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BENCHMARKING INSOLVENCY FRAMEWORKS FOR NON-FINANCIAL CORPORATIONS. INSIGHTS FROM THE WORLD BANK DOING BUSINESS RESOLVING INSOLVENCY INDICATORS

(Note to the Eurogroup)

The discussion at the Eurogroup of 22 April 2016 allowed an exchange of views on the reform of national insolvency frameworks. Ministers endorsed a list of key principles which should serve as guidance to improve the efficiency of national insolvency frameworks and insisted on the importance of flanking policies. Acknowledging the lack of comparable, systematically updated, objective and outcome-based data to benchmark insolvency frameworks in the euro area, ministers supported the Commission's work to improve data availability and quality. It was also agreed to revert to the issue in the autumn based on the existing indicators developed by the World Bank for its Doing Business survey on corporate insolvency.

1. THE ECONOMIC RELEVANCE OF INSOLVENCY FRAMEWORKS

Insolvency frameworks shape the incentives of private agents and have implications for a well-functioning capital market. Ex-ante, by protecting investors in case of default, notably resulting from opportunistic behaviour by debtors, insolvency frameworks contribute to a sound supply of credit. When claims become distressed, insolvency frameworks help ensure that claims are enforced, by ensuring that viable debtors are restructured while unviable ones are liquidated and proceeds distributed to creditors in an orderly proceeding, notably avoiding a run on a debtor's assets. An efficient restructuring and insolvency framework is all the more critical when credit development is affected by a high debt overhang.

Insolvency frameworks need to accommodate a diverse set of stakeholders and situations. Frameworks need to be able to address distressed debts of corporates, entrepreneurs as well as households or may be targeted to a specific typology of debt.[1] In order to reflect the severity of the risk for creditors, insolvency frameworks need to include several types of procedures, with varying degrees of formalisation and court-implication. Throughout the insolvency process, the ranking of claims needs to be acknowledged and the various types of creditors need to be provided appropriate protection. Insolvency frameworks differ across countries in light of different social attitudes, legal traditions and financial systems. Although there is no single superior model to organise insolvency, a number of broad principles for efficient insolvency frameworks have been identified in the economic literature.[2] These principles have been translated to some extent into international best practices, mostly in the case of corporate insolvency.[3]

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1 The specific issues arising in the case of insolvency, recovery or resolution of banks and other institutions in the scope of the Bank Recovery and Resolution Directive are not addressed as part of the current exercise.

2 E.g., Djankov, S., O. Hart, C. McLiesh, and A. Shleifer, (2008), "Debt Enforcement around the World", Journal of Political Economy, vol. 116, no. 6, 1105-1149; La Porta, R., F. Lopez-de-Silanes, A. Shleifer and R. W. Vishny, 1997. Legal Determinants of External Finance, Journal of Finance, , vol. 52(3), pp 1131-50, July.

3 For corporate insolvency, e.g., INSOL, 2000. Statement of Principles for a Global Approach to Multi-Creditor Workouts, December; UNCITRAL, 2005. Legislative Guide on Insolvency Law, United Nations Commission on International Trade Law, New York.; World Bank, 2015. Principles for Effective Insolvency and Creditor/Debtor Rights Systems (revised 2015), the World Bank Group. For personal insolvency, common soft law principles are less well established, as the country-specific context plays a more relevant role in this case. For instance, in countries where home ownership is less widespread and property is concentrated among corporations or wealthy individuals, exceptions to foreclosures could be less easily accepted than in countries where home ownership is pervasive and

A number of efficiency principles for insolvency have been endorsed by the Eurogroup. In its meeting of 22 April 2016, the Eurogroup agreed on a number of principles which are based on international best practices: (i) detection and resolution of debt distress should take place at an early stage; (ii) early restructuring procedures should be available to improve the value which can be recovered; (iii) a diverse set of instruments and procedures, reflecting the various types of debt distress, should be available at an affordable cost; (iv) secured claims should be enforced in a predictable and transparent manner; (iv) a reasonable discharge period should be set up to limit the potential risk related to insolvency for honest entrepreneurs; and finally (v) uncertainty related to specific treatment of cross-border claims should be minimal so as not to discourage cross-border investment.

2. BENCHMARKING THE EFFICIENCY OF INSOLVENCY SYSTEMS: AVAILABLE DATA AND ON-GOING WORK

Publicly available data on the outcome of insolvency systems are scarce and comparability is generally limited. National official sources (e.g. justice ministries or national statistical institutes) generally provide information on the number of insolvency cases filed; and, in some cases, they provide additional details on the type of procedures. However, the potential for cross-country comparison is limited due, in particular, to discrepancies between the existing insolvency procedures across the EU and structural differences in the composition of insolvency cases. A number of ad-hoc studies use comparable sources across a limited number of countries. However, it is not easy to use these to assess developments in insolvency framework over time.[4]

The World Bank Doing Business survey on corporate insolvency provides regularly-updated set of indicators (Table 1) but has important limitations. These indicators, which focus on corporate insolvency, are based on a common methodology which is applied consistently in the various countries. The values are updated on a regular basis, ensuring time-consistency. However, the indicators only capture insolvency frameworks applying to a specific hypothetical business when measuring the potential outcome of insolvency.[5] In particular, the recovery rate corresponds to the procedure (reorganisation, foreclosure, liquidation or receivership) that is most likely in the specific case studied but no information is available on the alternative procedures available. Hence, the results for such a specific case may not reflect accurately the efficiency of the overall insolvency system. In addition, the assessment relies on judgemental scoring which may raise the question of comparability. Moreover, the indicators depend on a set of assumptions that may not always adequately capture the specificities of different countries. Finally, since the scoring is judgemental, there is no clear ex-ante link between policy instruments and the values of indicators, which reduces their usefulness in benchmarking.

rental markets are relatively underdeveloped. See, e.g., Laeven, Luc and Thomas Laryea, 2009. Principles of Household Debt Restructuring, IMF Staff Position Note 09/15, June;

[4] Cross-country analytical databases at micro level on insolvency outcomes have also been constructed on the basis of records held by courts or commercial banks (e.g., Blazy R., B. Chopard and N. Nigam (2013), "Building legal indexes to explain recovery rates: An analysis of the French and English bankruptcy codes", Journal of Banking and Finance, as well as Davydenko, S. and Franks, J. (2008), "Do Bankruptcy Codes Matter? A Study of Defaults in France, Germany and the U.K.", Journal of Finance, vol. 63 n. 2, pp. 565–608).

