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2023

Survey of Insolvency and Secured Transaction Regimes

New Financing for Distressed Businesses in the EBRD Regions

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Foreword

Access to finance is fundamental for business growth and prosperity. It is also critical for any successful business turnaround and rescue. But funding remains insufficient in emerging markets, and it is consistently lower than in developed economies.

The 2021 Enterprise Survey (BEEPS) VI[1], led by the EBRD, in partnership with the World Bank, found that over half of the businesses surveyed across the EBRD regions consider insufficient access to finance to be an obstacle. While there are many reasons for this, one persistent issue across most developing economies is the underdeveloped nature of security rights and insolvency regimes.

This report explores the interaction between secured transactions and insolvency laws. It identifies legal obstacles that continue to restrict the access to credit by businesses in many emerging markets, especially in the context of private restructurings (workouts) and insolvency proceedings.

An efficient system for the creation and registration of security rights and an insolvency regime that respects those rights as far as possible are highly desirable for any free market economy. The EBRD's Legal Transition Programme promotes reforms to secured transactions and insolvency laws in the regions where the EBRD invests. These reforms are designed to strengthen the credit ecosystem and to create opportunities for entrepreneurship and growth.[2]

Strong security rights and insolvency regimes offer significant benefits for both investors and businesses. They reduce the risks for investors of engaging in lengthy and uncertain legal proceedings to recover their money. They also make it easier for banks, institutional investors and private capital firms, at home and abroad, to invest in the real economy. We know from the EBRD Insolvency Assessment that the availability of transparent, comprehensive and reliable data is also important. Data helps financiers to understand the market and assess the risks of entering into a particular transaction.[3] In a more attractive investment environment with high quality data, businesses can benefit from greater opportunities to access credit and more diversified sources of funding.

While many economies have introduced new digital solutions to support access to finance and creditor rights, such as online registration systems for security interests, fundamental legal issues remain unresolved. These issues relate primarily to creditor priorities and the management of security interests. This creates risks for potential lenders and harms businesses, including the key job creators: micro, small and medium-sized enterprises (MSMEs). Any technological advances therefore need to be supported by good laws and institutional frameworks to be fully effective.

The purpose of this report is to raise awareness among policy makers about unresolved legal issues and challenges to access to finance for businesses. The report should facilitate greater collaboration among national authorities and development organisations, like the EBRD, on legal reforms that support access to credit by businesses.

The report has been prepared by the EBRD Legal Transition Programme. It is based on consultations with local legal counsel in 38 economies where the EBRD invests, who participated in the EBRD New Financing Survey led by the Legal Transition Programme team.[4] The report underpins another EBRD publication “New Finance Support - Receivables finance for MSME resilience and economic growth”, which advocates for the development of receivables finance products for MSMEs in the regions where the EBRD invests.

I hope that this publication will encourage national authorities across the EBRD regions to introduce further reforms to improve their economies' secured transactions and insolvency regimes. These initiatives will pave the way for stronger credit ecosystems and will help to boost business growth.

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[1] European Bank for Reconstruction and Development – European Investment Bank – World Bank - Enterprise Survey, available at: https://www.beeps-ebrd.com/.

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

[3] See www.ebrd-restructuring.com for the EBRD Insolvency (Business Reorganisation) Assessment Report and Annexes, including Annex 3 (Data Transparency).

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

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Glossary

Please see below some frequently used definitions in the report. These definitions should be interpreted according to the context.

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

EBRD Insolvency Assessment is the 2022 EBRD Business Reorganisation Assessment on reorganisation procedures across EBRD economies of operations available at www.ebrd-restructuring.com.

Economy Responses mean the summary of responses to the New Financing Survey contained at Annex III.

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

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

Intercreditor agreement is a contractual arrangement between several creditors to a financing transaction that governs various aspects of their relationship regarding the priority of their claims against the borrower. Key matters covered by the agreement typically include designating priorities or ranks to certain creditors (or classes of creditors) in terms of their rights to obtain satisfaction from the assets of the borrower or against any security enforcement proceeds and imposing restrictions on certain unilateral creditor actions.

Lender liability is any liability that lenders may incur, whether civil, administrative or criminal, for providing new financing to a debtor in financial difficulties. This term does not refer to other grounds on which lenders may be held liable in an insolvency context including, for example, interfering with the management of the debtor or acting as a 'shadow director'.

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

New financing (or **new finance**) is, as the context requires, any financing provided by an existing or a new creditor to enable a debtor to continue operating its business as part of a private financial restructuring or a reorganisation procedure to preserve or enhance the value of the assets of the debtor's estate or to implement a reorganisation plan.

New Financing Survey means the EBRD survey on new financing and liquidity for businesses contained at Annex II, which was completed by 75 respondents across 38 economies in July to September 2020.

New Finance Support Report means the 2023 EBRD report entitled "New Finance Support – Receivables Finance for MSME resilience and economic growth".

Parallel debt in syndicated loan transactions aims to achieve a commercial effect similar to a security agent structure in jurisdictions where the security agent is not recognised by law. In the parallel debt structure, the borrower undertakes a separate financial obligation, in parallel to its obligation under the loan agreement, to an entity sometimes referred to as an 'administrative agent', which is an existing creditor under the loan agreement.

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

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

Security agent structure (sometimes referred to as a security trust structure) allows lenders under a syndicated loan facility to share a security interest in a common pool of security. A financial institution is appointed by the lenders as their agent or trustee to hold the security interest and enforce this for the collective benefit of all the lenders.

Subordination agreement is an agreement involving multiple creditors, which determines, according to contract, the order of priority of the creditors' claims regarding the borrower. For example, where there are shareholder loans, the parties to a subordination agreement may include any bank creditors and the borrower's shareholders.

I. Executive Summary

Businesses in financial distress need new financing and investment to restructure their operations and to return to viability. However, the concept of new financing - and the protection of new financing as part of national insolvency procedures - is unfamiliar in many economies where the EBRD operates. The market for new financing is, therefore, underdeveloped.

This report presents and analyses the results of the EBRD New Financing Survey of partner law firms across 38 economies.[5] In the EBRD regions, bank lending is the dominant form of financing available to businesses. However, bank lending is typically only available on favourable terms when the borrower pledges or secures its assets in favour of the bank. Nevertheless, the legal systems in economies where the EBRD invests often disincentivise secured lending. The top three issues identified by survey respondents with respect to taking security over immovable assets, such as land, were (in order of importance): high costs, the uncertainties concerning the enforcement regime for enforcing security rights and the requirement of physical presence for the registration of any security interest over immovables.

With respect to movable assets, the main issues identified by survey respondents were (in order of importance): the uncertainties concerning the enforcement regime for enforcing security rights, the legal treatment of certain security interests and the limited pool of available assets. Therefore, for both immovable and movable assets, the key concerns focus first, on the difficulties encountered with respect to the enforcement of security rights and second, on the creation and registration of security interests.

Security agent or trustee structures, where an agent holds security on behalf of a syndicate or pool of lenders, facilitate large lending transactions and protect the interests of a group of creditors. However, the EBRD New Financing Survey results reveal that 29 economies, where the EBRD invests, have no legislation that expressly permits security agent structures. This creates legal uncertainty for any secured loan involving multiple lenders. It is also an obstacle to a financial restructuring, where the lenders may need to share any security granted by the obligor and to agree on an order of priority of payments with respect to any proceeds realised from secured assets. In nine EBRD economies where security agent structures are permitted, a security agent can enforce the security interest on behalf of other secured creditors, subject to certain local variations.

In the great majority of the surveyed EBRD economies, local or foreign law intercreditor agreements are used in practice. These agreements document the priority of different creditors. However, according to survey respondents, the enforceability of intercreditor agreements has not been widely tested before many national courts. This creates legal uncertainty and the risk that creditors may be unable to enforce their contractual claims under intercreditor agreements.

Providing new financing to a business in distress increases the credit risk profile. Consequently, it is standard practice for new finance creditors to require additional commercial and legal protections. Usually these protections include a requirement to be paid in priority to existing (unsecured) creditors and to receive new security over any available unencumbered assets of the borrower. In some cases, new finance lenders may negotiate priority over existing lenders and any security granted in favour of such lenders. This can be agreed contractually among creditors through an intercreditor agreement.

Nevertheless, any protections for new financing to support a formal reorganisation of a debtor as part of a reorganisation procedure must be contemplated by the insolvency law. As a minimum, the insolvency law should regulate the priority of any new financing in relation to unsecured creditors to allow new finance to rank ahead of such unsecured creditors. If there are any uncollateralised assets of value, it is also advisable for the insolvency law to allow the debtor to grant security over such assets in favour of the new finance provider, subject to any prior approval by the court and/or insolvency office holder.[6] New financing should benefit from protection against any subsequently avoidance actions by an insolvency office holder.

In the insolvency legislation of most EBRD economies, new financing can receive some form of priority in repayment over unsecured creditors. New financing has ‘super priority’ status in a handful of EBRD economies (Moldova, North Macedonia, Slovenia and Uzbekistan). In these economies, new finance ranks at the same level as administrative expenses, such as court and insolvency office holder fees (usually paid first in an insolvency case) or above other secured creditors. However, in a quarter of EBRD economies, the law does not contain any provision expressly protecting new financing provided by a creditor during insolvency as part of a reorganisation procedure or a reorganisation plan. Furthermore, in almost half of the economies, there is no express protection from avoidance actions by an insolvency office holder. Judicial actions could, therefore, be brought in a subsequent insolvency proceeding (for example, in a liquidation proceeding) against legal entities or individuals who provided new financing to an insolvent debtor. These actions could result in any new financing arrangement and related security being declared unenforceable and void.

