2020 International Insolvency Forum

One Year into COVID-19: What Are the Implications for Restructurings Around the Globe in 2021?

Presented by INSOL

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COVID-19

Nastascha Harduth
18 November 2020

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COVID-19 – RESHAPING AFRICA'S FUTURE

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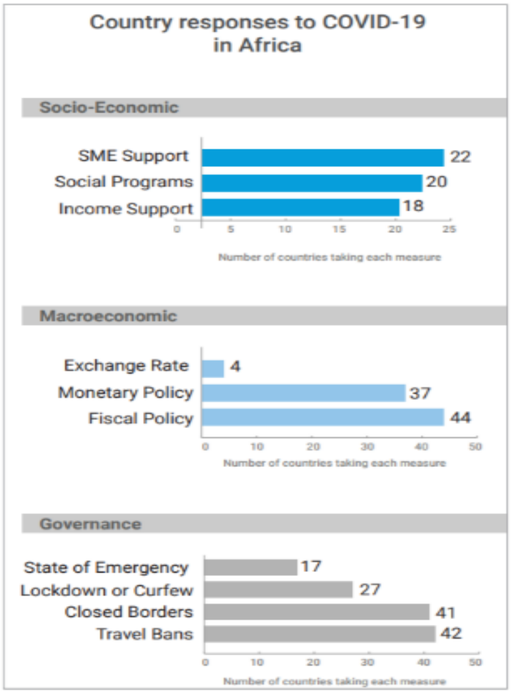
- There is no argument that the local economic and social spheres as well as global spheres have been challenged and some sectors have been drastically dismantled (Malpass D, World Bank president's remarks to the Development Committee 2020).

- Out of 54 African countries, more than half have put in place measures to respond to the Covid-19 pandemic



Source: UNDP[9]

COVID-19 – RESHAPING AFRICA'S FUTURE

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According to a UN Policy Brief of 20 May 2020:

> The expected consequences of the COVID-19 pandemic are dire

CHART 3. ILLUSTRATED CONSEQUENCES OF COVID-19 IN AFRICA

	First Order Effects	Second Order Effects	Third Order Effects
Economic	• GDP drops • Trade Balance worsens • Job and livelihood losses • Wealth depletion • Increased health and related spending	• Domestic supply chains collapse • Economic activity stalls • Increased non-formal activity	• Recession • Debt crisis • Financial distress
Social	• Loss of lives • Social spending reduced • Disproportionate impact on vulnerable groups • Social services disrupted	• Widespread deprivation • Social disaffection • Breakdown in social services	• Increased inequalities • Human development • losses • Vulnerable groups victimized • Societal unrest
Political	• Politicized responses	• Erosion of trust • Politicization of law enforcement	• Political unrest • Political violence

COVID-19 – RESHAPING AFRICA'S FUTURE

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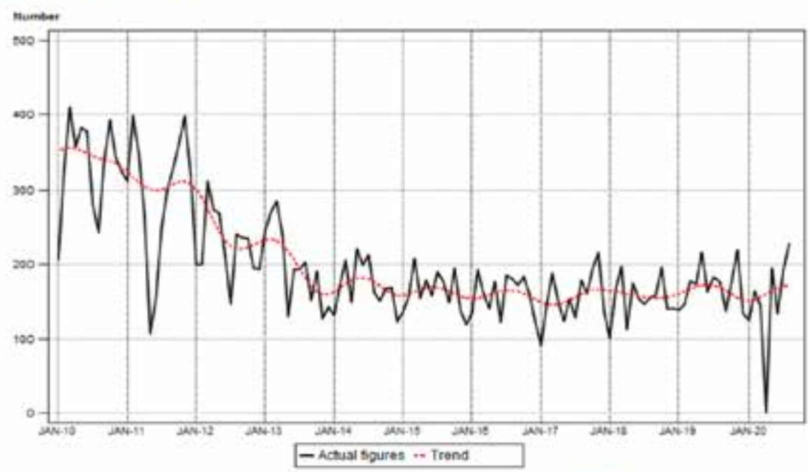
According to STATS SA statistical release of August 2020:

> A year-on-year increase in liquidations of 29,5% was recorded in August 2020 in South Africa, but has levelled out over a 10 year period

Figure 1 – Number of liquidations



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COVID-19 – RESHAPING AFRICA'S FUTURE

But Africans are resilient. According to a UN Policy Brief of 20 May 2020:

> African countries have largely taken a middle of-the-road approach to prevention, maintaining some level of economic activity.