[5] The World Bank case study focuses on a domestically-owned limited liability company with 201 employees running a hotel in the largest business city in each economy.

The Commission has initiated a study to improve data availability on the cost and delay associated with loan enforcement by banks throughout the European Union. As announced in its recent Communication on accelerating the Capital Markets Union, the Commission is going to launch a study to benchmark national loan enforcement regimes from a bank creditor perspective. This study will notably seek to gather additional data on the actual outcome of loan enforcement procedures (including insolvency) across Member States. To the extent that primary data is available and sufficiently disaggregated, the study will notably assess the recovery rate under various procedures, their length and the costs associated. The results of this study are expected by the summer 2017.

In addition, the Commission's upcoming legislative proposal on restructuring, second chance and measures to raise the efficiency of proceedings, including formal insolvency proceedings, will notably seek to improve data gathering on insolvency indicators in the EU. The legislative proposal, which is expected to be released by the end of 2016, will set minimum harmonised standards on a number of key elements contributing to the strength of restructuring, insolvency and second chance frameworks. To ensure monitoring and implementation of the rules, the proposal would require Member States to collect data based on a standard methodology, on indicators such as the number of filings for each type of procedure (restructuring, insolvency, second chance), length, outcome of procedures, administrative costs of procedures, recovery rates, and success of such procedures (measured as a function of re-applications by the same debtor in a period of 3 years from the first application). Data will be broken down by size and type of debtors. As opposed to the World Bank Index which is based on expert assessment of the efficiency in each country, data collected under this proposal will permit an objective assessment of the effectiveness of procedures in the Member States.

3. BENCHMARKING THE EFFICIENCY OF INSOLVENCY FRAMEWORKS FOR NON-FINANCIAL CORPORATIONS ON THE BASIS OF THE DOING BUSINESS RESOLVING INSOLVENCY INDICATORS

3.1. Main features of the Doing Business Resolving Insolvency Indicators

The World Bank Doing Business database includes quantitative indicators measuring the recovery rate of insolvency proceedings as well as the strength of the legal framework applicable to liquidation and reorganization proceedings. The indexes are based on research presented in Djankov et al. (2008) and apply to corporate insolvency only. A synthetic score of "resolving insolvency" is obtained as the simple average of sub-indicators on the recovery rate from insolvency proceedings and on the strength of the insolvency framework (Graph 1).[6] These indicators are computed yearly, and data are derived from questionnaire responses by local insolvency practitioners and verified through laws and regulations reviews as well as public information on insolvency systems. The recovery rate, which is computed as the share of asset which is ultimately recovered, is available since 2004 for euro-area countries[7]. The indicators on

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6 The overall indicator is calculated as a distance to the frontier (which represents the best performance observed across all economies), in order to obtain a meaningful indicator using two sub-indicator whose values are not comparable: the recovery rate is a number which can be interpreted (cents on the euro recovered by secured creditors) whereas the strength of the insolvency framework indicator (score out of 16) is a purely ordinal number.

7 Exceptions are Luxemburg (2006), Cyprus (2008) and Malta (2011).

the strength of insolvency were introduced only in 2013, with a strong impact on the overall score and on country rankings from 2014 on.

The World Bank Doing Business indicators have routinely been used in the literature on insolvency performance. Due to their cross-country comparability, the Doing Business indicators are routinely used in the empirical literature to perform statistical analysis on both the determinants of insolvency performance (Djankov et al., 2008) and its consequences for economic performance (Becker and Josephson, 2013 or Association for Financial Markets in Europe, 2016). Although their construction has been criticized (e.g. Ralf, 2009), the Doing Business indicators have been instrumental in the cross-country assessment of insolvency frameworks by international organisations.

3.2. The overall resolving insolvency indicator: main findings

Countries with a lower value of the insolvency indicators are also those where non-performing loans (NPL) have been increasing faster since 2008 (Graph 2). The deterioration in economic growth has been the primary driver of non-performing loans in the euro area since 2008. Still, an efficient insolvency framework, which allows for a speedier resolution of bad debt, can contribute to mitigate large build-ups of NPL stocks. The World Bank indicators support this expectation: they appear to be negatively correlated with the level of NPLs and their growth (Table 2). Such a prima-facie evidence however should be taken with caution, as correlations are not statistically significant and do not necessarily imply causation (other factors could play in driving the relation, e.g., stronger output contractions recorded on average in countries with low values of the indicator…).

The cross-country comparison of the overall resolving insolvency indicator reveals a number of features (Graphs 3a to 3c)**:**

- Euro-area Member States are on average slightly behind non-EU comparable economies. The average distance to frontier for insolvency indicators would put the euro area on the 29th rank out of the 189 economies reviewed by the World Bank, behind peers such as Japan, the US or Canada.

- Indicators point to remarkable discrepancies within the Member States. The countries with the highest scores, such as Finland, Germany and Portugal, are among the best scores. At the other end of the spectrum, Lithuania, Luxemburg and Malta, which rank lowest among euro-area countries on both sub-indicators, rank around 75th worldwide.

- No discernible pattern emerges regarding the insolvency score of euro-area Member States across legal systems of different origin.

- The sub-indicators entering the construction of the overall resolving insolvency index do not tend to move together: a number of countries rate high on one sub-indicator and low on the other (Graph 4). This suggests that the ex-ante good features of the legislation (as measured by the strength indicator) are not sufficient per-se to ensure high recovery rates.

3.3. The recovery rate indicator

The recovery rate indicator is recorded as the percentage of the initial value of the loans which can be recovered by secured creditors. According to the methodology

defined by the World Bank, this is first linked to whether, in the case studied, the company continues operating through debt enforcement or if it is subject to piecemeal liquidation. Second, the duration of the resolution is taken into account both through an annual depreciation in the asset and the actualisation of financial flows. Finally, the cost of proceedings linked to the debt resolution is deducted from the amount recovered.