[5] 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.

[6] In some jurisdictions, new financing provided during a reorganisation procedure within insolvency can take priority in certain circumstances over existing secured creditors. For example, this is the case under Chapter 11 of the United States Bankruptcy Code.

Nevertheless, responses to the New Financing Survey reveal that in the majority of EBRD economies, the valuation industry is perceived to be well-developed. Survey respondents considered that it was easy to obtain a reliable third party to perform a valuation of collateral or a secured asset. Furthermore, unlike in some Western European economies, respondents confirmed that there were no significant lender liability risks associated with the provision of new financing to financially distressed borrowers in the EBRD regions.

Many governments introduced temporary credit support programmes and emergency measures during the Covid-19 crisis to sustain business activity. However, in the EBRD regions there were no long-lasting reforms to secured transactions and insolvency laws during the crisis to support new financing for businesses. As part of better future 'crisis preparedness', policy makers and legislators should review their national laws to improve access to credit and new financing in particular for business continuity and resilience. Improving access to new financing within insolvency reorganisation procedures can have a positive impact on the successful outcome of such procedures. Indirectly, this can also stimulate private financial restructurings, which are negotiated in the 'shadow of the law' and with reference to formal (court-administered) alternatives.

II. Introduction

The EBRD began this research into new financing in the context of the Covid-19 crisis and the difficulties faced by businesses around the world to remain viable. We chose to focus on the issues affecting 'new financing' for distressed businesses that need to access capital as part of a private restructuring or a reorganisation procedure. However, many of the issues identified in the report are relevant for all businesses accessing credit.

New financing lies at the crossroads between secured transactions and insolvency. This report focuses on the principal areas of legislation across the EBRD regions affecting the provision of new financing. Specifically, the report examines the laws relating to general movable and assets, security agent structures, the subordination of creditor claims, new financing in reorganisation procedures and the valuation of collateral. It complements the 2022 EBRD Insolvency Assessment and underpins the 2023 EBRD New Finance Support Report.[7]

One of the fundamental goals of insolvency regulation is the rehabilitation of financially distressed but viable businesses. In recent years, there has been increasing recognition by policy-makers on the importance of ensuring that national legal frameworks support early or preventive restructuring by businesses. This includes ensuring that such frameworks support and incentivise new financing. New financing is often critical for restructuring since many businesses require fresh capital to continue operating. Legislative support for new financing can therefore increase the prospect of successful business turnaround and rescue.[8]

The EBRD Core Principles of an Effective Insolvency System provide that an effective insolvency system should facilitate the continuation of the debtor's day-to-day operations during a reorganisation procedure by protecting new financing. This standard is aligned with the UNCITRAL Legislative Guide on Insolvency which confirms the necessity of the debtor to be able to access funds both during the procedure between commencement of the proceedings and approval of any reorganisation plan (interim financing) and after approval of the plan (additional financing), which is generally addressed in the plan.

The absence of interim financing during a business' negotiations with its creditors or the lack of additional financing for the business to implement any agreed reorganisation plan can be fatal. However, credit providers are often reluctant to finance a company in financial difficulties, without adequate returns or protection against their enhanced financial exposure and legal risks.

The availability of new financing for companies in financial difficulties can be challenging because of specific weaknesses inherent in a country's insolvency regime, such as broadly drafted or unclear transaction avoidance provisions. These provisions are generally used to recover assets belonging to the debtor's estate. However, they can result in the new financing transaction and any related security being void, voidable or unenforceable as an act detrimental to the general body of creditors in an insolvency procedure.

The lack of special protections for new financing and the limited recognition of the priority of new financing ahead of other (unsecured) credit, can be further disincentives. In some jurisdictions there are additional lender liability risks arising from the provision of credit to a distressed business. However, this issue appears to be a feature of more developed regimes, such as France and Germany, and less relevant for emerging economies. It is reportedly not an issue in any of the jurisdictions surveyed by the EBRD as part of the New Financing Survey.

New financing lenders typically require security over the debtor's available assets. New financing to distressed businesses therefore also needs to be analysed through the wider lens of secured transaction regimes and the ease of taking security. The EBRD Core Principles for a Secured Transactions Law state that enforcement procedures should enable the prompt realisation at market value of the assets given as security. Nevertheless, in many jurisdictions, secured lending carries inherent risks, such as slow or expensive enforcement proceedings. This reduces the value of security as a means of lender protection or insurance against a defaulting borrower. In the context of loans to larger corporates, there may be additional risks and legal uncertainties. These may include uncertainties concerning how new financing ranks in respect of other loans under intercreditor agreements and/or how new financing and any related security may be shared with other lenders as part of security agent structures. This can undermine efforts to agree a private financial restructuring agreement outside of a formal insolvency process.

Based on the results of this report and the EBRD Insolvency Assessment, as well as the New Finance Support Report, there is significant scope for policymakers to improve both insolvency and secured transaction legal frameworks to support new financing and access to credit for all businesses.

[7] Available at: www.ebrd-restructuring.com.

[8] See, for example, the following European Union initiative: Directive (EU) 2019/1023 of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1023. The role of new financing is also emphasised in the EBRD Insolvency Assessment report available at: www.ebrd-restructuring.com.

III. Methodology

This report does not aim to score or rank the economies covered. Rather its main goal is to provide a snapshot of different legal frameworks across the EBRD regions and to identify the core issues in secured transactions and insolvency laws affecting the provision of new financing.

The report analyses the cross-jurisdictional information collected through an electronic survey conducted by the EBRD's Legal Transition Programme of law firms across 38 economies.[9] A full copy of the New Financing Survey is contained at Annex II to this Report.

The majority of questions contained in the New Financing Survey cover the local 'law on the books'. However, the survey included a few perception-based questions on the ease of taking security over both movable and immovable assets (questions 5 and 6). It also contained some questions of interpretation (for example question 14 on the enforceability of intercreditor agreements) and broader questions related to the position taken by the courts on security rights.

In total, representatives from 75 different law firms completed the survey. Annex I contains a list of law firm respondents and website details.

The EBRD project team reviewed answers to the survey closely for potential errors of interpretation. In some cases, the team requested local counsel to clarify certain answers to the survey. In a few economies, more than one contributor completed the New Financing Survey. This enabled the EBRD team to compare responses and clarify any discrepancies. Annex III contains a consolidated response per economy to each of the questions contained in the New Financing Survey.

Answers to survey question 21 "Does the insolvency law expressly recognise the ability of the debtor to obtain new financing in reorganisation-type insolvency proceedings?" and to question 22 "Can the debtor grant security in respect of such new financing?" were validated against the findings from the EBRD Insolvency Assessment (particularly Annex 6 (New Financing) of the Insolvency Assessment Report).[10]

The survey format allowed participants to leave some questions unanswered. Missing information in the summary responses is displayed as a box (☐) in the tables or in the text with the note that the information is not available. If the answers from the respondents were ambiguous and it was not possible to verify the information, this is displayed in the tables with a question mark (?). The Economy Responses at Annex III include comments and explanations provided by survey respondents.

[9] Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Egypt, Estonia, Georgia, Greece, Hungary, Jordan, Kazakhstan, Kosovo, Kyrgyz Republic, Latvia, Lebanon, Lithuania, Moldova, Mongolia, Montenegro, Morocco, North Macedonia, Poland, Romania, Russia, Serbia, Slovak Republic, Slovenia, Tajikistan, Tunisia, Türkiye, Turkmenistan, Ukraine, Uzbekistan and West Bank and Gaza.

[10] See www.ebrd-restructuring.com.