> With digitalisation already transforming Africa's economies in important ways, most African countries have also actively employed digital technologies to shift to cashless transactions, for example, through the use of mobile money in East Africa, which has helped reduce the risk of the spread.

> South Africa is using cell phones for contact tracing, as opportunities for telehealth also open up.

> In addition, African civil society actors and the private sector are forming unprecedented partnerships to fight the disease.

> Tech volunteers from the Ethiopian diaspora are working with the government to develop tools for contact tracing, information campaigns and data collection. In Ethiopia and Senegal, tech start-ups are using 3D printing to develop face shields and ventilator valves.

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COVID-19 – IN AFRICA HOPE SPRINGS ETERNAL

Alan Witherden, Business Development Director at Ocorian reported in Business Media Mags SA Mining that:

> From Africa's handling of the COVID-19 crisis and the shape of things to come, in the short to medium term the continent will be teeming with investment opportunities to grab.

> Technology-enabled sectors as pillars of resilience COVID-19 has been a strong revealer of the power of technology to support local and regional value chains, enabling the cost-effective delivery of a host of services to consumers confined in their homes.

> Specifically relevant in these times have been the digital education initiatives deployed in many countries, in the likes of Kenya's Eneza Education in partnership with telco giant Safaricom. In a post-COVID era, more online education platforms can help programmes and curricula achieve scale, reaching out to larger student populations at a lower cost, without the traditional brick-and-mortar investments.

> The same is true for digital meeting platforms

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COVID-19 – IN AFRICA HOPE SPRINGS ETERNAL

> Undoubtedly one of Africa's most resilient sectors to the current crisis, the financial technology industry (fintech), with its mobile-enabled payment platforms, has been providential in ensuring that large volumes of transactions could still be processed, supporting vital economic activity from isolated farmers, small enterprises and self-employed individuals. Before the pandemic, fintech was already thriving in Africa. According to WeeTracker, in 2019, fintech attracted more than 50% of the $1.34-billion raised by African start-ups.

> A strong African manufacturing industry is also a pre-requisite to the success of the impending African Continental Free Trade Area (AfCFTA). The protocol on the trading of goods within this unified market of 1.2 billion consumers was slated to commence on 1 July 2020. As a lever of trade and economic recovery, the AfCFTA implementation agenda is expected to receive priority attention from African governments after the pandemic.

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POST COVID-19 –THE EVOLUTION

In Africa and the World, there are several industries that will continue to thrive post-COVID19

> Online meeting platforms (Skype, Zoom, Teams, Google Hangouts, Blue Jeans, … this list grows and grows)

> E-learning platforms (for Adults and Kids)

> Experiences

> Entertainment streaming services

> Online shopping

> Remote medical services

> Eco friendly technologies

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POST COVID-19 – THE EVOLUTION

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Regarding Eco friendly technologies

> The food and beverage industry is highly dependent on the packaging materials by using different types of plastics. The demand for biodegradable paper & plastic packaging market is growing.

> Data Bridge Market Research reported on 9 November 2020 that the Middle East and Africa biodegradable paper and plastic packaging market is projected to register a substantial compound annual growth rate in the forecast period of 2019 to 2026.