Whether the indicators incorporate the judgement that the proceedings end up with liquidation or with the rescue of the business has strong implications for the recovery rate indicator. As the World Bank case study explicitly specifies that business under review is viable, maintaining it as a going concern is the efficient economic outcome. In the euro area, countries for which reorganisation of the company to maintain it as a going concern is the most likely procedure used in the case study[8] are those for which recovery rate is the highest. In most euro-area Member States, the case study results in a liquidation of the company leading to a sale as a going concern, with a still high recovery rate. In the cases where the procedure is expected to end in a piecemeal liquidation of the company's assets, in light of the assumptions underlying the methodology for the construction of the indexes, the recovery rate is much lower.[9] In addition, the related proceedings are also almost a year longer on average, while the cost does not appear significantly impacted by the fact that the company is eventually liquidated. Overall, these Member States, which include in 2015 Greece, Lithuania, Luxembourg, Latvia and Malta, perform poorly based on the recovery rates computed by the World Bank and thus on the overall insolvency scores.

The cost and the duration of proceedings are positively correlated. On average in the euro area, more lengthy procedures also tend to be more costly (Table 3). Still, many countries rate high on one indicator and low on others. For example, in Ireland, Austria, Cyprus and Italy, the value lost as a result of the length of the procedures is fairly limited, but the costs of the proceedings are rather high. Conversely, in Estonia, Greece and Malta, the costs of the proceedings are below euro-area average even though the value lost as a result of the length of the procedures is among the highest.

3.4. The indicator of the strength of the insolvency indicator

The insolvency index that describes the strength of a country's insolvency framework is based on four indices: (i) commencement of proceedings (the easier to start proceedings for debtors or creditors the higher the score), (ii) management of debtor’s assets (the more advantageous the treatment of debtors' assets from the point of view of the company's stakeholders the higher the score), (iii) reorganization proceedings (the score is higher if the legislation is in compliance with international principles of best practice); (iv) creditor participation (the higher creditors' participation in insolvency proceedings, the higher the score). The strength of insolvency framework index is the sum of the scores on the commencement of proceedings index, management of debtor’s assets index, reorganization proceedings index and creditor participation index. The index ranges from 0 to 16, with higher values indicating insolvency legislation that is better designed for rehabilitating viable firms and liquidating nonviable ones.

The sub-indicators for the strength of the insolvency are only loosely related to the recovery rate. The four sub-indexes appear to be generally positively correlated meaning that countries which perform well on one index also perform well on the others

[8] In Belgium, Spain, Ireland, Slovenia and Finland.

[9] If the assets are sold piecemeal, it is assumed that only 70% of the hotel can be recovered.

(Table 4). Still not all dimensions have a significant impact on the recovery rate. More specifically, the ability for a business to emerge as a going concern from the insolvency procedure appears associated with easy access to insolvency proceedings and to the measures in place to allow the firm to continue its operations (Table 5). These dimensions are thus positively correlated with the recovery rate. Even among countries which achieve the efficient outcome of maintaining the company as a going-concern, the management of debtor asset appears as an important factor to improve the recovery rate. By comparison, reorganisation proceedings and creditor participation seem to have less impact on the outcome.

3.5. Evolution of the indicators

Indicators have improved over the crisis period in several Member States which undertook reforms in this area. Changes in the ranking over the last few years are mostly due to evolutions in the recovery rate indicator (Graph 5). The indicator on the strength of insolvency legislation has remained unchanged for all euro-area countries since its creation in 2013.[10] Countries where the recovery rate increased the most since 2008 are those that had relatively low scores prior to the crisis. In particular, France and Slovenia which saw the expected outcome of the proceeding change from liquidation to emergence as a going-concern saw strong increase in the recovery rate.

This pattern reflects the reforms that were carried out in the Member States to enhance the insolvency frameworks. Member States in the euro area took measures since 2010 to address the rise in non-performing loans during the crisis period. The importance of insolvency reform is notably reflected in the country-specific recommendation of the Council (Table 6) as well as in the conditionality set in programme countries (Table 7). In particular, pre-insolvency instruments were introduced in Greece and in Latvia and existing preventive restructuring frameworks were reformed in Spain, Slovenia, Croatia, France. In a number of Member States, notably Spain and Italy, reforms were undertaken to strengthen and facilitate the use of the overall insolvency framework.

4. CONCLUDING REMARKS

The World Bank Doing Business survey provides useful indicators, but given their limitations these indicators do not lend themselves to quantitative targeting. The Doing Business survey on resolving insolvency provides a set of regularly updated indicators aiming to compare countries in terms of some efficiency parameters of insolvency frameworks and their main features. While these indicators are informative, regularly updated, and cover all euro-area countries, their use in policy benchmarking is subject to a number of limitations. They focus on the insolvency of a specific type of corporations. The assumptions and the use of expert judgment may limit cross-country comparability. Moreover, the scoring system has no clear relation with the policy instruments at the disposal of policy makers. As such the indicators do not lend themselves for the definition of quantitative targets to steer the reform process. Accordingly, efforts by Member States to collect data on the outcome of insolvency procedures in a systematic way, as will be proposed by the Commission in the upcoming legislative proposal on reorganisation, will be essential to allow a consistent benchmarking of insolvency systems in the euro area going forward.

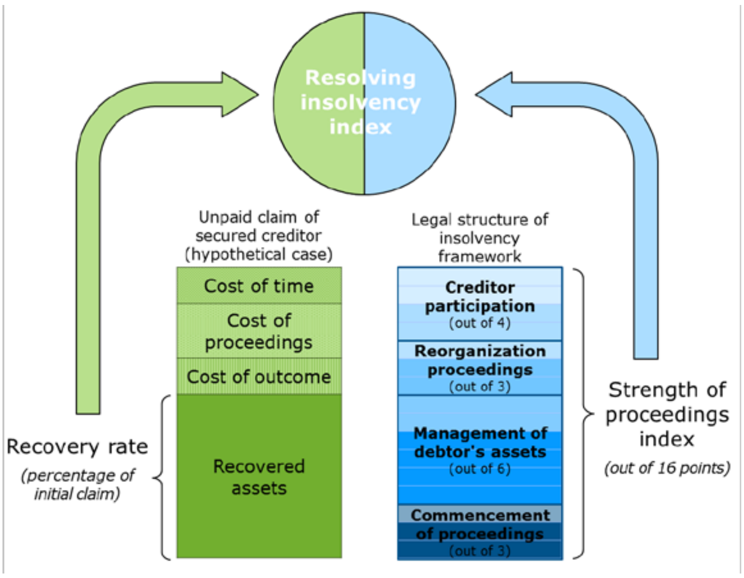
[10] With the exception of Cyprus, whose indicator increased from 6 to 13 in 2015