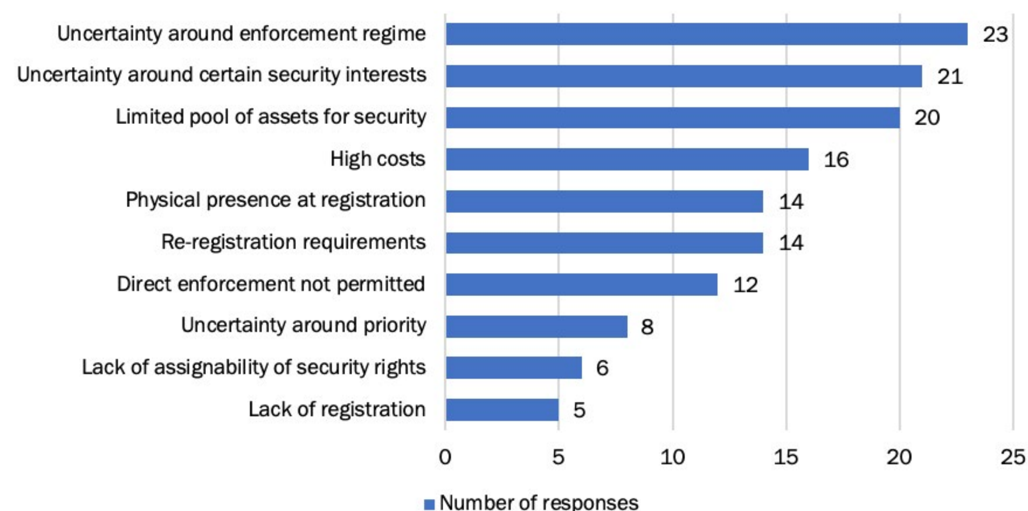
IV. Main Findings and Trends

A. General Secured Transaction Legislation

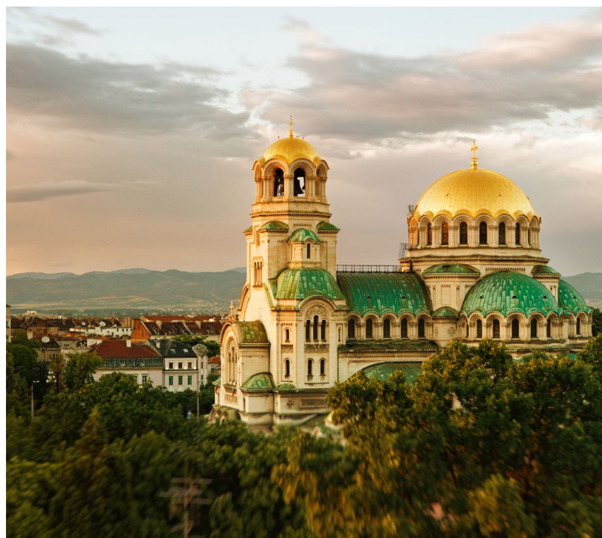
The EBRD New Financing Survey identifies a number of key legal, regulatory or practical impediments to the security over movables and immovables in secured transactions laws across the EBRD regions.

In respect of secured legislation frameworks regarding movables, the most common impediment, according to survey respondents, is the uncertainty concerning the enforcement regime. The second impediment identified by respondents is the uncertainty related to the legal treatment of certain security interests, such as leases, receivables or other rights under contract. The third most frequent impediment according to respondents is the high costs associated with taking security over movables, including notarisation fees, taxes and duties, or costs of meeting a local language requirement.

Figure 1. Main obstacles to taking security over movables in the EBRD regions



Note: *This chart summarises responses from the EBRD New Financing Survey to the legal, regulatory and practical impediments to taking security over movable property in the EBRD regions. The bar chart shows the number of respondents (among the 75 law firm surveys completed) who identified impediments in their legislation and market practice.*

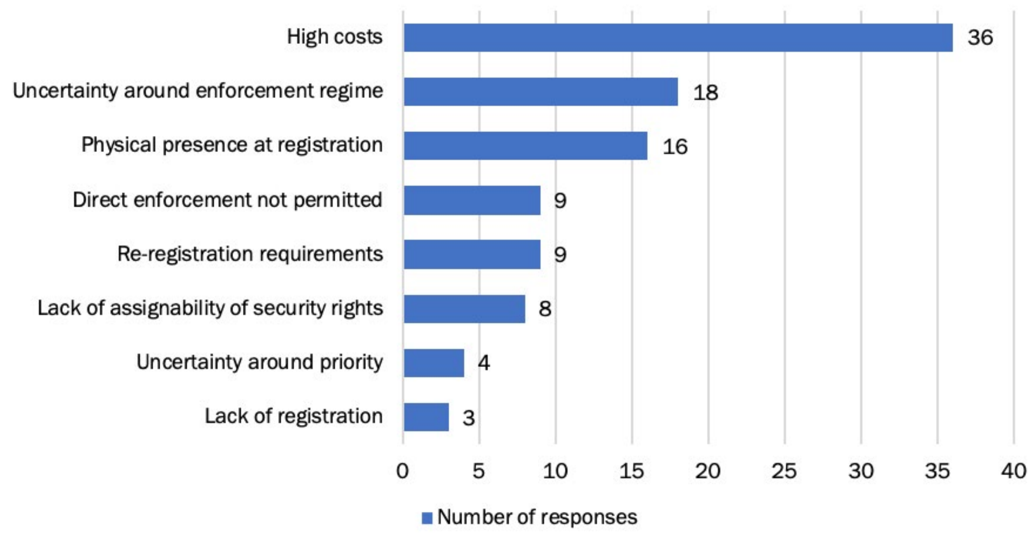


Respondents indicated additional impediments in their economies' existing movables security legislation frameworks. A common hurdle across all jurisdictions is related to the registry of movable pledges. For example, there is no central electronic security registry in Greece, while in Croatia and Kosovo the movable pledge registries have poor search engines. In Türkiye, there is a burdensome procedure for updating a pledge at the online registry. In Croatia, the registry does not allow a party searching the registry to obtain a confirmation as to the absence and/or priority of any pledges.

Furthermore, as evident from additional comments provided by respondents, the prospects of lending against movable security could be improved in certain jurisdictions. One major improvement would be to increase the pool of movable assets over which a security interest can be granted. Moreover, many economies would benefit from enhanced legal certainty around certain specific movable security instruments. The improvement of legal procedures in relation to the perfection and registration of security interests should also be high on the legislative agenda for many EBRD economies.

In respect of immovables security legislation, the most common impediment, according to survey respondents, is the high costs associated with obtaining this form of security. The next two most common impediments are the uncertainty around the enforcement regime with respect to immovable property and the fact that physical presence is frequently needed to register security rights over immovables.

Figure 2. Main obstacles to taking security over immovables in the EBRD regions



Note: *This chart summarises responses from the EBRD New Financing Survey to the legal, regulatory and practical impediments to taking security over immovable property in the EBRD regions. The bar chart shows the number of responses (among the 75 law firm surveys completed) from respondents who identified such impediments in their legislation and market practice.*

Several respondents made further comments on the impediments in their economy's existing immovables security legislation framework. Additional respondent feedback suggests that a weak enforcement system is a major obstacle for enforcing immovable security interests. For example, in Armenia, the procedures for direct enforcement by secured creditors are not fully regulated, while in Bosnia and Herzegovina and Slovenia, enforcement procedures are considered to be inefficient. In Croatia, the enforcement of pledges over immovables located in the territories of different courts requires the initiation of a separate procedure before each of these courts. Moreover, debtors have numerous defences at their disposal, which can frustrate or delay enforcement proceedings.

The results of the EBRD New Financing Survey therefore suggest that more clarity around the enforcement of security rights and more efficient enforcement mechanisms should be a priority for lawmakers in several EBRD economies of operations.

B. Security Agent Structures

The EBRD New Financing Survey reviewed the legislation pertaining to security agent structures in each of the 38 economies covered by the survey.

Security agent structures are commonly used under syndicated secured loan facilities. They allow lenders to share a security interest granted by the borrower. Under these structures, the lenders appoint a specialist financial institution (a security agent) to hold and administer the security and enforce it for the benefit of the lenders as a group. Such structures can benefit lenders and borrowers alike, as they streamline administration and help to coordinate the actions of the multiple lenders. This provides cost saving opportunities and flexibility for the borrower, which can use its assets as security for multiple lenders.

However, the security agent structure is weakened in some economies by the lack of express legal recognition of the right of third party agents to hold and administer security on behalf of a pool of lenders. In economies where a security right is considered to be an accessorial right, it can be too risky to attempt such solution. In effect, this prevents a security right from being granted without a corresponding debt being owed to the security right holder. Some economies have developed alternative mechanisms, such as 'parallel debt' structures as a workaround to this issue. Such structures create an independent and separate debt obligation by the borrower in favour of the security agent to the debt obligation owed by the borrower under the facility agreement.

The EBRD New Financing Survey revealed that security agent structures are expressly permitted by legislation in only nine out of the 38 surveyed EBRD economies. These economies are Bulgaria, Egypt, Greece, Hungary, Kosovo, Poland, Romania, Russia and Serbia. In Greece, Hungary, Poland, Russia and Serbia, the security agent structures are applicable to both movable and immovable securities. In other countries there are restrictions with respect to the security agent structure. In Bulgaria, only security rights in respect of financial collateral can be granted to a party other than the creditor under the financial transaction. In Egypt, the regulations pertaining to security agents have only been introduced in respect of security over movables, although in practice security agents are used for both types of security. In Romania, a local law governed security agent is permitted for security over movables only, although foreign law governed security agent structures are recognised in respect of both movable and immovable securities. In Kosovo, security agents are regulated by the law on mortgages, but can only be used in very limited cases.

The EBRD New Financing Survey has also identified some local particularities. In some cases, a security agent structure may only be used in the case of registered non-possessory pledges (e.g. Hungary), or for certain structured loans (e.g. bond loans in Greece). Alternatively, a security agent structure may not be permitted for certain types of pledges. For example, in Serbia, a security agent cannot be used for pledge over shares in joint stock companies and for promissory notes. In Hungary, a security agent structure cannot be applied to fiduciary securities.