> And even in sectors hardest hit, those companies with strong management have used the pandemic to grow their market share. E.g. FlySafair in South Africa

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POST COVID-19 – POSITIVE SENTIMENTS WORLDWIDE

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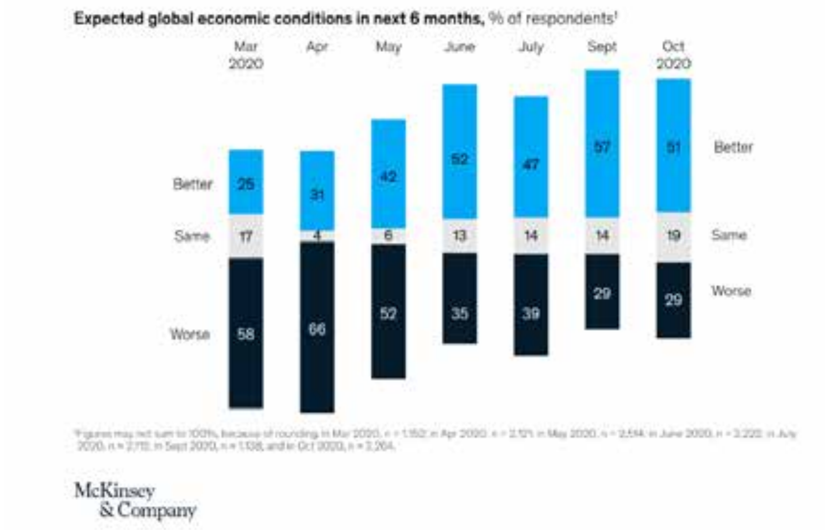
McKinsey & Co GLOBAL SURVEY – 29 October 2020:

> Outlooks on the economy and company prospects have remained more positive than negative



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POST COVID-19 – POSITIVE SENTIMENTS WORLDWIDE

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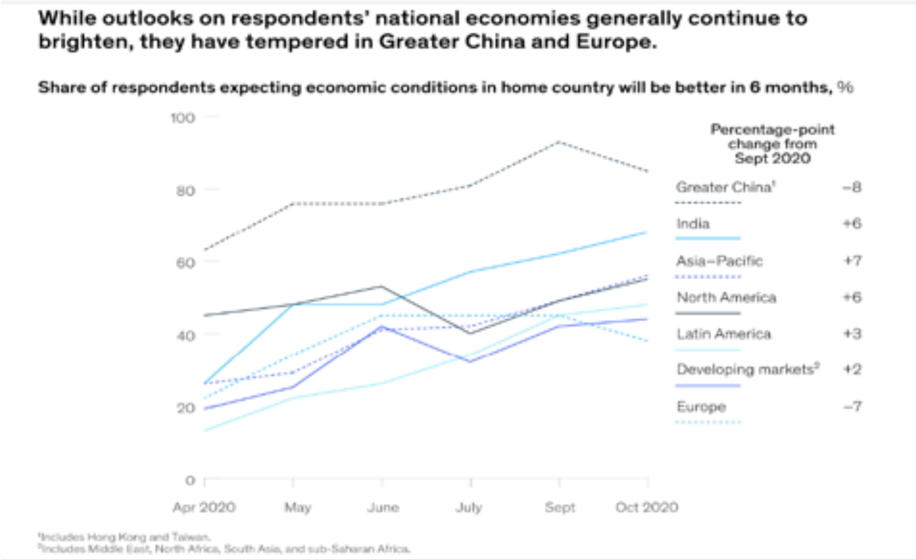
> Outlooks continue to brighten in all but two regions, namely Greater China, but where positive sentiments are still more common than in any other region, and Europe.



