

UNCITRAL 55TH SESSION

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Good morning ladies and gentlemen and distinguished representatives, I am delighted to participate in today's event on behalf of the European Bank for Reconstruction and Development. As mentioned by Samira, I will provide a brief overview of the recent EBRD Business Reorganisation Assessment conducted in cooperation with UNCITRAL and future EBRD activities in the insolvency sphere.

A. Background of the EBRD Assessment

1. We regularly carry out legal assessments in countries where the EBRD invests to benchmark national legal frameworks against leading international practices. This helps us to identify any gaps and countries where we should prioritise EBRD technical cooperation activities. For example, in insolvency we have worked on many projects related to strengthening the insolvency practitioner profession, as well as projects involving wholesale reform of domestic insolvency legislation. The information that we collect as part of our assessments is also used for EBRD-wide country strategies and policy engagement.
2. In February 2022, the EBRD published a comprehensive Assessment Report covering 38 EBRD economies of operations and 40 jurisdictions¹ across all eight EBRD regions (Central Asia, Central Europe and Baltic States, Cyprus and Greece, Eastern Europe and the Caucasus, Russia, South Eastern Europe, South and Eastern Mediterranean and Turkey).
3. The focus of the assessment was on formal legislative procedures (so-called 'business reorganisation procedures') that are aimed at restructuring the financial liabilities of businesses that are either insolvent or in financial difficulties, but we also looked at the broader insolvency framework.
4. The Assessment consists of a Main Report, 40 Economy Profiles that provide a snapshot of the insolvency system in each economy and 20 Annexes with detailed comparative information on insolvency.
5. All materials are available for consultation on our website: ebrd-restructuring.com which contains a link to Tableau Public where all the data from our questionnaire is stored. In total, 500 respondents completed the Assessment questionnaire.²
6. The Main Report includes a comparative analysis and ranking of EBRD economies by overall score based on a methodology developed by the EBRD. The ranking includes a 'bonus' score awarded to economies that publish clear and comprehensive insolvency data.

¹ Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina (Federation and Republika Srpska), 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, Turkey, Turkmenistan, Ukraine, Uzbekistan, West Bank and Gaza.

² Across the EBRD's 40 jurisdictions and 17 'external' jurisdictions outside the EBRD regions including BRICS and some EU (non-EBRD) countries The majority of respondents (68%) were legal professionals while 12% were from the financial institutions sector. Others were from a variety of backgrounds including accountancy and the judiciary.

7. Performance of economies in the Main Report is also measured according to three benchmarks: Efficiency, Effectiveness and Flexibility, which are all tailored to business reorganisation indicators. The Efficiency benchmark is aligned with Principle 5 (Provision for timely, efficient and impartial resolution of insolvency) of the UNCITRAL Guide while also incorporating 'economic' efficiency. The effectiveness and flexibility benchmarks reflect the general desire for sufficient reorganisation tools (for example the right to choose affected creditors and intra and cross class cram down) and procedural and legislative flexibility (including one or more available procedures, hybrid procedures, and simplified procedures for SMEs).

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B. Connection with UNCITRAL

The EBRD Assessment and methodology is aligned with core parts of the UNCITRAL Legislative Guide on Insolvency and the 2019 EU Directive on preventive restructuring.

We underscore the importance of expedited reorganisation proceedings for debtor that are not yet insolvent, protection for post-commencement financing, which is critical for reorganisation and protection of essential contracts for the debtor's business which help to secure the business' ongoing operations.

We also consider the availability of cross-border insolvency provisions, important for successful business reorganisation, as well as cross-border trade and the attraction of external investment.

C. Assessment Main Conclusions

I will briefly highlight a five conclusions from the Assessment which are relevant for the EBRD's future cooperation with UNCITRAL.

1. Business Reorganisation Procedures

More work is needed to improve business reorganisation procedures in practice. A few areas for improvement include:

Accelerated (hybrid) reorganisation procedures, which are only available in half of the EBRD economies of operations.

New financing (or post-commencement financing), which do not benefit from any special protection within insolvency proceedings in 15 jurisdictions.

Protection from third-party contractual termination in at least one of the available reorganisation procedures, which is missing in the majority of jurisdictions (20).

2. Cross-border insolvency

Coordination between jurisdictions and better administration of cross-border insolvency proceedings is also essential.

Officially, the UNCITRAL Model Law on Cross Border Insolvency has only been substantially implemented in six economies where the EBRD invests.

A further nine economies have however implemented similar provisions.

But this leaves over half of EBRD economies (23 in total) without any provisions on cross-border insolvency.

3. SMEs

There is also a lot to be done on the policy-front to encourage legislators to think about micro and small enterprises now we have UNCITRAL's recommendations.

Only three EBRD economies have developed specific provisions based on the company's size for reorganisation-type procedures.³

4. Specialised courts and office holders

More is needed to encourage the development of specialist courts and judges for commercial insolvency law. **Only 19 out of 38 EBRD economies have commercial courts or (in the case of one economy) a dedicated insolvency court for insolvency cases.**

In the remaining jurisdictions, insolvency and reorganisation cases (and commercial cases generally) are handled by the courts of general civil jurisdiction.

On a positive note, in all but four EBRD economies, insolvency office holders must have a formal authorisation to act in insolvency procedures.

5. Data gathering and analysis of data (investors and transparency)

We are not able to fully assess and compare insolvency systems due to an absence of insolvency data. Only five out of 38 economies have dedicated insolvency registers with up-to-date insolvency data on different procedures (three of these are EU Member States). More insolvency registers are expected in other EU Member States and we expect to see an increase in the divide between EU and non-EU economies in our regions of operations.

In other economies data is limited and irregular and in 10 economies where the EBRD invests, there is no reporting of insolvency data (and no clearly identifiable centralised authority responsible for the collection of insolvency data). This needs to change.

Next Steps

The EBRD plans to finance the maintenance and update of the EBRD Business Assessment over the next two years.

³ Hungary and Kosovo have fully-fledged reorganisation regimes with reduced formalities for financially distressed SMEs. Slovenia has a procedure for micro sized enterprises and entrepreneurs. There are a few countries (Czech Republic and Greece for example) which have liquidation procedures for micro and smaller companies.

As part of this extension, we will work with UNCITRAL to gather more information on the influence of the UNCITRAL Model Law on Cross Border Insolvency and to raise awareness in the EBRD regions of the benefits and need for cross-border insolvency provisions.

We will also continue to monitor developments in relation to micro and smaller sized companies, which we expect to become more relevant for future insolvency law reform.

Finally, we will work to advocate for better data collection and publication on insolvency to be able to track insolvency developments and the influence of UNCITRAL, the World Bank and other international organisations in the insolvency field. Our next EBRD project is a practical guide to publication of insolvency data for national authorities.