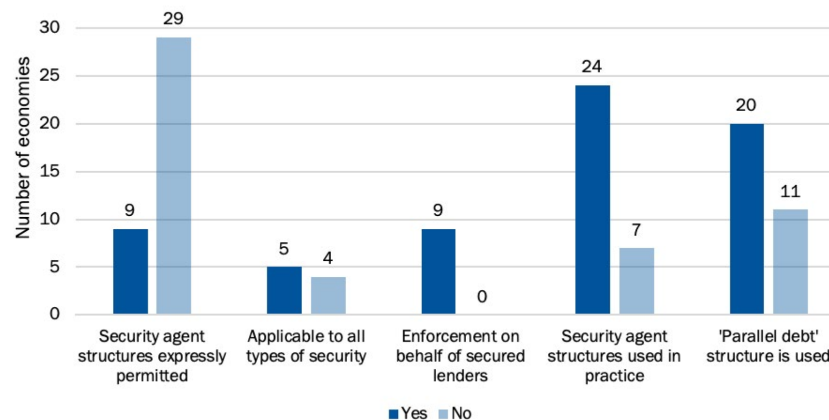
As revealed by the New Financing Survey, security agent structures generally permit the enforcement by the security agent on behalf of secured lenders. However, there are local variations and legal uncertainties. For example, in Egypt, non-lender security agent structures are not tested. Bureaucratic obstacles may also arise due to the dominant market practice of appointing a security agent who is also a lender. Moreover, the security agent's ability to enforce directly certain forms of security, such as security over shares, remains questionable. Consequently, it is more likely that a non-lender security agent would have to go through a court-ordered auction process.

In 24 out of 38 economies surveyed by the EBRD, security agent structures are used despite the lack of supporting legislation. Such structures are typically used in cross-border syndicated loan transactions under English law. Current practices vary among economies. These may include appointing a security agent from among the pool of creditors to using a third party (usually a commercial bank) as a security agent. Sometimes, a 'joint creditorship' may be established where the obligor can discharge its obligation by paying the entire debt to one or more co-creditors e.g. in Montenegro, North Macedonia and Türkiye. In such cases, the remaining creditors would have recourse to any co-creditor(s).

'Parallel debt' structures are a popular solution to the issue of non-recognition of security agent structures and are used in 20 economies where the EBRD invests. A 'parallel debt' structure in syndicated loan transactions is aimed at achieving a similar commercial effect to a security agent structure. Under this structure, the borrower undertakes a separate financial obligation ('parallel debt') towards an entity (an administrative agent), which is a creditor in its own right, in parallel with assuming the secured debt under the finance document entered into between the borrower and the lenders. The security rights contemplated by the finance document are granted in favour of the administrative agent. The sum of the parallel debt is equal to that of the secured debt, and a decrease in one debt results in an equivalent decrease in the other debt.

Various economies have indicated that the parallel debt structures are only rarely used or have not been sufficiently tested in the courts. In some economies, survey respondents consider it more likely that the structure will be recognised if the loan documentation is governed by foreign law. Nonetheless, concerns remain in several EBRD economies of operations with respect to the enforceability of such structures. Commercial parties would most certainly benefit from the formulation of express provisions of law relating to security agent structures in the relevant EBRD economies of operations.

Figure 3. Legislation relating to security agent structures needs improvement in most EBRD regions



Note: *This chart summarises responses from the EBRD New Financing Survey to the security agent structures in the EBRD regions. The bar chart shows the number of economies that have certain named features in their legislation and market practice.*

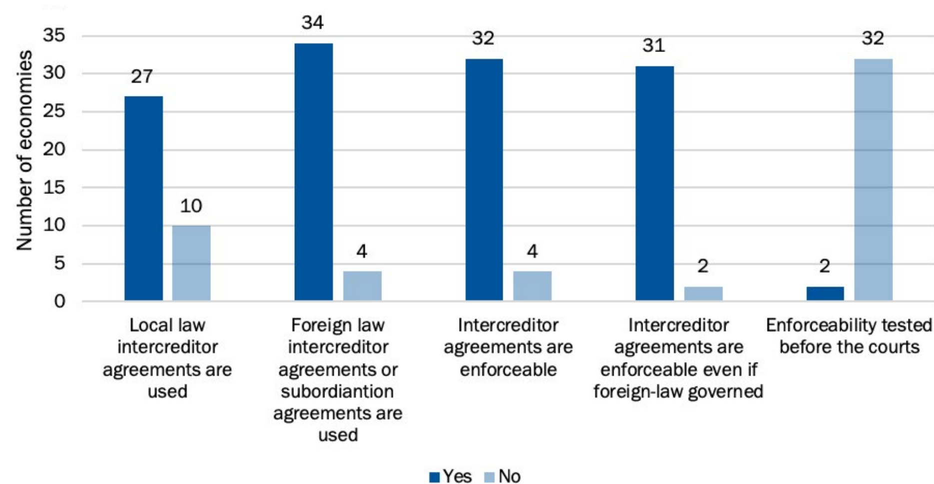
C. Subordination of Claims

The third area examined by the New Financing Survey was the legislation pertaining to the subordination of claims.

In financing transactions involving multiple creditors, creditors may contractually set forth the order of priority of their respective claims with regard to the borrower's debt. This is typically documented in a subordination agreement, where a creditor acknowledges that its claim ranks below another creditor's claim in priority (subordinated). This may be part of an intercreditor agreement with the borrower that governs other aspects of the relationship between creditors beyond designating ranks or priorities. For example, this may include imposing restrictions on individual actions taken by a creditor and the requirement to turnover any proceeds paid to an individual creditor.

27 out of the 38 surveyed EBRD economies usually use local law governed intercreditor agreements, while eight more economies use foreign law governed intercreditor agreements. However, respondents from some economies reported that such agreements are rarely used in practice. In general, they are more frequently used in syndicated loan transactions involving a foreign element and are then governed by foreign law (some economies mentioned English law). Respondents in 32 economies considered intercreditor agreements to be enforceable, albeit in some cases subject to compliance with mandatory local law provisions. **The lack of developed case law in 32 EBRD economies, however, creates uncertainties in relation to the enforceability of intercreditor agreements.** This increases the risk for creditors that such arrangements are unenforceable. In various economies, intercreditor agreements are considered enforceable only as contractual obligations between the parties to the contract. In other words, the mandatory ranking of creditors in insolvency law or enforcement law prevail over contractual priority arrangements. This may prevent the parties from enforcing their claims within any insolvency or enforcement proceedings, unless such claims comply with the statutory ranking. The insolvency office holder or court enforcement officer would not be bound by the contractual arrangements. Parties would, therefore, need to rely on the enforcement of any turnover provisions following a distribution by the office holder as a matter of contract.

Figure 4. Subordination of claims is common in the EBRD regions but is largely untested before the courts

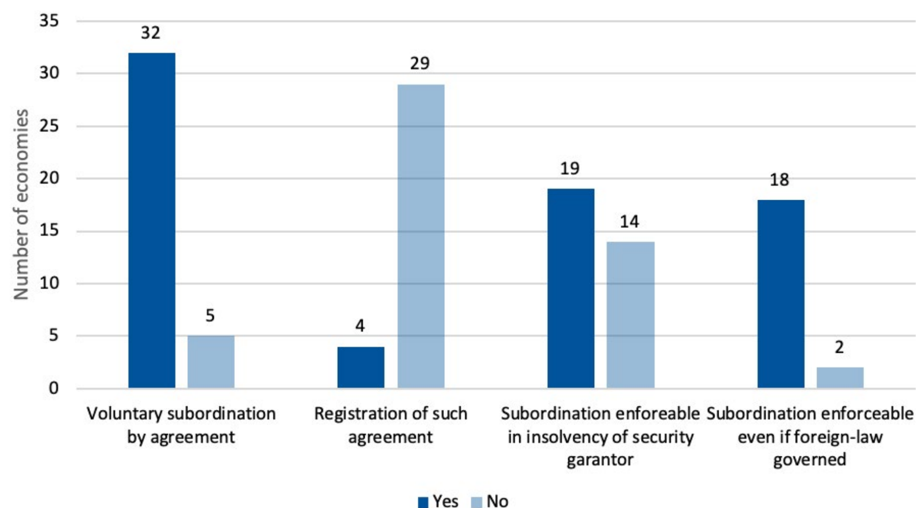


Note: *This chart summarises responses from the EBRD New Financing Survey to the subordination of claims in the EBRD regions. The bar chart shows the number of economies that have certain named features in their national legislation and frameworks.*

The New Financing Survey results reveal that in over three quarters of the EBRD economies of operations voluntary subordination by contract is permitted. There are economies where the law is silent on the matter, but the survey respondents considered voluntary subordination to be possible. In some economies there was no doubt that such agreements would be recognised as a matter of contract between the parties. The registration of subordination agreements is typically not required. However, in some economies, perfection by registration is a possibility (e.g. in Croatia and Georgia). The survey responses show greater diversity with respect to the enforceability of any subordination agreement in insolvency proceedings.

Some economies' respondents consider that voluntary subordination is enforceable within insolvency proceedings but uncertainties remain. These uncertainties include whether a subordination agreement may be enforced only if it is not aligned with statutory rules on the ranking of creditors. Voluntary subordination may nevertheless be considered enforceable as a matter of contract between the parties outside insolvency proceedings. In other economies, there are certain contractual mechanisms that indirectly permit subordination in the event of insolvency (e.g. Estonia). Furthermore, subordination appears to be enforceable in insolvency proceedings in economies where the subordination agreement is perfected (e.g. Georgia). In other cases, subordination arrangements may be given effect in insolvency proceedings. In Serbia, for example, contractual subordination binds all unsecured creditors in an insolvency. In other words, unsecured creditors which agreed prior to the insolvency proceedings to be subordinated to one or more creditors, shall be satisfied only after the full settlement of the claims of such creditors. **The enforceability of subordination across the EBRD regions does not typically depend on the governing law of the agreement.**

Figure 5. Subordination of claims is often voluntary in the EBRD regions and is not always directly enforceable within insolvency proceedings



Note: *This chart summarises responses from the EBRD New Financing Survey to the subordination of claims in the EBRD regions. The bar chart shows the number of economies that have certain named features in their national legislation and frameworks.*

D. New Financing in Insolvency

The fourth area examined by the New Financing Survey is new financing provided to financially distressed companies in insolvency proceedings.