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POST COVID-19 – POSITIVE SENTIMENTS WORLDWIDE

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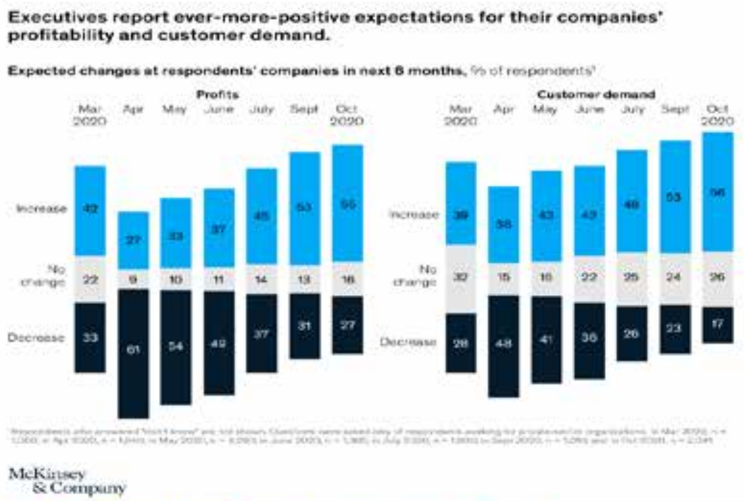
> A majority of respondents (57 percent) expect the global growth rate to increase over the next six months

> The 55 percent of respondents expecting their companies' profits to increase in the coming months, and 56 percent predict that customer demand will increase.



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COVID-19 – THIS TOO SHALL PASS

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THANK YOU

18 NOVEMBER 2020

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Emerging Market Perspectives on Restructuring

ABI International Insolvency Forum

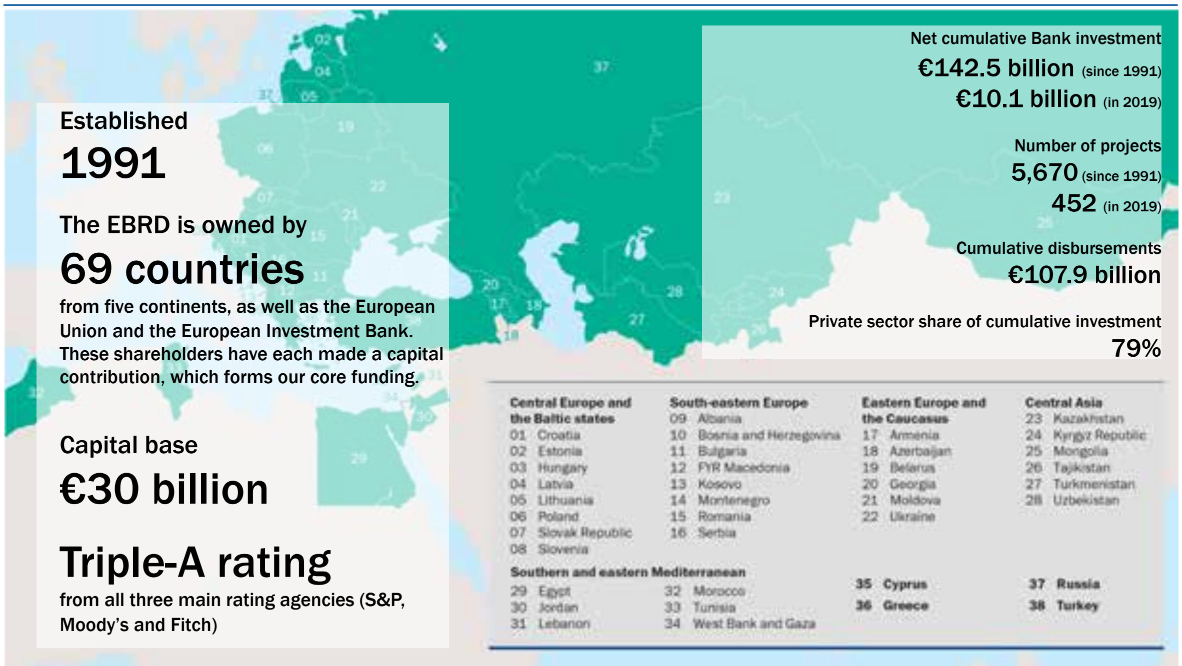
Catherine Bridge Zoller
EBRD Senior Counsel

18 November 2020

European Bank
for Reconstruction and Development

EBRD Overview
Where we invest

European Bank
for Reconstruction and Development



Established
1991

The EBRD is owned by
69 countries
from five continents, as well as the European Union and the European Investment Bank. These shareholders have each made a capital contribution, which forms our core funding.

