The impact of the COVID-19 pandemic on international insolvency policy-making

Catherine Bridge Zoller reports on the key findings of the EBRD's recent project with INSOL Europe

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The COVID-19 pandemic and ensuing economic crisis have been an important spur to the policy work at the European Bank for Reconstruction and Development (EBRD) in the area of corporate insolvency.

They have been an opportunity to strengthen EBRD cooperation with other international financial institutions from the European Commission and the IMF, to the World Bank and UNCITRAL and to develop closer partnerships and networks with private sector associations, particularly INSOL Europe and its members. These contacts have been instrumental for EBRD's research and international standard setting. During the course of our association with INSOL Europe, we have revised our core insolvency standards and completed a successful comparative research project on business insolvency.

For readers who may not be that familiar with the world of IFIs, the EBRD is a multilateral development bank headquartered in London and established in 1991, following the collapse of the former Soviet Union. Our mission is to develop open and sustainable market economies in countries committed to, and applying, democratic principles. We operate across a number of sub-regions: Central Asia, Central Europe and Baltic States, Cyprus and Greece, Eastern Europe and the Caucasus, South Eastern Europe, parts of North Africa (known as the 'Southern and Eastern Mediterranean' or SEMED) and Turkey. Since the war in Ukraine, we have closed our offices in Russia and Belarus, although we stopped new investments in 2014 and 2020 respectively.

In addition to being a bank and a key investor in many markets, the EBRD is actively involved in policy-making. EBRD economists are influential in the policy sphere, but lawyers also play an important role through the Bank's Legal Transition Programme. The programme's objective is to improve the legal and investment environment in the economies where the EBRD invests. We regularly work on projects for commercial legislative reform, including a number of EU projects to transpose the Preventive Restructuring Directive. We also carry out capacity building and training of judges and insolvency practitioners in countries familiar to INSOL Europe, such as Croatia and Cyprus, as well as more remote and exotic locations like Armenia. Recently our insolvency project list has expanded to include projects with an IT and statistical reporting component, as well as initiatives to provide SMEs and entrepreneurs with financial and business guidance.

The COVID-19 crisis has been unique in its global effects. It affected, often profoundly, developed and emerging markets. At the EBRD, we quickly realised that we needed to set some priorities for our technical assistance projects and policy engagement that could support the Covid-19 emergency financial assistance packages provided by the EBRD, the European Union, the European Investment Bank, the International Monetary Fund (IMF) and the World Bank Group and many national authorities. In May 2020, I published the "EBRD Covid-19 Response: Financial Restructuring and Insolvency Discussion Paper" to invite comments and opinions from stakeholders on what we needed to prioritise.

By 2020, our insolvency standards by which we benchmark our projects against best international practices: the 'EBRD Core Principles of an Effective Insolvency System'[1] and the 'EBRD Insolvency Office Holder Principles'[2] were out of date. They did not reflect any of the latest trends on corporate insolvency, especially those favouring corporate rescue. This theme of a second chance was particularly important given the pandemic. Moreover, we had not yet updated our Insolvency Office Holder Principles to include any of the findings from our comprehensive 2014 assessment on the profession in 27 countries.[3]

One important initiative, therefore, was to revise these existing standards. We did this in consultation with a number of other IFIs and INSOL Europe. This resulted in 2020 in new EBRD Core Principles for an Effective Insolvency System in English (and translated into Russian) that aim to provide legislators and national authorities in the EBRD's economies of operations with high-level guidance on key objectives and international best practices in business insolvency. The principles now reflect the latest developments and trends in insolvency laws, particularly the increasing focus on the importance of statutory restructuring tools, consensual out-of-court restructuring solutions and early 'pre-insolvency' action to support business continuity. They are supported by the recast principles on insolvency office holders, which articulate the core elements that should be considered by policymakers for the development of the insolvency office holder profession and advancement of the integrity, fairness and efficiency of the insolvency law system.

In May 2020, in response to the COVID-19 pandemic, we launched another important initiative with support from INSOL Europe: the EBRD Business Reorganisation Assessment on insolvency systems. We anticipated a wave of insolvency law reform and we were keen to understand which economies the EBRD should prioritise for technical assistance supporting corporate rescue and turnaround. Published in January 2022, our Assessment report is available at www.ebrd-restructuring.com and reflects over 18 months of intensive work. It includes:

- comparative research on the EBRD regions and benchmarking against England and Wales, France, Germany and the USA;
- jurisdictional bankruptcy and insolvency profiles covering business reorganisation procedures for all 38 emerging markets where the EBRD invests; and
- stakeholder perception maps on key issues affecting reorganisation.