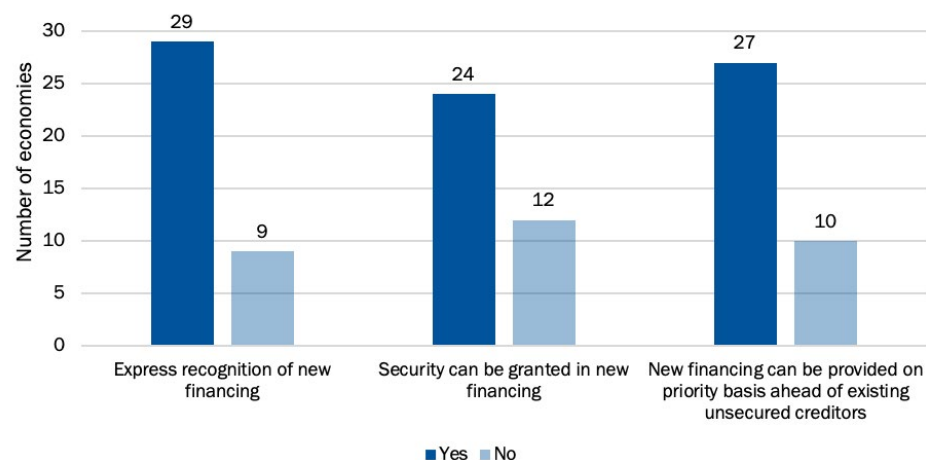
The possibility of providing new financing to financially distressed businesses is an important feature of reorganisation procedures. Without statutory priority, creditors would have no incentives to lend to an insolvent company. Moreover, new financing providers as well as borrowers need express carve-outs from transaction avoidance actions. Avoidance actions are the judicial actions or remedies that can be brought in insolvency proceedings (e.g. in liquidation proceedings) against corporations and individuals who have received a payment or other preferential treatment from an insolvent debtor. In addition, lenders' liability may arise for extending new financing to a debtor in financial difficulties. The New Financing Survey addressed all these important matters.

29 out of the 38 surveyed EBRD economies reported that their insolvency law expressly recognises the ability of the debtor to obtain new financing in reorganisation procedures. Local legislations vary as to whether such new financing requires the prior approval of creditors, or a creditors' committee, or the consent of the insolvency office holder and/or the insolvency court. Frequently, new financing must be granted pursuant to the reorganisation plan. The legislation may, therefore, not expressly recognise interim financing provided during the course of the proceedings. Sometimes, new financing is limited in amount. For example, in Slovenia, the amount of new financing may not exceed the value of liquid assets necessary to operate the debtor's regular business. Under certain local laws, new financing is recognised and accepted only where there is a prospect of avoiding insolvency (e.g. West Bank and Gaza). Nonetheless, there are jurisdictions where the law does not expressly permit new financing within a reorganisation procedure. It therefore remains a matter of interpretation as to whether new financing may be provided in insolvency reorganisation procedures (e.g. Azerbaijan).

In 24 out of the 38 surveyed jurisdictions where new financing is considered possible, new financing can be provided on a priority basis ahead of any existing unsecured creditors. Local legislations vary as to how new financing, whether secured or unsecured, is treated in terms of ranking. A smaller group of economies reported that new financing can only be provided on a priority basis as part of a court-sanctioned reorganisation plan (e.g. Albania, Bosnia and Herzegovina, Kosovo and North Macedonia). Respondents in Croatia highlighted that new financing has priority over all creditors in the event of subsequent liquidation proceedings, except for creditors of the first rank (employee claims). In Lithuania, unsecured new financing ranks alongside employee and social security claims. In some economies (e.g. Latvia), new financing provided as part of an attempted restructuring would be treated as an expense in the insolvency proceedings, therefore, it would precede in priority all unsecured creditors' claims. In Egypt, only secured new financing takes priority over existing unsecured creditors. Similar rules apply in Poland. In Serbia, new financing takes priority over unsecured creditors' claims if provided after the opening of insolvency proceedings. In Moldova, the insolvency administrator may grant a security interest to secure new financing obligations. However, these can only take priority over already existing security interests with the approval of the relevant secured creditors.

Granting security in respect of new financing is considered possible in 24 out of the 38 surveyed economies, despite the fact that it is not always expressly provided for by law. However, some respondents expressed concerns that such security may conflict with general insolvency provisions in their economies or would likely be subject to avoidance actions. Other respondents indicated that the matter remains unclear. Certain respondents considered that a security interest could only be granted over the unencumbered assets of the debtor. In other cases, the respondents considered that it was possible for a lower ranking security to be granted over already encumbered assets of the debtor, subject to the existing secured creditors' consent. Other respondents considered that new security could not affect already existing priorities. In some economies, respondents stated that new financing could only be granted as part of an adopted reorganisation plan or with court approval.

Figure 6. New financing is recognised in many national insolvency procedures in EBRD regions

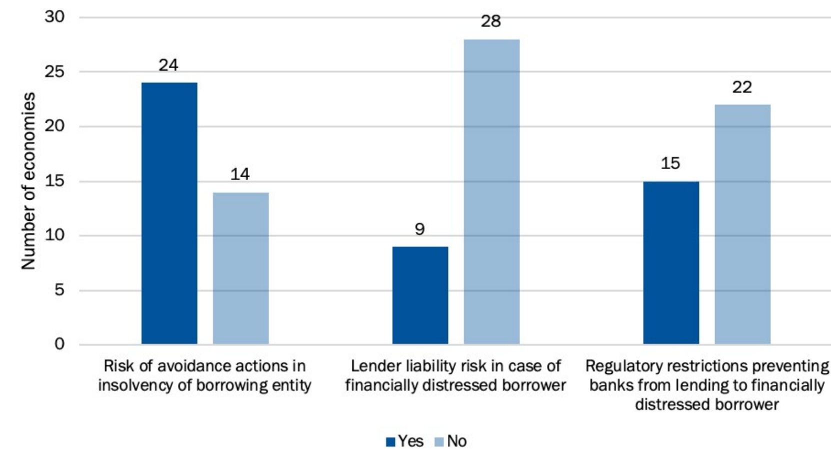


Note: *This chart shows the regulation of new financing within insolvency procedures in the EBRD regions, according to the law firm respondents of the New Financing Survey. The bar chart shows the number of economies where the insolvency law gives new financing certain specified protections.*

Respondents from 24 EBRD economies of operations reported a risk of avoidance actions in insolvency of the debtor for any new financing and related security provided on a commercial, arm's length basis. Respondents from only nine economies considered that there was a lender liability risk when lending to a financially distressed borrower. Typically, in jurisdictions where new financing may be obtained as part of a court-sanctioned reorganisation plan in the course of court-supervised proceedings, respondents foresaw no risk of avoidance actions (e.g. Albania, Bosnia and Herzegovina and Kosovo). Moreover, in those jurisdictions where new financing is expressly protected from avoidance actions, respondents reported that no risk appeared to exist (e.g. Lithuania). In contrast, the risk of avoidance actions was flagged in jurisdictions, either: (i) where new financing is not regulated and there is uncertainty around whether actions taken in the statutory period before insolvency would be scrutinised in liquidation proceedings (e.g. Azerbaijan), or (ii) where new financing is regulated, although not specifically in respect of insolvency, hence the general rules on the validity of contractual arrangements prevail (e.g. Belarus, Hungary, Kazakhstan). Some respondents considered the risk of the avoidance of arm's length transactions merely theoretical despite new financing not being expressly excluded from the scope of avoidance actions (e.g. Latvia). Survey respondents expressed the greatest concern regarding harmful transactions, which could trigger avoidance actions. For example, avoidance actions could apply if the new financing is provided on a preferential basis to the detriment of existing creditor(s) (e.g. Cyprus, Hungary and Montenegro). In contrast, in certain economies, arm's length transactions clearly fall outside the scope of avoidance actions because the legislation is clear on the matter (e.g. Greece and Moldova).

The New Financing Survey responses did not identify any specific regulatory restrictions preventing banks from granting new financing. However, respondents from several EBRD economies of operation highlighted that credit risk management and prudential requirements would apply.