Capital base
€30 billion

Triple-A rating
from all three main rating agencies (S&P, Moody's and Fitch)

Net cumulative Bank investment
€142.5 billion (since 1991)
€10.1 billion (in 2019)

Number of projects
5,670 (since 1991)
452 (in 2019)

Cumulative disbursements
€107.9 billion

Private sector share of cumulative investment
79%

Central Europe and the Baltic states
01 Croatia
02 Estonia
03 Hungary
04 Latvia
05 Lithuania
06 Poland
07 Slovak Republic
08 Slovenia

South-eastern Europe
09 Albania
10 Bosnia and Herzegovina
11 Bulgaria
12 FYR Macedonia
13 Kosovo
14 Montenegro
15 Romania
16 Serbia

Eastern Europe and the Caucasus
17 Armenia
18 Azerbaijan
19 Belarus
20 Georgia
21 Moldova
22 Ukraine

Central Asia
23 Kazakhstan
24 Kyrgyz Republic
25 Mongolia
26 Tajikistan
27 Turkmenistan
28 Uzbekistan

Southern and eastern Mediterranean
29 Egypt
30 Jordan
31 Lebanon
32 Morocco
33 Tunisia
34 West Bank and Gaza

35 Cyprus
36 Greece
37 Russia
38 Turkey

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Main Themes

European Bank
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1. IFI Covid-19 Financial Support
2. National Covid-19 Emergency Measures
3. Emerging Market Restructuring Issues
4. General European Policy Trends in Restructuring

Impact of Covid-19 on Emerging Markets

European Bank
for Reconstruction and Development

- *“the COVID-19 global recession will be the deepest since the end of World War II, with the largest fraction of economies experiencing declines in per capita output since 1870.”* (June 2020 Global Economic Prospects, World Bank). The report predicts a 5.2 % contraction in global GDP in 2020 and moderate growth of global GDP of 4.2% in 2021
- *“developing countries are set to see a USD 700 billion drop in external private finance in 2020 and a gap of USD 1 trillion in public spending on coronavirus recovery measures compared to what is being spent in advanced economies”* (November 2020, OECD’s latest Global Outlook on Financing for Sustainable Development)

Impact of Covid-19 on Emerging Markets
Pressure points

European Bank
for Reconstruction and Development

- ✓ Pressure on health care systems
- ✓ Loss of trade: World Trade Organization October forecasts 9.2% decline in the volume of world merchandise trade for 2020, followed by a 7.2% rise in 2021
- ✓ Foreign direct investment flows expected to fall more than 30% in 2020 (OECD May 2020)
- ✓ Exporters of energy and industrial commodities particularly hit
- ✓ Unprecedented collapse in oil demand and crash in oil prices and tourism
- ✓ Vulnerability of emerging markets to strengthened US dollar

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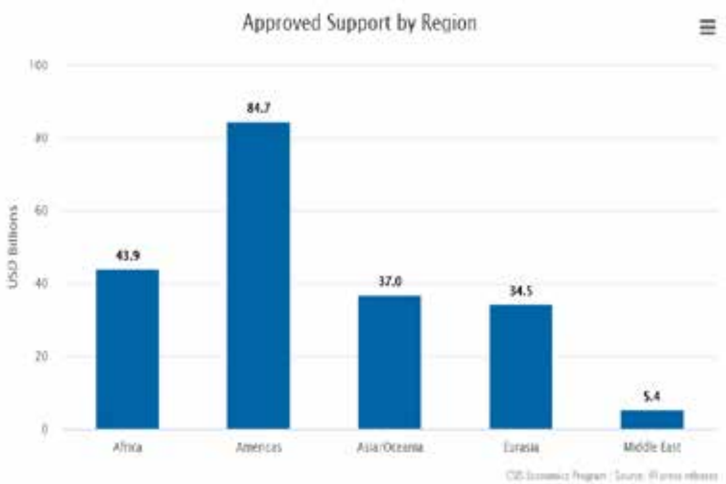
IFI Covid-19 Financial Support
Overview

European Bank
for Reconstruction and Development

What has been done so far?