ANNEX

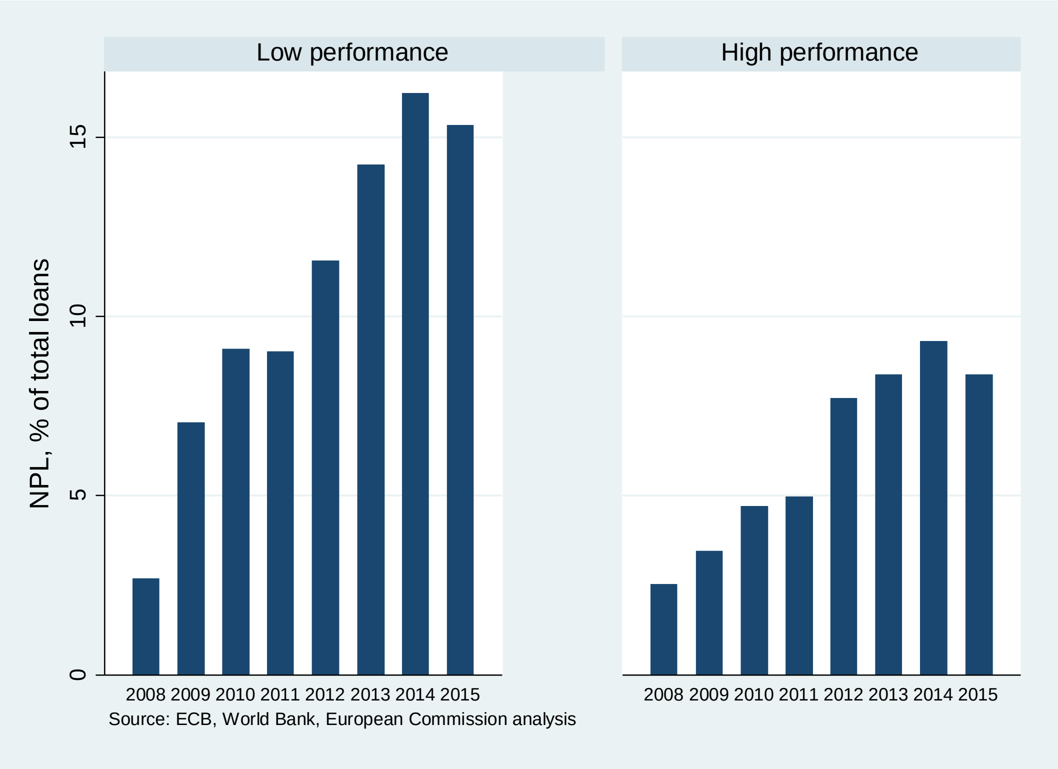
Table 1: The Doing Business Resolving Insolvency indicator and its sub-components

Country	Rank	**Overall distance to frontier**	**Recovery rate (cents on the euro)**	Time (years)	Cost (% of estate)	Outcome (0: piecemeal sale; 1: going concern)	**Strength of insolvency framework index (0-16)**	Commencement of proceedings index (0-3)	Management of debtor's assets index (0-6)	Reorganization proceedings index (0-3)	Creditor participation index (0-4)
FI	1	**93,8**	**90,1**	0,9	3,5	1	**14,5**	3	6	2,5	3
DE	3	**91,9**	**83,7**	1,2	8	1	**15**	3	6	3	3
PT	8	**84,8**	**73,4**	2,0	9	1	**14,5**	3	5,5	3	3
BE	10	**84,0**	**89,3**	0,9	3,5	1	**11,5**	2,5	6	1	2
NL	11	**83,8**	**88,9**	1,1	3,5	1	**11,5**	2,5	6	1	2
SI	12	**83,4**	**88,2**	0,8	4	1	**11,5**	2,5	6	2	1
CY	17	**79,0**	**71,4**	1,5	14,5	1	**13**	3	4,5	2,5	3
AT	18	**78,9**	**82,7**	1,1	10	1	**11**	2,5	5,5	1	2
IE	20	**78,4**	**87,7**	0,4	9	1	**10**	3	4,5	1,5	1
IT	23	**76,1**	**63,1**	1,8	22	1	**13,5**	3	5,5	3	2
FR	24	**76,1**	**77,5**	1,9	9	1	**11**	3	6	1	1
ES	25	**75,8**	**71,2**	1,5	11	1	**12**	3	6	2	1
SK	33	**70,0**	**54,7**	4,0	18	1	**13**	3	4	3	3
EE	40	**65,3**	**40,0**	3,0	9	0	**14**	2,5	5,5	2	4
LV	43	**63,4**	**48,1**	1,5	10	0	**12**	2,5	5	2,5	2
EL	54	**56,3**	**34,9**	3,5	9	0	**12**	2,5	5,5	3	1
LT	70	**48,1**	**42,8**	2,3	10	0	**8**	2,5	4	0,5	1
LU	80	**45,5**	**43,8**	2,0	14,5	0	**7**	2,5	3	0,5	1
MT	83	**44,8**	**39,6**	3,0	10	0	**7,5**	2,5	2	0	3
EU average	31,7	**71,3**	**63,8**	2,0	10,3	0,6	**11,8**	2,8	5,1	1,9	2,0
EA average	30,3	**72,6**	**66,9**	1,8	9,9	0,7	**11,7**	2,7	5,1	1,8	2,1
World average		**96,1**	**43,7**	36,1	2,6	16,3	**0,3**	7,8	2,3	3,8	0,8

Graph 1. The construction of the Doing Business Resolving Insolvency indicator



Graph 2. NPL development and performance of the insolvency system according to the Doing Business Resolving Insolvency "distance to frontier" indicator.



Low (resp.high) insolvency indicator countries are defined as those EA countries with the mean resolving Insolvency indicator (distance to frontier) below (resp. above) the EA median in 2015.