Figure 7. New financing in the EBRD regions carries certain risks



Note: *This chart the risks affecting new financing in EBRD economies, according to respondents to the New Financing Survey. The bar chart shows the number of economies where law firm respondents perceive certain named risks.*

E. Specific Covid-19 Measures

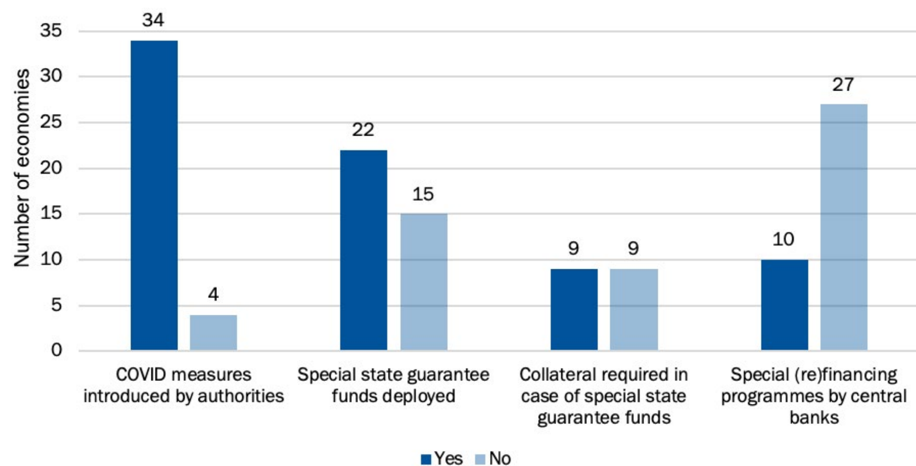
The fifth area of focus of the New Financing Survey was on the specific measures deployed by many national governments to support businesses during the Covid-19 pandemic.

According to the New Financing Survey, 34 out of the 38 surveyed EBRD economies introduced some measures to help companies navigate the crisis. Special state guarantee funds were deployed in 22 economies, while special (re) financing assistance was provided in nine economies. Assistance was often aimed at supporting the financing of working capital, or the payment of employee salaries. Some of the measures were specifically aimed at small and medium sized enterprises (SMEs). Other measures included the temporary suspension of principal, interest or fee payment on loans, or of late penalties (moratorium); or the suspension of credit rating deterioration measures; or easing any applicable statutory obligation for businesses to file for insolvency.

The New Financing Survey did not identify any new creditor protection rules to facilitate new financing as part of the Covid-19 emergency measures, such as protection from avoidance actions or lender liability risks, with the exception of Poland. In Poland, a 'simplified' court-controlled restructuring was introduced to combat the Covid-19 crisis. The related regulation stipulated that avoidance actions may not apply in a subsequent court-controlled restructuring and insolvency procedure, provided that the new financing and respective security were notified in the application and accepted by the court. In some countries e.g. Lithuania, legislative protections for new financing were introduced before the pandemic. In Lithuania, the new insolvency law, which came into force on 1 January 2020, expressly stated that intermediate financing or new financing provided to a legal person could not be voided, except if concluded in breach of law or where obtained by deceit.

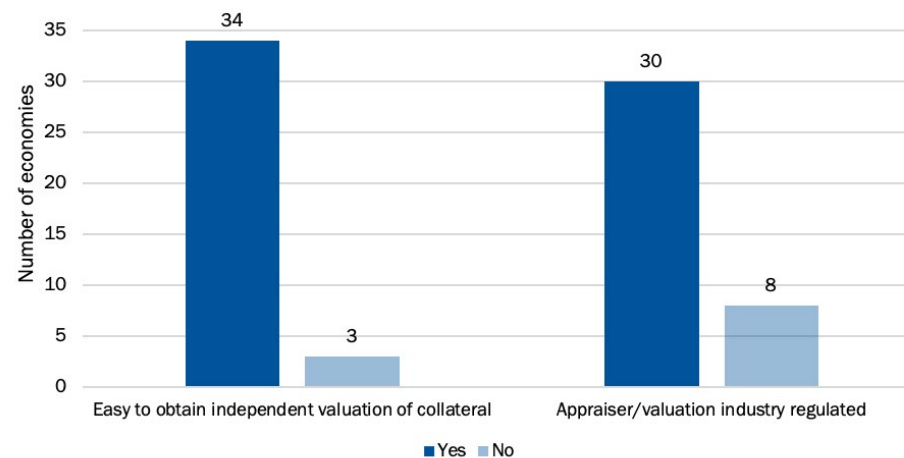
No legal or regulatory measures appear to have been introduced as part of the pandemic response in the EBRD regions to incentive new financing to distressed businesses. In Hungary, some regulatory measures in relation to connected creditors were already in place. These allowed shareholders providing rescue loans to be exempt in respect of such loans from an existing provision in the insolvency law that would decrease their number of votes as creditors in reorganisation proceedings.

Figure 8. Many EBRD economies enjoyed some government emergency support during the Covid-19 crisis



Note: *This chart shows the specific measures introduced by governments to combat the financial crisis caused by Covid-19 pandemic in the EBRD regions, according to New Financing Survey respondents. The bar chart shows the number of economies that introduced such measures.*

Figure 9. Frameworks for valuation of collateral are generally well-developed in the EBRD regions



Note: *This chart covers certain issues with respect to the valuation of collateral across the 38 economies surveyed, according to the 75 law firm respondents who completed the New Financing Survey. The bar chart shows the number of economies where respondents agree with certain statements regarding the valuation of collateral.*

F. Valuation of Collateral

The last aspect examined by the New Financing Survey concerns the valuation of collateral.

Respondents in the majority of economies reported that it is fairly easy to obtain a reliable third-party valuation of collateral or security and that the valuation industry is regulated. However, in certain cases valuation is only regulated in respect of immovable assets. The survey revealed a diverse approach among EBRD economies concerning the licensing of valuation activities, and the availability of court appraisers. However in the vast majority of EBRD economies (30 in total) the valuation industry is regulated. There were also divergences among economies concerning whether national valuation standards had been adopted, or reliance on European Valuation Standards. In a minority of economies, there were no applicable valuation methods prescribed by regulation. Respondents from several economies considered the proper valuation of collateral to be an issue in a financial crisis situation. The most frequent flaws cited by respondents included a conservative approach taken by appraisers, undervaluation of assets and the lack of solid market data.

V. Summary Tables

The below tables summarise the data collected for each of the 38 EBRD economies for each section of the New Financing Survey in respect of factual matters covered by the survey. This covers the following topics: (i) security agent structures, (ii) subordination of claims, (iii) new financing in insolvency, (iv) specific Covid-19 measures and (v) the valuation of collateral.[11]

Key:

✔ Yes ☐ Not available

✘ No ? Uncertain

[11] 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. The tables do not cover the first section of the New Financing Survey with respect to perception-based questions regarding impediments to general movables and immovables security legislation.

A. Security Agent Structures

Economy	Q.7: Are security agent structures expressly permitted?	Q.8: If yes, is it applicable to all types of security?	Q.9: If yes, is enforcement possible on behalf of secured lenders?	Q.10: Are security agent structures used in practice?	Q.11: Is the 'parallel debt' structure used?
Albania	✘			✔	✔
Armenia	✘			✘	✘
Azerbaijan	✘			✘	✘
Belarus	✘			✔	✔
Bosnia and Herzegovina	✘			✔	✔
Bulgaria	✔	✘	✔		✔
Croatia	✘			✔	✔
Cyprus	✘			✔	✘
Egypt	✔	✘	✔		
Estonia	✘			✔	✔
Georgia	✘			✔	✔
Greece	✔	✔	✔		✔
Hungary	✔	✔	✔		
Jordan	✘			✔	✘
Kazakhstan	✘			✔	✔
Kosovo	✔	✘	✔	✔	☐
Kyrgyz Republic	✘			✘	✘
Latvia	✘			✘	✔
Lebanon	✘			✔	✘
Lithuania	✘			✔	✔

Key: ✔ Yes ✘ No ? Uncertain ☐ Not available

A. Security Agent Structures

Economy	Q.7: Are security agent structures expressly permitted?	Q.8: If yes, is it applicable to all types of security?	Q.9: If yes, is enforcement possible on behalf of secured lenders?	Q.10: Are security agent structures used in practice?	Q.11: Is the 'parallel debt' structure used?
Moldova	✘			✘	✔
Mongolia	✘			✔	✘
Montenegro	✘			✔	✔
Morocco	✘			✔	✔
North Macedonia	✘			✔	✔
Poland	✔	✔	✔		
Romania	✔	✘	✔	✔	✔
Russia	✔	✔	✔		
Serbia	✔	✔	✔		
Slovak Republic	✘			✔	✘
Slovenia	✘			✔	✔
Tajikistan	✘			✘	✘
Tunisia	✘			✔	☐
Türkiye	✘			✔	✔
Turkmenistan	✘			✘	✘
Ukraine	✘			✔	✔
Uzbekistan	✘			✔	✔
West Bank and Gaza	✘			✔	✘
Total ✔	9	5	9	24	20
Total ✘	29	4	0	7	11
Total ☐	0	0	0	0	2

