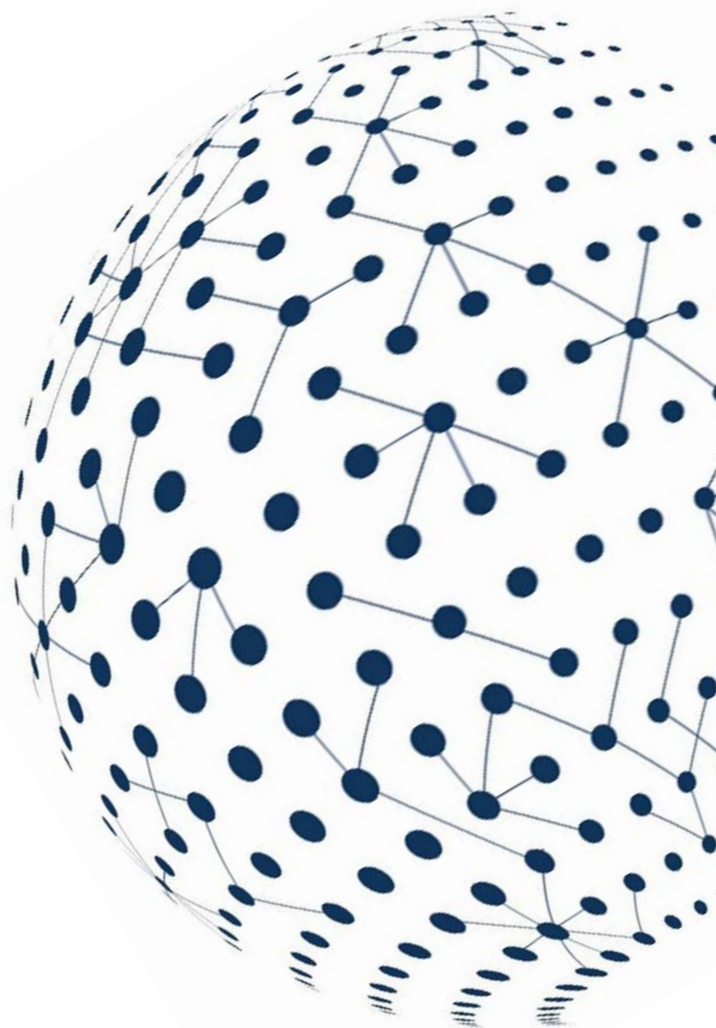
FSB FINANCIAL STABILITY BOARD

Thematic Review on Out-of-Court Corporate Debt Workouts

Peer Review Report



9 May 2022

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Foreword

Financial Stability Board (FSB) member jurisdictions have committed, under the FSB Charter and in the *FSB Framework for Strengthening Adherence to International Standards,*[1] to undergo periodic peer reviews. To fulfil this responsibility, the FSB has established a regular programme of country and thematic peer reviews of its member jurisdictions.

Thematic reviews focus on the implementation and effectiveness across the FSB membership of international financial standards developed by standard-setting bodies and policies agreed within the FSB in a particular area important for global financial stability. Thematic reviews may also analyse other areas important for global financial stability where international standards or policies do not yet exist. The objectives of the reviews are to encourage consistent cross-country and cross-sector implementation; to evaluate (where possible) the extent to which standards and policies have had their intended results; and to identify gaps and weaknesses in reviewed areas and to make recommendations for potential follow-up (including through the development of new standards) by FSB members.

This report describes the findings of the peer review on out-of-court corporate debt workouts, including the key elements of the discussion in the FSB Standing Committee on Standards Implementation (SCSI). It is the sixteenth thematic review conducted by the FSB and is based on the objectives and guidelines for the conduct of peer reviews set forth in the *Handbook for FSB Peer Reviews.*[2] The analysis and conclusions of this peer review reflect information as of mid-February 2022 unless otherwise noted.

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[1] See the *FSB Framework for Strengthening Adherence to International Standards* (January 2010).

[2] See the *Handbook for FSB Peer Reviews* (April 2017).