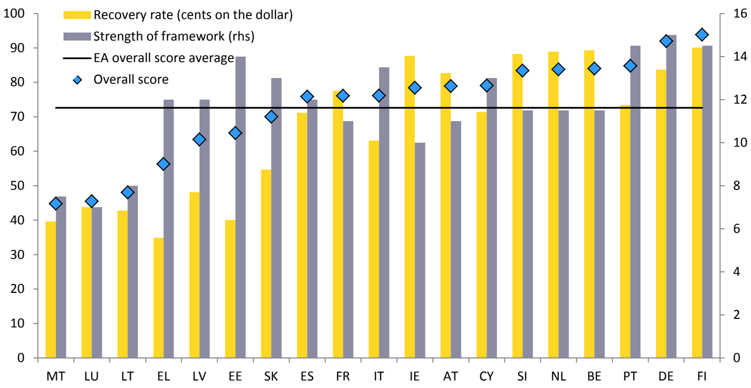
Table 2: Correlations NPL rates and the insolvency indicators

	NPL rate in 2015	NPL growth rate (2012-2015)
Overall score	-0.02	-0.08
Recovery rate	-0.15	-0.28
Time to resolve debt	0.15	0.36
Cost of proceedings	0.23	0.29
Outcome of proceedings	0.00	-0.08
Strength of the framework	0.18	0.30
Commencement of proceedings	0.12	0.14
Management of debtor's assets	0.06	-0.15
Reorganization proceedings	0.45	0.45
Creditor participation	-0.13	0.16

Source: World Bank Doing Business, ECB, EC calculations

* indicates significance at the 5% level

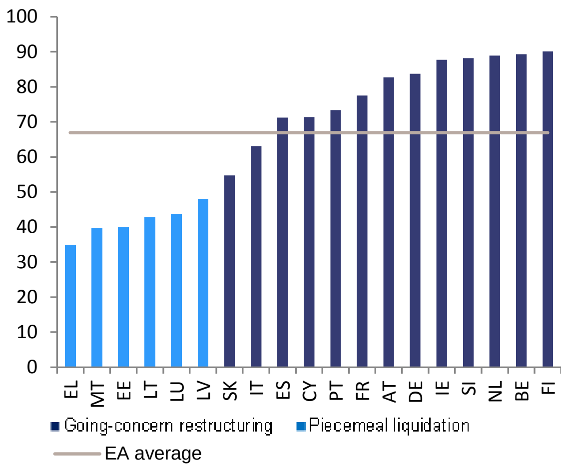
Graph 3a. Overall score "Resolving insolvency" indicators, 2015



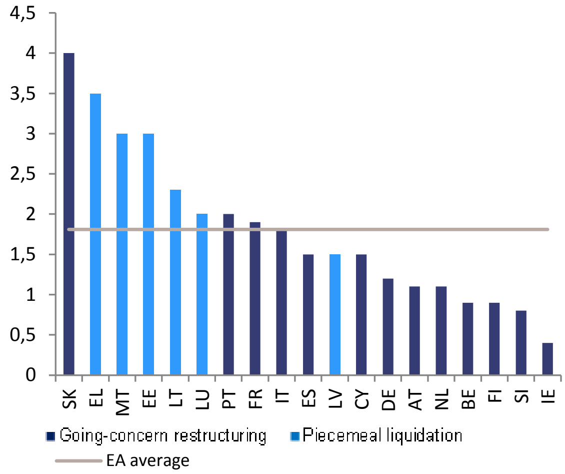
Note: the overall score describes the distance to frontier (100 being the most efficient regime) and thus range from 0 (the weakest) to 100 (the strongest).
Source: World Bank Doing Business 2016

Graph 3b. World Bank Doing Business "Resolving insolvency" indicators, 2015. Recovery rate indicator and its components

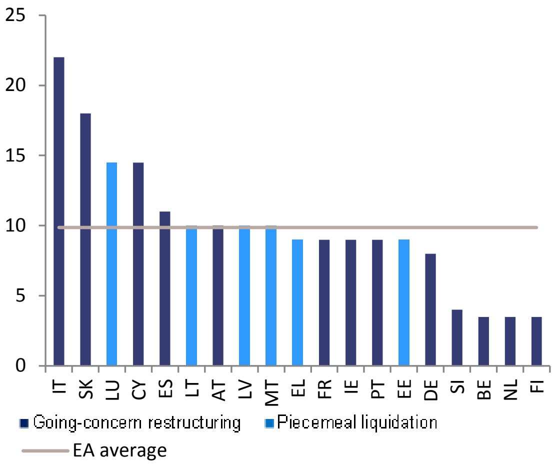
Recovery rate (in % of asset value)



Subindicator 1: Time (in years)



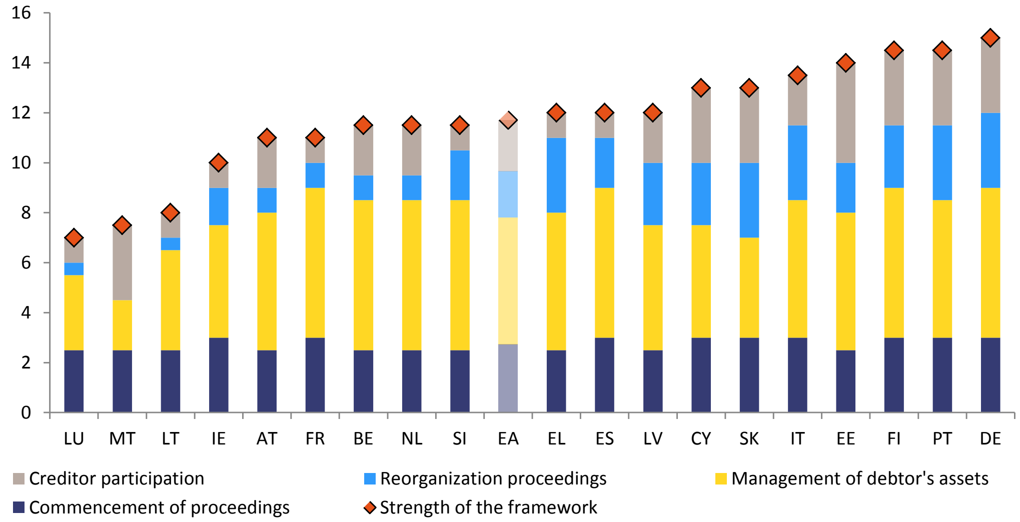
Subindicator 2: Cost (in % of asset value)



