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	✓	
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?	x	

## New Financing in the EBRD Regions – Uzbekistan

Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans secured with receivables or warehouse receipts?	x	
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation collateral or security in your jurisdiction?	✓	Valuation of security can be provided by the local licensed assessment / appraiser companies.
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	It is regulated by the Law on Valuation Activity.
What valuation standards have been implemented?		The valuation standards are provided by the Unified National Valuation Standard of the Republic of Uzbekistan (registration number 3239-1).
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		Collateral evaluation practice in Uzbekistan is based on the national standards which may appear different from the standards applicable in international practice. Hence discrepancies and valuation lower than the market value may appear to be a problem.

# New Financing in the EBRD Regions – West Bank and Gaza

## West Bank and Gaza

This Economy Response forms part of Annex III (*Economy Responses*) to the EBRD report entitled ‘Survey of Insolvency and Secured Transaction Regimes - New Financing for Distressed Businesses in the EBRD Regions’. It summarises the responses received from West Bank and Gaza legal counsels to the New Financing Survey conducted in 2020-2022. Further information on the West Bank and Gaza insolvency framework for business reorganisation can be accessed in the individual Economy Profiles available at [ebrd-restructuring.com/economy-profile/westbankandgaza](https://ebrd-restructuring.com/economy-profile/westbankandgaza).

### 1. General movable and immovable security legislation<sup>89</sup>

This section summarises the responses to section 3 to the [New Financing Survey](#). It highlights the key legal, regulatory and/or practical issues that respondents consider to be the main impediments to taking security over assets in their economy’s existing secured transactions framework.

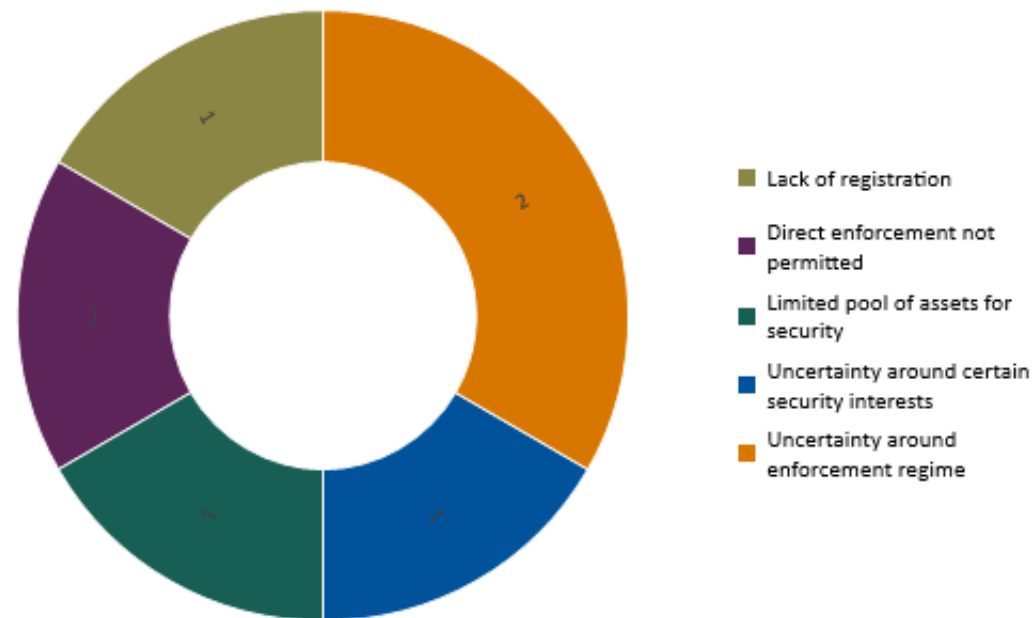
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<sup>89</sup> Two law firms from West Bank and Gaza participated in the New Financing Survey. There are separate legal regimes currently applicable to the West Bank and to Gaza.



## New Financing in the EBRD Regions – West Bank and Gaza

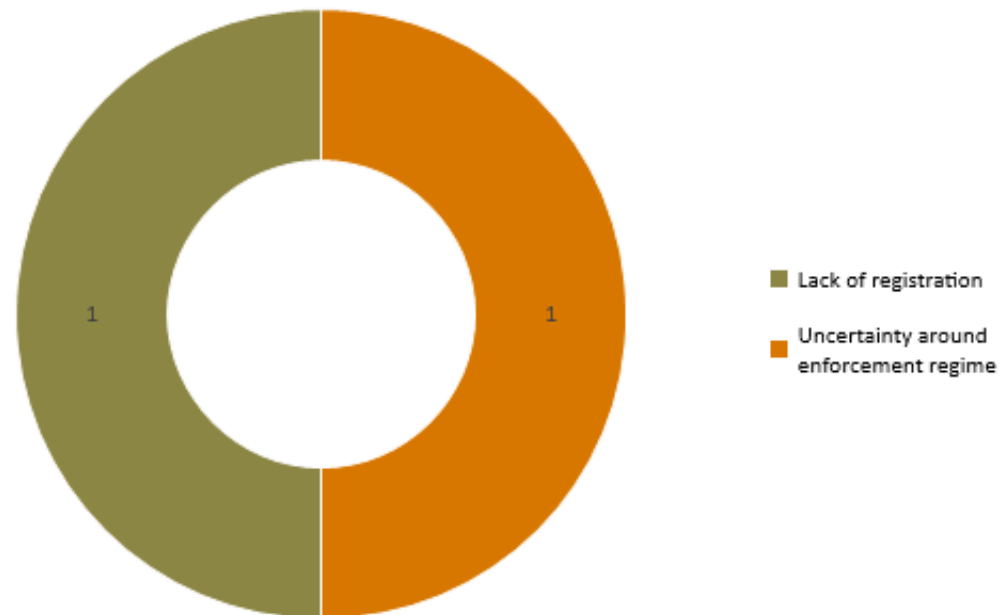
According to the respondents, the main obstacles to taking security over movable assets in West Bank and Gaza are:



**Note:** This illustrates the main obstacles cited by West Bank and Gaza legal counsel when responding to section 3, Q. 5. of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. West Bank and Gaza had two respondents from two different law firms.