- As of October 2020, IFIs have approved an estimated $206.3 billion in Covid-19-related support since January 2020 (Source: CCIS think tank)
- Support likely to continue in 2021



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EBRD Covid-19 Support

European Bank
for Reconstruction and Development

The EBRD's Covid-19 Solidarity Package

- Support worth €21 billion up until end of 2021. The programme includes:
  - ✓ Resilience Framework providing finance to meet the short-term liquidity and working capital needs of existing clients. Financing available under the Framework of up to €4 billion
  - ✓ Expanded financing under the Trade Facilitation Programme (TFP) to promote foreign trade to, from and within the EBRD regions, including guarantees and trade-related cash advances.
  - ✓ Fast track restructuring for distressed clients
  - ✓ New Vital Infrastructure Support Programme to ensure continuation of key public infrastructure e.g. waste collection, transport, water utilities despite Covid-19 loss of revenues

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National Covid-19 Emergency Measures

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- Emergency measures in the field of insolvency aimed at protecting businesses
- There have been broadly two main legislative approaches by national governments to the Covid-19 crisis:
  - i. **use of "blanket" emergency standstill legislation** either to suspend execution, enforcement and insolvency proceedings e.g. Turkey or commercial loan repayments e.g. Hungary and Serbia in a number of emerging markets in the EBRD regions
  - ii. **more targeted temporary insolvency law amendments** in mature markets e.g. Germany, UK, Australia and some emerging markets e.g. Russia and recently Ukraine (UK also introduced long-term insolvency reforms)
- **De facto standstill** in countries where courts closed
- **Political pressure** on banks to restructure or show forbearance

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Covid-19 Emergency Measures
Impact on restructuring

European Bank for Reconstruction and Development

What next?

- 2020 too early to assess…
- For developed markets, wave of insolvency filings is expected when the emergency measures expire and government funding dries up
- Businesses have accumulated high levels of debt as a result of state emergency / guaranteed loans and fall in revenues
- Covid-19 crisis has highlighted the need for better formal and informal restructuring tools in emerging markets
- SMEs are particularly vulnerable because of their small operating margins and lack of reserves to withstand the downturn in business activity

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Typical Restructuring Issues in EBRD Regions
Out of court workouts

European Bank for Reconstruction and Development

- **Fragmentation of lending** (high levels of bilateral loans) that complicates any restructuring
- **Lack of trust** and culture of out of court workouts
- **Uncertain legal status of subordination agreements:** intercreditor agreements are mainly used in syndicated loan transactions involving foreign lenders and governed by foreign law but uncertainties relating to their validity and enforceability (e.g. Bosnia and Herzegovina, Georgia, Greece, North Macedonia, Serbia).
- **Uncertain security agent structures:** not expressly permitted or provided for by law in certain jurisdictions (e.g., Belarus, Estonia, Georgia, Latvia, Moldova, Turkey).

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Typical Restructuring Issues in EBRD Regions
Formal Procedures

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Formal restructuring framework

- Many countries lack effective and time-efficient reorganisation-type procedures
- Insolvency/ bankruptcy is a synonym for liquidation: high level of stigma attached to entering into formal procedures

Position of secured creditors

- Weak creditor rights generally
- In some jurisdictions secured creditors are able to enforce their security, despite commencement of a restructuring procedure
- Reluctance of some legislators to affect secured rights within formal restructuring procedure e.g. secured creditor claims cannot be compromised as part of a majority creditor-approved restructuring plan

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Typical Restructuring Issues in EBRD Regions
Formal Procedures

European Bank
for Reconstruction and Development

New financing

- Essential component of any restructuring
- Lack of certainty on subordination and unsuccessful track record of formal restructuring procedures discourages new financing
- Many jurisdictions fail to regulate (in detail) the priority of new financing and provision of security for new money e.g. Turkey or restrict priority over secured creditors e.g. Latvia
- In some countries, new financing is subject to the approval of insolvency creditors or a creditors' committee, e.g. Moldova