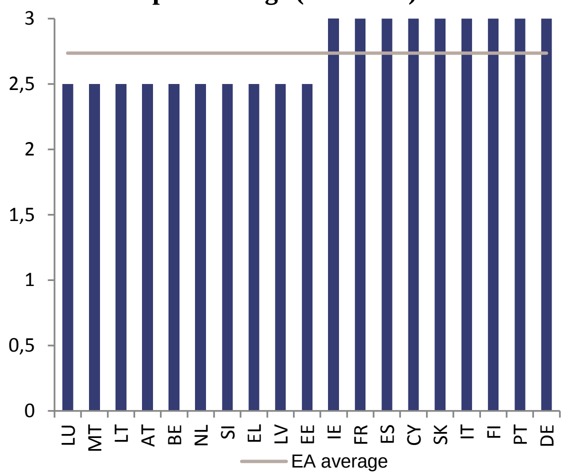
Source: World Bank Doing Business 2016

Graph 3c. Components of the indicator on strength of insolvency legislation

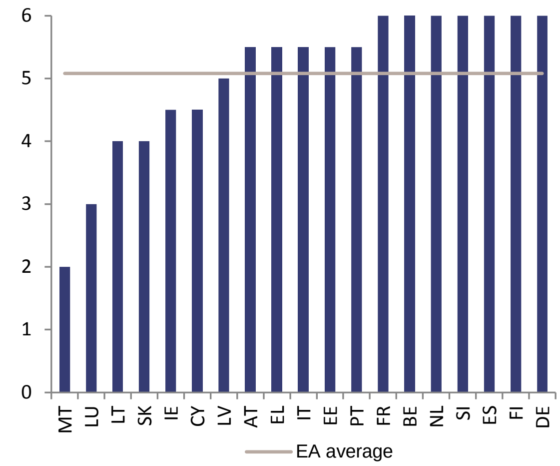
Strength of insolvency legislation (0-16 index)



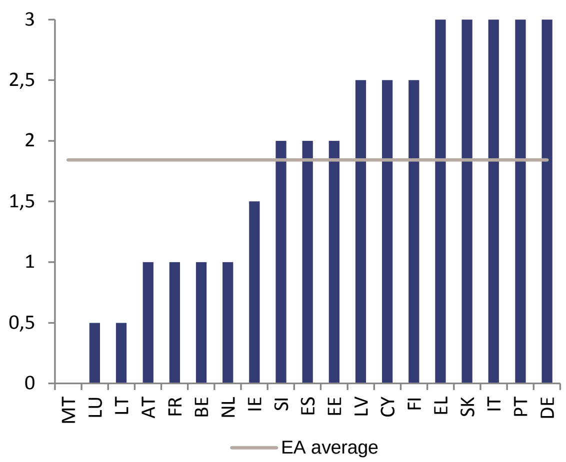
b. Subindicator 1: Commencement of proceedings (0-3 index)



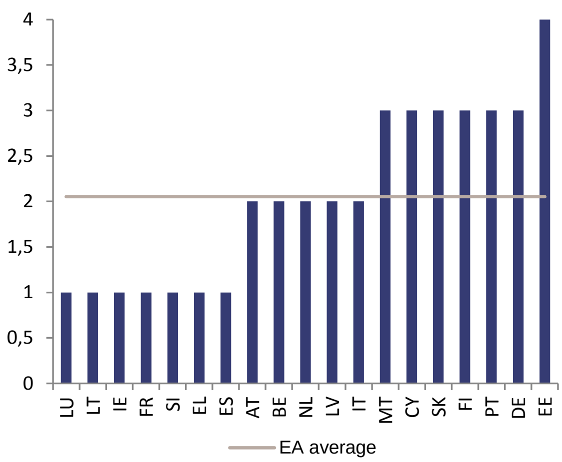
c. Subindicator 2: Management of debtor's assets (0-6 index)



d. Subindicator 3: Reorganization proceedings (0-3 index)

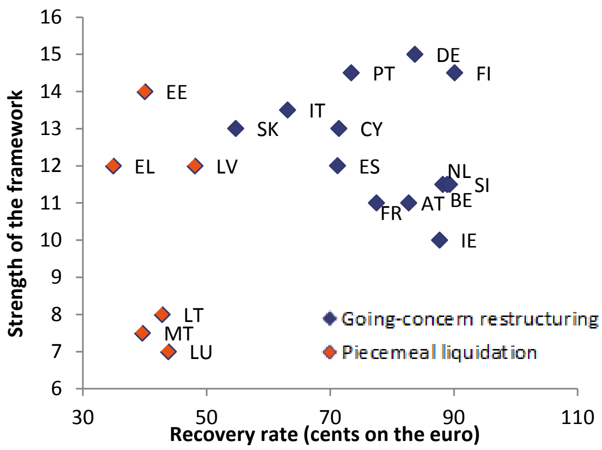


e. Subindicator 4: Creditor participation (0-4 index)



Source: World Bank Doing Business 2016

Graph 4. Recovery rate and strength of insolvency indicators



Source: World Bank Doing Business 2016, EC calculations

Table 3: Correlations between the recovery rate indicators and its subcomponents

	Recovery rate	Time to resolve debt	Cost of proceedings	Outcome of proceedings
Recovery rate	1			
Time to resolve debt	-0.80*	1		
Cost of proceedings	-0.36*	0.41*	1	
Outcome of proceedings	0.88*	-0.50*	-0.04	1

Source: World Bank Doing Business, EC calculations

* indicates significance at the 5% level

Table 4: Correlations between the strength of insolvency framework index and its subcomponents

	Strength of the framework	Commencement of proceedings	Management of debtor's assets	Reorganization proceedings	Creditor participation
Strength of the framework	1				
Commencement of proceedings	0.61*	1			
Management of debtor's assets	0.76*	0.41*	1		
Reorganization proceedings	0.87*	0.59*	0.54*	1	
Creditor participation	0.50*	0.12	-0.03	0.29*	1

Source: World Bank Doing Business, EC calculations

* indicates significance at the 5% level

Table 5: Correlations between the subcomponents of the insolvency indicator

	Strength of the framework	Commencement of proceedings	Management of debtor's assets	Reorganization proceedings	Creditor participation
Recovery rate	**0.29***	**0.34***	**0.45***	**0.04**	**-0.02**
Time to resolve debt	**-0.02**	-0.10	-0.34*	0.17	0.24
Cost of proceedings	**-0.11**	0.19	-0.43*	0.17	0.03
Outcome of proceedings	**0.37***	0.49*	0.34*	0.23	0.13

Source: World Bank Doing Business, EC calculations

* indicates significance at the 5% level

Graph 5. Evolution of resolving insolvency indicator and recovery rate.