Definitions of key terms used in the report

Term	Definition[3]
Alternative dispute resolution (ADR)	Any process or procedure for resolving a dispute other than adjudication in a statutory court, for example credit mediation, conciliation and arbitration. Such processes are not specific to disputes concerning the restructuring of debt, but may also be used as an element of enhanced OCWs.
Code of conduct	An agreement on rules or expected behaviour. It can be a voluntary agreement among organisations (such as banks) to be subject to these rules (self-commitment) and/or supported or imposed by authorities. Such arrangements are not specific to negotiations concerning the restructuring of debt, but in this report, a code of conduct is considered a modality of enhanced OCWs.
Debt restructuring scheme	A debt restructuring scheme is a set of rules for the restructuring of debts of distressed enterprises. These rules are issued by a state authority, or developed by state authorities in cooperation with the financial sector. The scheme includes rules for eligibility, conduct of negotiations and steps to reach an agreement, and may be combined with public support for the preparation of restructuring plans, assistance with negotiations, and resolution of disputes. It may also include guidance on solutions for the different distress situations. In this report, debt restructuring schemes are considered a modality of enhanced OCWs.
Debtor-in-possession procedure	Procedures where the company’s existing management remain in control. Commonly, a court or an independent, and usually regulated person, is appointed to oversee the procedure. Procedures are usually used whilst the company is still trading and there may be a requirement to meet a financial stress type criteria for eligibility.
Formal insolvency or bankruptcy procedure	A court-supervised or approved process by which the imminent or actual insolvency (bankruptcy) of a debtor is addressed. Usually, this objective is achieved by the liquidation of the debtor company or by restructuring and reorganisation.
Judicial reorganisation	A court-supervised process aimed at restoring the financial well-being and viability of a debtor’s business. Depending on the jurisdiction, the management of the debtor company may or may not remain in place. This process is a formal insolvency or bankruptcy procedure.
Liquidation	A court-supervised process by which assets of the debtor company are sold and disposed for distribution to creditors, in accordance with a ranking of claims established by law. This process may be part of a formal insolvency or bankruptcy procedure.
Master restructuring agreement	A master restructuring agreement (or framework agreement) is an agreement among financial institutions that sets general requirements for the restructuring of companies. The signatories are bound by the majority decisions taken in each of the specific restructurings conducted under the agreement. These agreements generally include arbitration for the resolution of disputes. In this report, a master restructuring agreement is considered a modality of enhanced OCWs.

[3] Definitions and key terms correspond to those provided in the Insolvency and Creditor Rights (ICR) Standard and in World Bank and IMF literature, slightly adapted for the purposes of this report.

Scheme of arrangement	Restructuring of solvent companies including impairment of debts. Normally with court supervision to sanction and bind parties to the arrangement.
Out-of-court workout (OCW)	A privately negotiated debt restructuring between the debtor and all or some of its creditors. Examples of OCWs show a vast array of negotiated restructurings along a continuum of increasing formality, reflecting broadly the extent of institutional involvement. • On the informal side of the continuum are purely informal OCWs, which basically do not follow formal requirements, but may be based on (non-binding) common principles or practices. • Enhanced OCWs are in the middle of the spectrum. They do not involve courts, but benefit from other features such as third-party coordination or a dedicated process or incentives framework. • Hybrid OCWs are on the formal end of this spectrum as they involve courts at limited points in the process and for limited tasks. This report uses these categories to provide structure and orientation. A specific framework or procedure may not clearly fall into one category as opposed to another or be regarded as falling into a different category than that described here.
Enhanced OCW	A privately negotiated debt restructuring between the debtor and all or some of its creditors, which does not involve courts, but benefits from other supporting features, such as third party (possibly administration or authority) coordination or a dedicated process or incentives framework. In some variants, participants are bound by law or contract to follow restructuring-specific standards introduced by an administrative authority, in accordance with an expectation or requirement set out by that authority. In the context of this report, codes of conduct, debt restructuring schemes, master restructuring agreements and alternative dispute resolution are considered a modality of enhanced OCW.
Hybrid OCW	A procedure that involves private negotiation of a debt restructuring agreement and provides for a court role short of supervision of the full insolvency or bankruptcy procedure. This includes preventative hybrid workouts, defined as hybrid procedures aimed at restructuring, while under court-ordered stay protection, of a debtor's business that is in financial distress but not yet in a technical state of insolvency. Typical features include, for example, hybrid workouts concluded among creditors but confirmed or approved by the court to bind all creditors (e.g. pre-packaged plans) and other types of hybrid procedures, such as when the negotiations are protected by a limited or general stay. For example, a scheme of arrangement is considered a hybrid workout procedure. This report distinguishes between two types of hybrid workout procedures: expedited reorganisations, where negotiations take place out of court and the agreement is confirmed by the court (pre-arranged and pre-packaged reorganisations), and restructuring procedures, where the court role goes beyond mere confirmation (preventive restructuring procedures and schemes of arrangement).
Informal OCW	A privately negotiated debt restructuring between the debtor and all or some of its creditors, possibly based on (non-binding) common principles or practices, but without the use of enhancing elements or court involvement. In general, the only formal requirement for a restructuring by means of an OCW is that the final agreement is a valid and binding contract.