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General Policy Trends
United Kingdom

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New Corporate Insolvency and Governance Act (26 June 2020)

- New standalone moratorium without need for insolvency procedure (subject to significant carve outs for financial services contracts)
- Moratorium initially granted for 20 business days (extendable)
- Debtor-in-possession and limited role of "monitor"
- Extension of protection of supplies to <u>all</u> supplies of goods and services, subject to certain exceptions
- Cross-class cram-down of dissenting classes of creditors if:
  - A: *dissenting class not worse off* than in most likely relevant alternative scenario
  - B: *plan agreed by class that would receive payment* or with genuine economic interest in relevant alternative scenario

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General Policy Trends
United Kingdom

European Bank
for Reconstruction and Development

Restructuring of Virgin Atlantic

- First restructuring case which used the new restructuring plan under the Corporate Insolvency and Governance Act
- The new restructuring plan was chosen as it offers more flexibility than a scheme of arrangement, e.g. single majority threshold (75% by value in each class) and cross-class cram-down
- Involved four classes of creditors, including trade creditor class, subject to certain excluded creditors
- No cross-class cram-down needed – classes 1 (RCF), 2 (Lessors) and 3 (Connected Party) approved by 100% and class 4 (Trade Creditors) by 99.24% in value
- Next day recognition of Restructuring Plan as foreign main proceeding under US Chapter 15

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General Policy Trends
European Union

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for Reconstruction and Development

Directive (EU) 2019/1023 on preventive restructuring – key concepts

- *Link between out-of-court and court-overseen financial restructuring*, as part of an overall supportive financial restructuring framework
- *Flexible, wide-ranging and time-limited moratorium* (max 12 months) capable of review and termination by the court and covering secured, as well as unsecured, creditors
- *Protection of essential contracts* necessary for day-to-day operations
- *Invalidity of contractual ipso facto clauses*
- *Ability to determine classes of creditors on case by case basis* (minimum secured and unsecured)

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General Policy Trends
European Union

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Directive (EU) 2019/1023 on preventive restructuring – key concepts

- *Protection of new financing*, including a minimum protection from potential avoidance actions in liquidation
- *Cross-class cram down* enabling one class of creditors, subject to certain conditions, to impose a restructuring plan on other dissenting classes of creditors
- *Directors' obligations* to consider the interests of different stakeholders, including creditors during a restructuring and to take steps to avoid insolvency

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General Policy Trends
European Union

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EU Preventive Restructuring Directive	Chapter 11 Reorganisation
Debtor-in-possession (but likely supervised)	Debtor-in-possession (subject to appointment of trustee)
Limited court involvement (theoretically)	Fully court-supervised
Moratorium on all types of creditors	Moratorium on all types of creditors
Cross-class cram-down with either Absolute Priority Rule or Relative Priority Rule	Cross-class cram-down with Absolute Priority Rule
Concept of affected creditors	Concept of impaired/ unimpaired creditors

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General Policy Trends
European Union

European Bank
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Impact of the EU Preventive Restructuring Directive

- EU Member States have to implement the Directive on Preventive Restructuring Frameworks by July 2021
- Most have not enacted legislation yet, with exceptions e.g. Netherlands
- Importance of the Directive for countries that follow *EU acquis*
- Directive a useful benchmark for other EBRD economies of operations

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EBRD 2020-2021 Insolvency Assessment

European Bank
for Reconstruction and Development

- Covid-19 crisis: an opportunity for significant reform?
- EBRD Assessment of insolvency laws aims at identifying gaps and weaknesses in reorganisation procedures.
- The Assessment will provide an up-to-date map of restructuring frameworks across the EBRD regions in Europe, Asia and Africa.
- Results of the assessment and a report summarising its findings will be made publicly available online in Q1 2021.
- In partnership with the International Development Law Organization (IDLO), INSOL Europe, and INSOL International and in cooperation with the European Commission.
- www.ebrd-restructuring.com

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Further information on EBRD's Legal Transition Programme

European Bank
for Reconstruction and Development

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One Year into COVID-19: What Are the Implications for Restructurings Around the Globe in 2021?