Source: World Bank Doing Business

Table 6: Summary table of country specific recommendations related to the insolvency framework (2014-2016)

Year	Country	CSR
2014	LV	Complete judicial reforms including the pending reforms of insolvency, arbitration and mediation frameworks to ensure a more business- and consumer-friendly legal environment. (CSR5)
	SI	Evaluate recent changes in the insolvency legislation by September 2014, being ready to introduce any additional necessary measure. Further reduce the length of judicial proceedings at first instance in litigious civil and commercial cases including cases under the insolvency legislation, and the number of pending cases, in particular enforcement and insolvency cases. (CSR6)
	ES	Remove remaining bottlenecks in the corporate insolvency framework, in particular by enhancing the expertise of insolvency administrators and the capacity of the judicial system to handle insolvency cases, and develop a permanent framework for personal insolvency, paying due attention to balanced creditor/borrower rights and financial stability considerations. (CSR2)
2015	LV	Improve efficiency of the judicial system, by increasing accountability of all parties (including insolvency administrators), by providing adequate means to fight tax evasion and by strengthening the role of the Judicial Council. (CSR4)
2016	IT	Accelerate the reduction in the stock of non-performing loans, including by further improving the framework for insolvency and debt collection. (CSR3)
	LV	Increase the accountability and public oversight of insolvency administrators. (CSR3)

Table 7: Summary table of specific economic policy conditionality related to the insolvency framework for countries under a financial assistance programme

Latvia	
Initial MoU (January 2009)	A framework shall be introduced that enables banks' clients to require debt maturity and currency restructuring of outstanding loans on market conditions. In addition, facilitating insolvency procedures and quickly implementing rehabilitation plans shall be made a priority for legislators.
2nd review (February 2010)	By end-May 2010, the government will report on the improvement in the design and the implementation of the legal framework for insolvency and liquidation procedures in line with the best international practice. As a result, a significant reduction in the duration of court dealings is to be achieved.
Cyprus	
3rd review (winter 2014) and 4th review (spring 2014)	The authorities will, in consultation with EC and IMF and informing the ECB and ESM, prepare a comprehensive reform framework to be endorsed by the Council of Ministers by end-July, establishing appropriate corporate and personal insolvency procedures. A draft of the reform framework as well as an impact assessment of various options on lenders will be completed by end-June, and shared with the EC, ECB, IMF and the ESM. On the basis of that framework, corporate and personal insolvency legislation will be adopted, which will include licensing and regulation of insolvency practitioners by end-December. In the context of these reforms, the authorities will initiate a review by end-June and, by end-December, will formulate recommendations on the Civil Procedure Code and Court Rules in order to ensure the smooth and effective functioning of the revised foreclosure and insolvency frameworks. The authorities will review the private sector debt restructuring legal framework in the second half of 2015 with a view to assessing results and define additional measures as needed.
5th review (Summer 2014)	The following reforms shall be made to insolvency arrangements, in line with best international practices: (i) a modernized bankruptcy process for non-viable individuals, including an effective discharge subject to proper safeguards; (ii) streamlined processes for non-viable individuals with no assets and no income, and with relatively small unsecured debt; (iii) a repayment scheme for viable individuals; (iv) an effective restructuring procedure for legal entities, including large borrowers; (v) a modernised and effective liquidation process for companies; and (vi) regulation of insolvency practitioners. The parameters of the new repayment scheme for viable borrowers will be set and communicated once there is sufficient clarity on its impact on the financial institutions, and after consultation with the EC, ECB and IMF, and informing the ESM. For the purpose of insolvency frameworks and processes, the authorities will develop parameters for the definition and calculation of reasonable living expenses applicable in the context of personal insolvency.
6th review (Summer 2015)	In consultation with program partners, the authorities will submit to the Council of Ministers by end-September any necessary adjustments to the insolvency and foreclosure frameworks, including legislative changes. Moreover, the authorities will conduct a comprehensive review of the private sector debt restructuring legal framework by early 2016, with an action plan of modifications to the framework to correct any deficiencies.
Portugal	
Initial MoU (June 2011)	Intensify the implementation of the Judicial Reform Map. Audit of the backlog cases, including debt enforcement, insolvency, tax and labour cases and additional measures to expedite the resolution of the backlog. Regular reports to be published on recovery rates, duration and costs of corporate insolvency and tax cases. Amend the Insolvency Law to provide that guaranteed depositors and/or funds will be granted a higher priority ranking over unsecured creditors in the insolvent state of the credit institution. Amend the Insolvency Law to better facilitate effective rescue of viable firms and support rehabilitation of financially responsible individuals. Assess the need for separate Chambers within the Commercial Courts with specialised judges for insolvency cases.
1rst review (Summer 2011) and 2nd review (Autumn 2011)	Amend the Insolvency Law to better facilitate effective rescue of viable firms and support rehabilitation of financially responsible individuals, by end-December. Assess the need for separate Chambers within the Commercial Courts with specialised judges for insolvency cases.
Ireland	
Initial MoU (2011)	An in-depth review of the personal debt regime will be published shortly. Work will commence on reform of legislation which will balance the interests of both creditors and debtors. Legislation to reform the personal debt regime to be presented to the Houses of the Oireachtas.
1rst review (July 2011) to 4th review (Spring 2012)	Government will introduce legislative reform the personal debt regime to the Houses of the Oireachtas with the objective of lowering the cost and increase the speed and mitigating moral hazard and maintaining efficiency of proceedings, while at the same time maintaining credit discipline.
5th review (Summer 2012)	The authorities will ensure that a programme to facilitate access by distressed borrowers to professional financial advisory services, funded by banks, will be operational.