## New Financing in the EBRD Regions – West Bank and Gaza

With respect to taking security over immovable assets in West Bank and Gaza, respondents cited the following main obstacles in their economy's existing secured transactions framework:



**Note:** This illustrates the main obstacles cited by West Bank and Gaza legal counsel when responding to section 3, Q. 6 of the New Financing Survey. The number inside each section of the circle represents the number of times this obstacle was identified by the respondents. West Bank and Gaza had two respondents from two different law firms.

# New Financing in the EBRD Regions – West Bank and Gaza

## 2. New Financing Survey Responses

This section contains a compilation of all responses received from local legal counsel to sections 4 to 17 of the [New Financing Survey](#).<sup>90</sup> It follows the order of questions contained in the survey.

West Bank and Gaza		
<b>Security agent</b>		
Are 'security agent' structures expressly permitted by legislation?	x	
(Y) Are security agent structures applicable to all types of security (i.e. movable and immovable)?		
(Y) Can the security agent enforce security on behalf of all secured lenders?		
(N) Are security agent structures used in practice despite the lack of supporting legislation?	✓	
(N) Is the 'parallel debt' structure used in syndicated transactions as an alternative to the security agent structure?	x	
<b>Subordination of claims</b>		

<sup>90</sup> Answers were collected from the end of July 2020 until the beginning of September 2020. Responses should be interpreted with reference to this timeframe. Minor grammatical and spelling revisions have been made to all responses for greater legibility.

## New Financing in the EBRD Regions – West Bank and Gaza

Are local law intercreditor agreements used in your jurisdiction?	✓	
Are foreign law intercreditor agreements or subordination agreements used in your jurisdiction?	✓	
Are intercreditor agreements enforceable in your jurisdiction?	✓	
(Y) Is this true even if the intercreditor agreement is foreign-law governed (i.e. English law)?	x	
(Y) Has enforceability been tested before the courts?	x	
Can creditors voluntarily subordinate their claims to other creditors' claims by means of an intercreditor agreement or subordination agreement?	✓	
(Y) Is it required to register such intercreditor agreement or subordination agreement in the relevant security registry?	x	
Would subordination of creditor claims be enforceable in insolvency of the security grantor?	✓	
(Y) Is this true even if the intercreditor agreement or subordination agreement is foreign-law governed (i.e. English law)?	x	

## New Financing in the EBRD Regions – West Bank and Gaza

New financing in insolvency		
Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?	x	However, the Insolvency Law contains a principle that new loans executed by the debtor during the composition procedure are ineffective without permission from the judge, who may not grant permission unless the benefits are clear for the debtor. In conciliation procedure, creditors should be consulted on the possibility of granting the debtor a sum of money in the form of aid from the insolvency (bankruptcy) estate. If a majority of the creditors agree to grant such aid, the insolvency practitioner proposes an amount and the delegated judge decides on the final amount.
Can the debtor grant security in respect of such new financing?	x	
Can the new financing be provided on a priority basis ahead of any existing unsecured creditors?	x	
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 borrowing entity?	✓	
Are there any lender liability risks in granting new financing to a financially distressed borrower?	x	
Are there any regulatory restrictions preventing banks from granting new	✓	The banks must abide by the instructions issued by the Palestine Monetary Authority if any. Lending banks and financial institutions can check distressed borrowers in the credit registry system operated by the Palestine Monetary

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financing to a financially distressed borrower?		Authority (PMA) which classifies the creditworthiness of a borrower. Borrowers in certain classes would not be able to obtain new financing.
<b>Specific COVID-19 measures</b>		
Have regulatory authorities introduced new COVID measures specific to credit, such as forgivable loans or easing of some regulatory measures?	✓	Payment moratorium (delaying payment of any dues for 4 months if it is due between March 20, 2020 and July 19, 2020).
Have any creditor protection rules been introduced to encourage new financing to distressed businesses, such as protection from avoidance actions or lender liability risks?	x	
Have regulatory measures relating to connected creditors been eased to encourage new financing?	x	
Have special state guarantee funds, existing or new, been deployed in the context of the current crisis?	x	
(Y) Is collateral required in the case of special state guarantee funds deployed in the context of the current crisis?		
Have central banks supported lending of commercial banks through special (re)financing programmes, such as for loans	x	

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secured with receivables or warehouse receipts?		
<b>Valuation of collateral</b>		
Is it easy to obtain a reliable third-party valuation of collateral or security in your jurisdiction?	✓	
Is the appraiser/valuation industry regulated in your jurisdiction?	✓	The Palestine Capital Market licenses the appraiser activity. Most appraisers are individual persons.
What valuation standards have been implemented?		
What do you consider to be the main flaws in collateral valuation in your country in a financial crisis situation?		The relationship between the appraiser and lending institutions and the creditors.