Noel McCoy

Norton Rose Fulbright Australia
19 November 2020

APAC – key themes

Expiration of temporary support + insolvency law reform	Behavioural changes	Deglobalisation	Low interest rates	Broader policy responses

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APAC – insolvency law reform

Temporary business support	Expiry of suport: debt cliff	Increased insolvency
• Emergency measures across APAC of temporary nature • Moratoria on enforcement, initiation of restructuring or insolvency proceedings, director liability • Fiscal support for businesses to replace lost revenue	• Measures due to expire in 2021 • Debt deferrals leading to big debt balloons • 'Switch off' of fiscal support leading to major cash shortfalls	• Singapore and Australia anticipating significant SME fallout and passed/passing SME insolvency reforms • Not uniform, sector dependent • Impact of SME failure on broader economy

3

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APAC – insolvency law reform

- SME Focus:
  - Insolvency, Restructuring and Dissolution (Amendment) Bill 2020 (Singapore)
  - Corporations Amendment (Corporate Insolvency Reforms) Bill 2020 (Australia)
  - Other jurisdictions?

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APAC – changed behaviour

Retail	Transport
• Shift to online shopping accelerated • Foot traffic down in urban centres/CBDs	• Reduced demand for air travel, public transport for medium to long term
Hospitality	**Property**
• Structural shift toward home dining and technology enabled delivery	• WFH → Reduced demand for office space

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APAC – Deglobalisation

- Increased protectionism with restrictions on trade, investment and technology transfers
- Supply chain security and diversification – shift away from China
- China heightened assertiveness and "dual circulation strategy":
  - Hong Kong
  - Taiwan
  - Australia

"China imposed an 80% tariff on imports of Australian barley and restrictions on imports of Australian beef. More recently shipments of Australian lobsters have been subject to delays. Aussie wine has been formally threatened with higher tariffs. The Chinese authorities are reportedly discouraging firms from buying Australian coal, cotton and timber. There are fears that more Australian goods will soon feel the squeeze. "

The Economist, 14 November 2020

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APAC – sector in focus: coal market

- Pre-COVID-19 disruption: shift to renewables, ESG, protectionism
- Onset of COVID-19: price drop following decline in energy consumption and steel production → reduced coal production
- Recovery depends on recoveries in economies of major importers – China, India, Japan
- Foreign trade relations and protectionist policies

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APAC - interest rate environment

Country	Official rate
Australia	0.1 %
China	3.85%
India	4.0 %
Indonesia	6.5 %
Japan	-0.1 %
New Zealand	0.25%
South Korea	0.5 %

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APAC - interest rate environment

- Monetary policy stimulus → persistent low interest rates for near and medium term
- Higher yields → higher risk, increased appetite for investment in distressed debt and special situations
- Major financial institutions:
  - Increased enforcement appetite
  - Increased debt trading as an exit strategy
- Distressed investing activity still somewhat subdued

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Broader policy responses

- Flattening the curve v defeating the virus
- Economic v health goals
- Vaccine?
- The “Great Reset”?

“A Better Economy Is Possible. But We Need to Reimagine Capitalism to Do It”

Klaus Schwab, founder and executive chairman of the World Economic Forum

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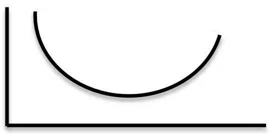
Economic outlook – what will happen?

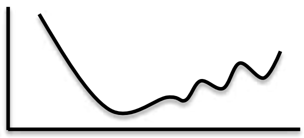
1 U-Shaped Recovery

Lag between decline & recovery



2 W-Shaped Recovery

A slow & staggered recovery



3 V-Shaped Recovery

A steep decline, quick recovery