6th review (Autumn 2012)	The authorities will ensure that the Draft Personal Insolvency Bill will provide for the framework for the appropriate licensing and regulation of Personal Insolvency Practitioners. The authorities will also improve the efficiency of the corporate insolvency framework for SMEs, drawing on the recommendations in the recent report by the Company Law Review Group. Based on experience of the operation of the Insolvency Service in the personal insolvency reform, the authorities will consider the appropriateness of further enhancements to the company law framework to reduce costs and achieve efficiency gains, including the potential for an administrative body to facilitate SME restructuring
7th review (Winter 2012) to 9th review (Summer 2013)	Based on experience of the operation of the Insolvency Service in the personal insolvency reform, the authorities will consider the appropriateness of further enhancements to the company law framework to facilitate restructuring, especially in multi-creditor cases, reduce costs and achieve efficiency gains, including the potential for an administrative body to facilitate SME restructuring.
Greece	
1rst programme – Initial MoU (2010)	Review the adequacy of the insolvency framework, for banks as well as for non-financial entities.
4th review (spring 2011)	Government establishes a Task Force, which is broadly representative of the legal community, including independent representatives of the legal professions, to review the Code of Civil Procedure to bring it in line with international best practices on, inter alia, (i) case management, including the possibility of removing dormant cases from court registers, (ii) the execution of decisions and orders to pay, in particular small claims cases with a view to reducing the role of the judge in these procedures, and (iii) enforcing statutory deadlines for court processes, in particular for injunction procedures and debt enforcement and insolvency cases
2nd programme – Initial MoU (March 2012)	The Government establishes a task force, which [...] reviews the Code of Civil Procedure to bring it in line with international best practice on, inter alia, i) judicial case management, including the possibility of removing dormant cases from court registers; ii) relieving judges from non-adjudicatory work, such as pre-mortgaging of immovable property, formation and dissolution of incorporated entities and consensual/nonlitigious family law applications, iii) the enforcement of decisions and of orders to pay, in particular small claims cases with a view to reducing the role of the judge in these procedures, and iv) enforcing statutory deadlines for court processes, in particular for injunction procedures and debt enforcement and insolvency cases.
1rst review (December 2012)	The authorities will strengthen the insolvency framework. 1. In consultation with the EC/ECB/IMF staff, the authorities will, by Q4-2012, on the basis of best international practices, review the insolvency framework of households and SMEs as well as the framework for out of court negotiations between banks and troubled borrowers, and prepare an assessment identifying areas for improvement. The aim will be to achieve predictable, equitable and transparent allocation of risks among all interested parties and maximizing value for the economy in general. 2. By end-February 2013, the authorities will revise, with technical support of international experts, the existing framework to facilitate workouts with over-indebted household borrowers that preserves bank solvency and credit discipline, avoids the use of fiscal resources to protect private borrowers and minimizes moral hazard by targeting borrowers that are in real need. The authorities will refrain from supporting initiatives that may undermine the payment culture in Greece.
2nd review (May 2013)	The Government commits to: 1. Enhance the legal regime for household insolvency to provide for more effective resolution of bad debts while protecting the payment culture and avoids unnecessary losses. 2. Establish, by end-June 2013 and in consultation with EC/ECB/IMF staff, a framework to assist distressed borrowers. It will take effect as soon as the necessary regulations to implement it can be put in place (at the latest by end-August 2013). 3. Introduce, in consultation with the EC/ECB/IMF staff and as soon as possible, measures aimed at deterring applications for court cases under Law 3869/2010, and borrowers who are subject to the provisions of laws 3869/2010 and 4128/2013 will be subject to the new framework for distressed borrowers, once it has been implemented. Specifically, to establish the legal framework, the Government will: 4. Pass legislation by end-June 2013 to introduce a new “Facilitation Program”. In respect of this new "Facilitation Program" the BoG will: assess the implementation of this framework within six months of its adoption. 5. Revise law 3869/2010 by end-June 2013, to address the implementation shortfalls identified during its first three years of enactment. 6. Adopt legislation to establish by end-June 2013, a framework consistent with the recapitalization framework for banks that will provide long-term solutions for overindebted borrowers (including for those viable borrowers who are not eligible to participate in the facilitation program). 7. It will include initiatives (to be specified further in regulations by end-August 2013) to: (i) address shortfalls in existing laws that limit the effectiveness of debt resolution activities; (ii) standardize the assessment procedure for borrower cases; (iii) introduce a standard list of loan restructuring tools to be used by banks; (iv) enhance access to free budgeting and legal advice services for citizens; and (v) encourage borrowers and lenders to participate in debt resolutions through non-judicial means. 8. Introduce steps to reduce excessive court waiting times, and to ensure that eligible debtors will choose to participate in the facilitation program.
3rd review (July 2013)	The Government commits to: 1. Implement the necessary regulations to put in place the “Facilitation Program” that has been adopted by Parliament, by end-August 2013. [...] 4. Build on the significant achievements toward reforming insolvency regimes, by taking the following

	steps: i. Established a working group to identify ways to improve the effectiveness of debt resolution processes for households, SMEs, and corporates by end-July 2013.
4th review (April 2014)	The Authorities commit to: 7. Review the personal and corporate insolvency laws (June 2014), and implement necessary changes to improve the functioning of in-court insolvency procedures by October 2014. 8. Establish a regulated profession of insolvency administrators, not restricted to any specific profession and in line with the EU best practices by October 2014. 9. Launch educational services and public awareness campaigns to inform debtors of their options and rights and educate small businesses on financial and credit management by July 2014. 10. Develop a coherent plan for a means-tested social safety net for vulnerable homeowners by July 2014.
Third programme – Initial MoU (August 2015)	As a prior action, the authorities will [...] adopt the following short-term reforms: (i) amendments to the corporate insolvency law to cover all commercial debtors, bring the law in line with international best practice including changes to promote effective rehabilitation of viable debtors and a more efficient liquidation process for non-viable debtors and reducing the discharge period to 3 years for entrepreneurs in line with the 2014 EC Recommendation; (ii) amendments to the household insolvency law to introduce a time-bound stay on enforcement in line with cross country experience; establish a stricter screening process to deter strategic defaulters from filing under the law, include public creditor claims in the scope of the law providing eligible debtors with a fresh start, tighten the eligibility criteria for protection of the primary residence, and introduce measures to address the large backlog of cases. By end-November 2015 (key deliverable), the Government will strengthen the institutional framework to facilitate NPL resolution, including (i) improving the judicial framework for corporate and household insolvency matters by adopting appropriate legal instruments to establish specialized chambers both for household and corporate insolvency cases and appointing and training an adequate number of additional judges (based on targeted caseload) and judicial staff for both corporate and household insolvency cases; (ii) establishing of a Credit and Wealth Bureau as an Independent Authority that will identify lenders payment capabilities for the facilitation of banking institutions, (iii) amending the out-of-court workout law so as to encourage debtors to participate while ensuring fairness among private and public creditors; (iv) fully operationalising the specialist chambers for corporate insolvency within courts.