B. Subordination of Claims (Part 1)

Economy	Q.12: Are local law intercreditor agreements used?	Q.13: Are foreign law intercreditor agreements or subordination agreements are used?	Q.14: Are intercreditor agreements enforceable?	Q.15: If yes, are intercreditor agreements enforceable even if foreign-law governed?	Q.16: If yes, has enforceability been tested before the courts?
Albania	Yes	Yes	Yes	Yes	No
Armenia	Yes	Yes	Yes	Yes	No
Azerbaijan	Yes	Yes	Yes	Yes	No
Belarus	No	Yes	No		
Bosnia and Herzegovina	Yes	Yes	Yes	Yes	No
Bulgaria	Yes	Yes	Yes	Uncertain	No
Croatia	Yes	Yes	Yes	Yes	No
Cyprus	Yes	Yes	Yes	Yes	No
Egypt	Yes	Yes	Yes	Yes	Yes
Estonia	Yes	Yes	Yes	Yes	No
Georgia	No	Yes	Yes	Yes	No
Greece	Yes	Yes	Yes	Yes	No
Hungary	Yes	Yes	Yes	Yes	No
Jordan	Yes	Yes	Yes	Yes	No
Kazakhstan	No	Yes	Yes	Yes	No
Kosovo	Not available	Yes	Yes	Yes	No
Kyrgyz Republic	Yes	No	No		
Latvia	Yes	Yes	Yes	Yes	No
Lebanon	Yes	Yes	Yes	Yes	Yes
Lithuania	Yes	Yes	Yes	Yes	No

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Economy	Q.12: Are local law intercreditor agreements used?	Q.13: Are foreign law intercreditor agreements or subordination agreements are used?	Q.14: Are intercreditor agreements enforceable?	Q.15: If yes, are intercreditor agreements enforceable even if foreign-law governed?	Q.16: If yes, has enforceability been tested before the courts?
Moldova	✔	✔	✔	✔	✘
Mongolia	✘	✔	✔	✔	✘
Montenegro	✘	✔	✔	✔	✘
Morocco	✔	✘	✔	✔	✘
North Macedonia	✔	✔	✔	✔	✘
Poland	✔	✔	✔	✔	✘
Romania	✔	✔	✔	✔	✘
Russia	✔	✘	✔	✘	✘
Serbia	✔	✔	✔	✔	✘
Slovak Republic	✔	✔	✔	✔	✘
Slovenia	✔	✔	✔	✔	✘
Tajikistan	✘	✔	✘		
Tunisia	✘	✔	✔	✔	✘
Türkiye	✔	✔	✔	✔	✘
Turkmenistan	✘	✘	✔	✔	✘
Ukraine	✘	✔	✔	✔	✘
Uzbekistan	✘	✔	✘		
West Bank and Gaza	✔	✔	✔	✘	✘
Total ✔	27	34	32	31	2
Total ✘	10	4	4	2	32
Total ☐	1	0	0	0	0
Total ?	0	0	0	1	0

Key: ✔ Yes ✘ No ? Uncertain ☐ Not available

C. Subordination of Claims (Part 2)

Economy	Q.17: Can creditors voluntarily subordinate their claims to other creditors' claims?	Q.18: If yes, is registration of such agreement required?	Q.19: Is subordination enforceable in insolvency of security grantor?	Q.20: If yes, is subordination enforceable even if foreign-law governed?
Albania	✔	✔	✔	✔
Armenia	✔	✘	✘	
Azerbaijan	✔	✘	✔	✔
Belarus	✘		✘	
Bosnia and Herzegovina	✔	✔	✔	✔
Bulgaria	✔	✘	✔	☐
Croatia	✔	✔	✔	✔
Cyprus	✔	✘	✔	✔
Egypt	✔	✘	?	
Estonia	✔	✘	✔	✔
Georgia	✔	✘	✔	✔
Greece	✔	✘	✔	✔
Hungary	✔	✘	?	✔
Jordan	✔	✘	✔	✔
Kazakhstan	✔	✘	✔	✔
Kosovo	✔	✔	✔	✔
Kyrgyz Republic	✘		✘	
Latvia	✔	✘	✘	
Lebanon	✔	✘	✘	
Lithuania	✔	✘	✘	

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Economy	Q.17: Can creditors voluntarily subordinate their claims to other creditors' claims?	Q.18: If yes, is registration of such agreement required?	Q.19: Is subordination enforceable in insolvency of security grantor?	Q.20: If yes, is subordination enforceable even if foreign-law governed?
Moldova	✔	✘	✘	
Mongolia	✔	✘	✔	✔
Montenegro	✔	✘	?	✔
Morocco	✔	✘	✔	✔
North Macedonia	✔	✘	✘	
Poland	✔	✘	✘	
Romania	✔	✘	?	☐
Russia	✘		✘	
Serbia	✔	✘	✔	✔
Slovak Republic	✔	✘	✔	✘
Slovenia	✔	✘	✔	✔
Tajikistan	?	✘	?	☐
Tunisia	✔	✘	✘	
Türkiye	✘		✔	✔
Turkmenistan	✘		✘	
Ukraine	✔	✘	✘	
Uzbekistan	✔	✘	✘	
West Bank and Gaza	✔	✘	✔	✘
Total ✔	32	4	19	18
Total ✘	5	29	14	2
Total ☐	0	0	0	3
Total ?	1	0	5	0

D. New Financing in Insolvency

Economy	Q.21: Is new financing expressly permitted?	Q.22[12]: Can security be granted for new financing?	Q.23[13]: Can new financing be provided on priority basis ahead of existing unsecured creditors?	Q.24: Risk of avoidance actions exists in insolvency?	Q.25: Lender liability risk for lending to financially distressed borrower?	Q.26: Regulatory restrictions preventing banks from lending to financially distressed borrower?
Albania	✓	✗	✓	✗	✗	✗
Armenia	✓	✓	✓	✗	✗	✗
Azerbaijan	✓	✗	✗	✓	✗	✓
Belarus	✓	✗	✗	✓	✓	✓
Bosnia and Herzegovina	✓	✓	✓	✓	✗	✗
Bulgaria	✗	✗	✗	✓	✓	✓
Croatia	✓	✓	✓	✗	✗	✓
Cyprus	✓	✗	✓	✓	✗	✓
Egypt	✓	✓	✓	✓	✗	✓
Estonia	✓	✗	✗	✓	✓	✗
Georgia	✗	✓	✓	✗	✗	✓
Greece	✓	✓	✓	✗	✗	✗
Hungary	✓	✓	✓	✓	✗	✓
Jordan	✓	✓	✓	✓	✗	✓
Kazakhstan	✓	?	✗	✓	✗	✓
Kosovo	✓	✓	✓	✓	✗	✓
Kyrgyz Republic	✓	✗	✓	✗	✗	✗
Latvia	✓	✓	✓	✓	☐	✗
Lebanon	✗	✗	✗	✓	✓	✗
Lithuania	✓	✓	✓	✗	✗	✗
Moldova	✓	✓	✓	✗	✗	✗

[12] Q.22 can be a Yes even if Q.21 is a No, as new financing can be provided, not only via the existence of express provisions in the law (which is the rationale behind Q.21), but also through the court's or creditors' approval and thus security can be provided.

[13] Q.23 can be a Yes if Q.21 is a Yes, as the legislation might expressly contain super-priority rules for new financing or if Q.21 is a No but Q.22 is a Yes as then security will be granted to new financing or subordination might be agreed among the creditors.

D. New Financing in Insolvency

Economy	Q.21: Is new financing expressly permitted?	Q.22[12]: Can security be granted for new financing?	Q.23[13]: Can new financing be provided on priority basis ahead of existing unsecured creditors?	Q.24: Risk of avoidance actions exists in insolvency?	Q.25: Lender liability risk for lending to financially distressed borrower?	Q.26: Regulatory restrictions preventing banks from lending to financially distressed borrower?
Mongolia	✘	?	?[14]	✔	✘	✘
Montenegro	✘	✔	✔	✔	✘	✘
Morocco	✔	✔	✔	✔	✔	✘
North Macedonia	✔	✔	✔	✔	✘	✘
Poland	✔	✔	✔	✔	✔	✔
Romania	✔	✔	✔	✘	✔	✘
Russia	✔	✔	✔	✔	✔	✘
Serbia	✔	✔	✔	✘	✘	✔
Slovak Republic	✔	✔	✔	✘	✘	✘
Slovenia	✔	✔	✔	✘	✘	✘
Tajikistan	✘	✘	✘	✘	✘	✔
Tunisia	✔	✔	✔	✔	✘	☐
Türkiye	✔	✔	✘	✔	✘	✘
Turkmenistan	✘	✘	✘	✔	✘	✘
Ukraine	✘	✔	✔[15]	✔	✔	✘
Uzbekistan	✔	✘	✔	✘	✘	✘
West Bank and Gaza	✘	✘	✘	✔	✘	✔
Total ✔	29	24	27	24	9	15
Total ✘	9	12	10	14	28	22
Total ☐	0	0	0	0	1	1
Total ?	0	2	1	0	0	0

[14] The Mongolian Economy Profile of the Insolvency Assessment provides that: *"there is no protection of new financing but claims arising from contracts concluded during rehabilitation procedure are satisfied before unsecured creditors"*.

[15] The Ukrainian Economy Profile of the Assessment provides that: *"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 or creditors may, agree in the in-court rehabilitation plan that their claims rank shall below any new financing"*.

