Speaking notes – José M. Garrido (IMF)[1]

It is both a pleasure and an honor to be able to participate in this panel discussion to provide an overview of the experience of the IMF in the assessment of insolvency systems.

The key functions of the IMF are the surveillance of the international monetary system and the monitoring of members' economic and financial policies, the provision of Fund financing to member countries to address their balance of payments problems, and the delivery of technical assistance and financial services. The surveillance of the economic health of member countries, and of developments that create risks to economic growth and financial stability can require the analysis of the national insolvency regime. In fact, sound insolvency regimes are crucial for economic growth, financial stability, and for delivering an adequate response in the event of an economic crisis.

I will briefly speak about the methodology we use for assessments, how we design and use indicators, and how we aim at integrating empirical data in insolvency analysis.

1. The methodology used for the assessment of insolvency systems

For the assessment of insolvency systems, we use the methodology developed in accordance with the international insolvency standard.

Assessments of insolvency system can be conducted in the context of surveillance (so-called Article IV consultations), in the context of broader financial sector assessments (FSAPs) or as part of technical assistance requested by national authorities.

As indicated before, the insolvency and creditor rights standard is composed of the World Bank Principles and recommendations from the UNCITRAL Legislative Guide on Insolvency Law, and has been compiled by both organizations, in consultation with the IMF. The standard is broad, with a strong emphasis on insolvency law, but includes also other important elements in the protection of creditor rights. As an assessment tool, it is extremely useful to identify issues and help countries improve their insolvency regimes.

The methodology was developed by the World Bank and UNCITRAL on the basis of the standard, with the assistance of the IMF. The latest version is from 2011, and it includes 285 criteria for assessing compliance. The methodology is very detailed; it sets out all the essential criteria that need to be taken into account by assessors. It focuses mainly on specific features of insolvency law, including liquidation, reorganization, cross-border insolvency and institutional aspects. The analysis focuses not only on the law: there is also room for how the legal provisions are applied in practice. Many of the assessment criteria come from the recommendations in the Legislative Guide, since the Principles tend to be high-level. In this

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way, the solutions included in the Guide are extremely useful and provide the backbone for the assessment of insolvency systems.

2. The use and design of indicators

Let me turn now to the use of indicators. The IMF puts a strong emphasis on economic research. At the intersection between the law and the economy, there are many promising lines of analysis, including research on the economic effects of insolvency law. There is abundant economic research that makes use of indicators that refer to legal or institutional characteristics to assess their interaction with the economy. In 2018, the IMF issued a guidance note for the use of third-party indicators in Fund reports. Essentially, indicators created by third parties can be used, but IMF staff need to understand them, including its methodology and limitations. For this reason, there is a preference for using indicators created by the Fund itself.

We have designed two indicators for research connected with insolvency regimes. In 2020, we published a Working paper on the prevention and treatment of over-indebtedness in Asia, which included an indicator measuring various aspects of the legal regime for enterprise and personal insolvency. This allowed the economists to test several hypotheses about the relation between the law and the economy. Then, more recently, in February 2022, we designed another indicator to measure the degree in which legal systems would be prepared to face a corporate debt crisis. This "crisis preparedness indicator" is built with elements from the standard that we have found to be especially useful in cases of crisis. Our indicators are based on core elements of the insolvency standard, although they may extend further than the standard, or emphasize certain aspects of it.

We believe that these indicators perform a useful function in supporting economic research and delivering an interdisciplinary message. However, indicators are just indicators. They merely point to the possible existence of issues and always require further analysis, so they are considered more a research tool than an assessment tool. In addition, we do not use rankings, as we believe their negative aspects outweigh any positive effects they might have.

3. Empirical data in insolvency analysis

Finally, let me just say a few words about empirical data.

We are firm believers in the use of empirical data. This has been the traditional position of economists, but we also believe that this is the future for the law. A lot of the disputes and controversies in the design of insolvency laws are based on opposing ideologies (or rather, opposing prejudices), but there is scarce empirical evidence to support positions in favor -or against- any given solution.

We provided some indications on how to use data in assessing and designing insolvency systems in a Working paper published in 2019.

Granular statistics allow making accurate judgments of what works and what does not work in a legal system. Insolvency systems need to perform effectively crucial economic functions and ultimately, the most reliable assessment of their performance will be based on actual data.