Possibly, without the COVID-19 crisis, we would never have attempted anything on this scale. But the lack of business travel and working from home was an opportunity to try to understand in detail the relative strength, effectiveness and flexibility of corporate reorganisation and rescue tools across EBRD regions.

Among all 38 economies assessed by the EBRD, Greece comes first, followed closely by Poland, Lithuania and Romania. In fifth place is Kosovo, propelled forward by the overall quality of its insolvency legislation. Also among the top ten performers are Moldova (in 8th place) and Albania (in 10th place). At the lower end of the spectrum are many of Central Asian and Southern and Eastern Mediterranean (SEMED) countries, such as Egypt, Lebanon, Morocco, Tunisia and West Bank and Gaza.

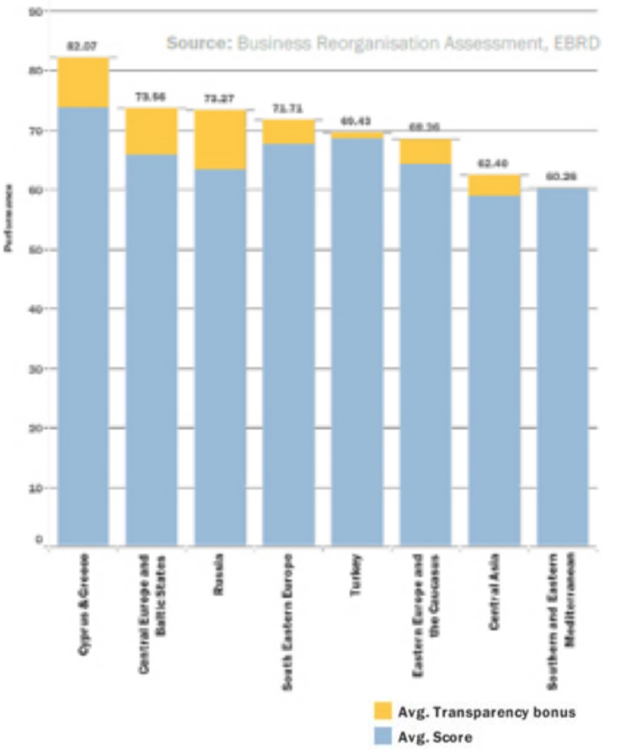
With a study of this breadth, there are many interesting findings. Transparency of insolvency data quickly became a central theme of our assessment. We discovered that 11 of the economies where the EBRD invests do not disclose publicly any data on insolvency. In other words, there is no transparency at all for the market and for investors. Furthermore, in these economies, there is no recognisable central authority or regulator. We integrated this into our methodology and ranking through a data transparency bonus of up to 10 points awarded to economies that publish comprehensive and accessible data on insolvency.

Regional differences can be clearly seen in the chart from the main assessment report. This illustrates the average performance (in descending order) of each of the EBRD sub-regions on an aggregate basis with respect to the assessment questionnaire and the data transparency bonus. It evidences a significant 22-point gap between Greece and Cyprus and the SEMED region.

Another important finding from the assessment is the apparent lack of popularity of business reorganisation procedures in many economies where the EBRD invests according to questionnaire respondents. Many respondents also believe that private workouts are not widespread. One reason for this may be the lingering negative stigma that affects all aspects of insolvency and bankruptcy, notwithstanding whether the goal of a given procedure is reorganisation of the debtor business.

With support from INSOL Europe members and the

Figure 6.34 Overall business reorganisation assessment score including the Data Transparency Factor across EBRD subregions



generous time contributed *pro bono* by our law firm partners, we hope to be able to maintain the economy profiles published at the www.ebrd-restructuring.com website. These legislative overviews can thus continue to be a useful and practical source of information for investors and policymakers in emerging markets. Our vision is also to improve data collection and transparency among national authorities. By further articulating what type of data regulators should collect and publish, we aim to establish a stronger link between insolvency data and policy-making in economies where EBRD is active. ■

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Footnotes:

1 Available at: <https://www.ebrd.com/legal-reform/ebrd-insolvency-core-principles.pdf>.

2 Available at: <https://www.ebrd.com/legal-reform/insolvency/ioh_principles.pdf>.

3 See: <https://ebrd-restructuring.com/ioh-assessment>.