Abbreviations

ADR	Alternative dispute resolution
AUD	Australian dollar
BRSA	Banking Regulation and Supervision Agency (Turkey)
CERSA	Compañía Española de Refianzamiento, S.A (Spain)
CESCE	Compañía Española de Seguros de Crédito a la Exportación (Spain)
CIRBE	Risk Information Centre of the Bank of Spain
CIRI	Interministerial Committee for Industrial Restructuring (France)
CODEFI	Departmental Committees for the Examination of Business Financing Problems (France)
CRPA	Corporate Restructuring Promotion Act (Korea)
ESS-C	Extended support scheme customised (Singapore)
ESS-S	Extended support scheme standardised (Singapore)
EU	European Union
EUR	Euro
FSB	Financial Stability Board
FSC	Financial Services Commission (Korea)
IBBI	Insolvency and Bankruptcy Board of India
IBRA	Indonesia Banking Restructuring Agency
ICA	Inter-Creditor Agreement (India)
ICO	Instituto de Crédito Oficial (Spain)
ICR Standard	Insolvency and Creditor Rights Standard
INSOL Principles	INSOL International Principles for a Global Approach to Multi-Creditor Workouts
KAMCO	Korea Asset Management Corporation
KRW	Korean Republic won
MRA	Master restructuring agreement
MSME	Micro, small and medium enterprises
NPL	Non-performing loan
OCW	Out-of-court workout
PPIRP	Pre-Packaged Insolvency Resolution Process (India)
R$	Brazilian real
RBI	Reserve Bank of India
REVIC	Regional Economy Vitalization Corporation of Japan
Rs	Indian rupee
SAREB	Spanish Asset Management Company
SBRA	Small Business Restructuring Act (US)

SCSI	Standing Committee on Standards Implementation (FSB)
SGA	Società Gestione Attività (Italy)
SGD	Singapore dollar
SIP	Simplified Insolvency Programme (Singapore)
SLIK	Financial Information Services System (Korea)
SME	Small and medium sized enterprise
UK	United Kingdom
UNCITRAL	United Nations Commission on International Trade Law
US	United States

Executive summary

The economic impact of COVID-19, combined with high levels of indebtedness, may induce a wave of corporate defaults over the coming years as official support measures are unwound, while the global economy is likely to be weighed down by debt overhang following the pandemic. Effective corporate restructuring and insolvency frameworks are necessary to help minimise damage to the economic and financial system that could be caused by widespread defaults. Out-of-court workouts (OCWs) represent the alternative to full, formal insolvency proceedings. They are generally less costly and more flexible, and they can play a useful role in dealing with a higher number of cases, particularly if the involvement of courts is minimal.