E. Specific Covid-19 Measures

Economy	Q.27: Covid-19 emergency measures introduced by authorities?	Q.28: Creditor protection emergency rules introduced?	Q.29: Regulatory measures relating to connected creditors eased?	Q.30: Special state guarantee funds deployed?	Q.31: If yes, is collateral required in the case of special state guarantee funds?	Q.32 Special (re)financing programmes by central banks introduced?
Albania	✔	✘	✘	✔	✘	✘
Armenia	✔	✘	✘	☐	☐	✔
Azerbaijan	✔	✘	✘	✔	✔	✘
Belarus	✔	✘	✘	✘		✘
Bosnia and Herzegovina	✔	✘	✘	✔	✘	✘
Bulgaria	✔	✘	✘	✔	✔	✘
Croatia	✔	✘	✔	✔	✘	✔
Cyprus	✔	✘	✘	✘		✔
Egypt	✔	✘	✘	✘		✘
Estonia	✔	✘	✘	✔	✔	✘
Georgia	✔	✘	✘	✔	✔	✘
Greece	✔	✘	✘	✔	✘	✔
Hungary	✔	✘	✔	✔	?	✔
Jordan	✔	✘	✘	✘		✘
Kazakhstan	✔	✘	✘	✔	✔	✘
Kosovo	✔	✘	✘	✔	✔	✘
Kyrgyz Republic	✔	✘	✘	✘		✘
Latvia	✔	✘	✘	✔	✘	✘
Lebanon	✔	✘	✘	✘		✘
Lithuania	✘	✘	✘	✔	✘	✔
Moldova	✔	✘	✘	✘		✘

E. Specific Covid-19 Measures

Economy	Q.27: Covid-19 emergency measures introduced by authorities?	Q.28: Creditor protection emergency rules introduced?	Q.29: Regulatory measures relating to connected creditors eased?	Q.30: Special state guarantee funds deployed?	Q.31: If yes, is collateral required in the case of special state guarantee funds?	Q.32 Special (re)financing programmes by central banks introduced?
Mongolia	✔	✘	✘	✘		✘
Montenegro	✔	✘	✘	✘		✘
Morocco	✘	✘	✘	✘		✘
North Macedonia	✔	✘	✘	✔	☐	✔
Poland	✔	✔	✘	✔	☐	✔
Romania	✔	✘	✘	✔	✔	✘
Russia	✔	✘	✘	✘		✔
Serbia	✔	✘	✘	✔	✔	✘
Slovak Republic	✔	✘	✘	✔	✘	✘
Slovenia	✔	✘	✘	✔	✘	✘
Tajikistan	✔	✘	✘	✘		✔
Tunisia	✘	✘	✘	✔	☐	☐
Türkiye	✔	✘	✘	✔	✔	✘
Turkmenistan	✘	✘	✘	✘		✘
Ukraine	✔	✘	✘	✘		✘
Uzbekistan	✔	✘	✘	✔	✘	✘
West Bank and Gaza	✔	✘	✘	✘		✘
Total ✔	34	1	2	22	9	10
Total ✘	4	37	36	15	9	27
Total ☐	0	0	0	1	4	1
Total ?	0	0	0	0	1	0

F. Valuation of Collateral

Economy	Q.33: Easy to obtain independent valuation of collateral?	Q.34: Appraiser / valuation industry is regulated?
Albania	✔	✘
Armenia	✔	✔
Azerbaijan	✔	✔
Belarus	✘	✔
Bosnia and Herzegovina	✘	✘
Bulgaria	✔	✔
Croatia	✔	✔
Cyprus	✔	✔
Egypt	✔	✔
Estonia	✔	✘
Georgia	✔	✘
Greece	✔	✔
Hungary	✔	✔
Jordan	✔	✘
Kazakhstan	✔	✔
Kosovo	✔	✔
Kyrgyz Republic	☐	✔
Latvia	✔	✔
Lebanon	✔	✘
Lithuania	✔	✔
Moldova	✔	✔

F. Valuation of Collateral

Economy	Q.33: Easy to obtain independent valuation of collateral?	Q.34: Appraiser / valuation industry is regulated?
Mongolia	✘	✔
Montenegro	✔	✔
Morocco	✔	✘
North Macedonia	✔	✔
Poland	✔	✔
Romania	✔	✔
Russia	✔	✔
Serbia	✔	✔
Slovak Republic	✔	✔
Slovenia	✔	✔
Tajikistan	✔	✔
Tunisia	✔	✘
Türkiye	✔	✔
Turkmenistan	✔	✔
Ukraine	✔	✔
Uzbekistan	✔	✔
West Bank and Gaza	✔	✔
✔	34	30
✘	3	8
☐	1	0

Annex I: Law Firm Respondents

This Annex acknowledges the law firms and their representatives that assisted with completing the New Financing Survey. The EBRD would like to thank all those who responded to the questionnaire. The time and commitment offered by all participants greatly contributed to the overall value of this report.

Economy	Law firm	Contributor
Albania	Tashko Pustina	Florian Hasko
	Boga & Associates	Genc Boga
Armenia	TK & Partners CJSC	Aleksandr Khachaturyan
	Anonymous	-
Azerbaijan	Dentons	Ulvia Zeynalova-Bockin
	Omni Law Firm	Afag Bayramova
	BM Morrison Partners LLC	Delara Israfilova and Mustafa Salamov
Belarus	VMP Vlasova Mikhel & Partners	Tatiana Emelianova
	Sorainen	Kiryl Apanasevich
Bosnia and Herzegovina	Marić & Co	Branko Marić
Bulgaria	DPC Law Firm	Alexander Georgiev
	CMS CMNO LLP	Konstantin Stoyanov
Croatia	Mamić Perić Reberski Rimac Law Firm	Luka Rimac
	Law Firm Anđelović, Siketić & Tomić Ltd	Petra Siketić
Cyprus	Maria Kyriacou & Associates LLC	Maria Kyriacou
	George Pamboridis LLC	Spyrou Christy
Egypt	Sharkawy and Sarhan Law Firm	Noha Eissa Zakaria
	Al Tamimi & Co	Bassem Abdelrahman

Economy	Law firm	Contributor
Estonia	Advokaadibüroo Sorainen AS	Kätlin Krisak
	Ellex	Ermo Kosk
Georgia	BGI Advisory Services Georgia	Lasha Gogiberidze
Greece	Karatzas & Partners Law Firm	Alexander Metallinos
Hungary	Anonymous	-
	DLA Piper Hungary	Zoltan Fabok and Gábor Borbély
	CMS Hungary	Erika Papp
Jordan	Ali Sharif Zu'bi Advocates	Jumana Toukan
Kazakhstan	Dentons	Vassiliy Zenov
	Kinstellar	Adlet Yerkinbayev
	GRATA International Law Firm	Shaimerden Chikanayev
Kosovo	Pallaska &Associates L.L.C.	Edita Ismaili
	Shita & Ibrahimaga Law Firm	Ardi Shita and Virtyt Ibrahimaga
Kyrgyz Republic	Lorenz Law Firm	Saara Kabaeva
Latvia	Sorainen	Edvīns Draba
	Cobalt Law Firm	Gatis Flinters
Lebanon	Abousleiman & Partners	Randa Abousleiman

Economy	Law firm	Contributor
Lithuania	Sorainen Law Firm	Augustas Klezys
	Cobalt Law Firm	Lina Aleknaite
Moldova	Gladei & Partners Law Firm	Pavel Spatari
Mongolia	KhanLex Partners LLP	Enkhbat Batsukh
	GRATA International	Shagdarsuren Zuunai
Montenegro	BDK Advokati	Luka Popovic
	Moravcevic Vojnovic i Partneri AOD in cooperation with Schoenherr	Nikola Babic and Jovan Barovic
Morocco	Gide Loyrette Nouel	David Julien
North Macedonia	Schoenherr	Andrea Lazarevska
	Polenak Law Firm	Tatjana Shishkovska
Poland	Baker McKenzie	Rafal Zakrzewski
Romania	RTPR	Victor Padurari
	Clifford Chance Badea SPRL	Madalina Rachieru
Russia	Ilyashev&partners	Dmitry Konstantinov

Economy	Law firm	Contributor
Serbia	Law Office Miroslav Stojanovic in cooperation with Wolf Theiss	Milos Andjelkovic
	Karanovic & Partners	Katarina Guduric
	Harrisons	Aleksandar Jovićević
	Moravcevic Vojnovic i Partneri AOD in cooperation with Schoenherr	Nikola Babic and Jovan Barovic
	Bojovic Draskovic Popovic & Partners	Uros Popovic
Slovak Republic	Majerník & Mihálíková Law Firm	Ivan Kormaník
Slovenia	Law Firm Jadek & Pensa	Aljaž Cankar
	Odvetniki Šelih & partnerji	Nina Šelih
	Law Firm Franc Cmok ltd.	Franc Cmok
Tajikistan	Nazrisho and Mirzoev, LLC	Sherzod Sodatkadamov
Tunisia	Meziou & Elleuch Law Firm	Meziou Ahmed
Türkiye	GKC Partners	Ceren Sen
	Paksoy Law Firm	Sera Somay
Turkmenistan	ACT Law Firm	Vladimir Dolzhikov
	ES Altyn Kanun (AK Counsel)	Mkrtumova Yana and Kerim Akmammedov
Ukraine	Avellum	Glib Bondar
	Sayenko Kharenko	Igor Lozenko
Uzbekistan	Centil Law Firm	Sofia Shaykhrazieva
West Bank and Gaza	Amro, Zahaikah & Associates Law Office	Ernest Abelyan
	A. F. & R. Shehadeh Law Firm	Aziz Shehadeh

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Annex II: EBRD New Financing Survey

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Annex III: Economy Responses