The objective of the review is to support COVID-19 response and recovery efforts by examining FSB member jurisdictions' practices, experiences and lessons from OCWs, and the implications for financial stability. This report covers three types of OCWs: purely informal workouts on a contractual basis between debtors and creditors, without specific rules or procedures adopted for such workouts; enhanced procedures supported by laws or other procedural rules but without court involvement; and hybrid procedures (e.g. expedited reorganisations which are confirmed by a court and restructuring procedures which may have limited court intervention beyond confirmation).

A purely informal OCW is generally considered most effective in restructuring financial debt with one main creditor or a limited number of creditors where no support for creditor coordination is required. Enhanced OCWs coordinate and increase the possibilities of reaching agreement among a larger number of creditors and between the debtor and creditors. Due to judicial intervention (albeit limited) of hybrid OCW procedures, these offer the possibility of majority decisions that bind dissenting creditor minorities.

Main findings

FSB jurisdictions have adopted a variety of approaches to complement in-court insolvency proceedings and facilitate restructurings through the use of OCW frameworks, including most recently in response to COVID-19.

Existing OCW frameworks (section 2)

- The possibility of a debtor and its creditors reaching an agreement to restructure debt in a purely informal workout exists in all jurisdictions, and several jurisdictions report that there is a widespread informal restructuring practice.
- Most jurisdictions have various OCW frameworks in place. In addition to purely informal frameworks, 23 of the 25 FSB jurisdictions have hybrid frameworks and 17 jurisdictions have enhanced frameworks, with 15 jurisdictions having both types. Because different OCW frameworks can serve different purposes, having several ones may be beneficial.
- Most OCW frameworks have been in place since before COVID-19. Some jurisdictions have introduced new frameworks or amended existing ones to cope with the consequences of the pandemic, in particular to support small and medium-sized enterprises (SMEs). Some of these frameworks (France, India, Indonesia, Singapore) are temporary. A few

jurisdictions also report that they plan to review their frameworks including in light of the pandemic experience.

- Data about the use of OCW frameworks is scarce, and where it is available it is not in a format that is comparable across jurisdictions. This is to be expected, given that informal debt restructurings and OCWs are frequently voluntary arrangements between private parties with no or very limited government involvement that would allow for data collection. As informal restructurings tend to be confidential, no data is available about them. Hybrid restructuring procedures rely on limited judicial intervention and therefore could be included in insolvency statistics. However, insolvency statistics are also scarce and incomplete in most jurisdictions. This lack of information makes it difficult to assess the relative use or efficiency of OCW frameworks, both within and across jurisdictions.

- The features of OCWs that are considered most helpful by authorities to support swift and cost-efficient restructurings are moratoria or standstills on debt enforcement (to give the time needed for the debt workout) and flexibility of outcomes (that allows debtors and creditors to find individual, swift and simple solutions). A challenge in using OCWs relates to the necessity in certain instances (for example, in enhanced procedures) of reaching a unanimous decision between all creditors, but where agreement is not likely.

OCWs for SMEs (section 3)

- Most OCW frameworks are available to SMEs. Some OCWs pose similar challenges to SME debtors as in-court procedures, mainly due to their complexity and cost, which may often be disproportionate to the simple SME debt structure, and due to the lack of technical understanding by the debtor. In response, about half of FSB jurisdictions have specific OCW frameworks for SMEs or facilitate OCWs for SMEs through simplifying the existing restructuring framework. Most jurisdictions with a specific OCW framework for SMEs have adopted enhanced workout procedures for SMEs.

- Several jurisdictions highlight other barriers to SMEs' use of OCW frameworks that lie outside the procedures themselves, such as insufficient data about SMEs' financial situations and difficulties in attracting fresh financing.

- As SMEs account for the largest proportion of corporates in all jurisdictions, having the capacity to process a high number of debt restructurings is particularly relevant. Specific OCW measures were introduced in some FSB jurisdictions in response to COVID-19 or past financial crises to assist financially distressed SMEs. Common features of these frameworks are simplified procedures with certain standardised elements such as sets of pre-defined outcomes. This facilitates negotiations and reduces costs, although simplified procedures may limit the flexibility of debtor-creditor negotiations and may warrant safeguards to protect debtor and creditor rights and avoid abuse.

Enabling environment to facilitate OCWs (section 4)

- Restructuring is facilitated by legal and regulatory frameworks that encourage debtors and creditors to reach agreements and conduct a wide range of restructuring operations.

- Almost all FSB jurisdictions support OCWs by facilitating the low-cost availability of certain debtor information to creditors. Such information is key to removing information asymmetries and ensuring the availability of reliable and timely credit information to lenders in order to take informed restructuring decisions.

- Many jurisdictions also enable OCWs by allowing debt write-downs and giving priority for fresh financing. In most jurisdictions public sector creditors (such as tax authorities) can participate in such write-downs, and there are often special rules that apply to such participation. In some jurisdictions, the limited options for public creditors to accept debt reductions could complicate restructuring agreements. Fresh financing is often needed for indebted businesses to remain operational during restructuring negotiations. Because priority for fresh financing poses a risk to the economic value of the rights of pre-existing creditors, many jurisdictions that give priority to fresh financing require court approval. The extent of the priority for fresh financing varies across jurisdictions.

- Most jurisdictions identify no significant legal and regulatory obstacles to out-of-court debt restructuring, although recapitalisations of distressed companies tend to face more problems than other restructuring operations, from the interaction between company law, banking law and securities regulation. To facilitate debt restructuring, favourable tax treatment for losses incurred in such restructuring also exists in several jurisdictions.

- In response to the COVID-19 pandemic, some jurisdictions have legislated on the issue of fresh financing, and the majority of FSB jurisdictions have introduced special fiscal programs to support companies in distress.

Role of financial sector authorities (section 5)

- Financial sector authorities' involvement in OCWs and debt restructuring is shaped by each jurisdiction's legal, economic and political system. Where such authorities become involved in OCWs and debt restructuring, their involvement is often precipitated by crises. The principles or structures introduced are often temporary, although in some cases they have outlived the crisis, either because they have proven effective in non-crisis periods or because it took considerable time to resolve the effects of the crisis.

- Financial sector authorities generally take one of two primary regulatory approaches to OCWs. Some assume a more direct role in facilitating OCWs through a wide range of measures, including through the adoption of procedural rules, such as codes of conduct and sets of principles, or the establishment of administrative structures. Financial authorities that are active in this area tend to develop and support enhanced OCWs. Other authorities prefer to rely on voluntary arrangements between private parties, though they still indirectly affect OCWs through their regulatory and financial sector oversight responsibilities.

- Financial sector authorities in about half of FSB jurisdictions have adopted a code of conduct, set of principles or framework agreement for voluntary, consensual debt restructuring and OCWs. The majority of these frameworks establish specific procedures for debt restructuring and OCWs, whereas a minority set out only principles.

- Authorities in approximately one-quarter of jurisdictions have established administrative structures to facilitate debt restructuring and OCWs, such as credit mediation agencies, debt counselling services or special bodies set up to provide guidance on and support to OCWs.
- In approximately half of jurisdictions, financial sector authorities have created or supported mechanisms that aim to identify signs of distress in corporates and to address information asymmetries between creditors and debtors in debt restructuring and OCWs.
- These structures generally aim to create: conditions that would foster negotiations between viable corporates and their creditors; procedures to allow for efficient, swift and less-costly debt restructuring; guardrails to prevent abuse; and confidence in debtors and creditors that OCWs and debt restructuring are worth their time and resources.

Recommendations

The varied legal and economic structures across FSB jurisdictions, and the fact that OCW frameworks serve different purposes, underscores that there is no one-size-fits-all approach to OCWs. Recognising this, and based on the above findings, the peer review has identified the following recommendations:

1. FSB jurisdictions should consider:

    a. working, with the private sector and academia where appropriate, to assess the efficiency of the OCW frameworks in place in their jurisdiction and to collect data and develop metrics necessary to undertake such assessments; and

    b. reviewing whether there exist significant barriers to the use of their OCW frameworks by SMEs, and taking steps, as necessary, to reduce such barriers. Examples of barriers identified in the report include costs (e.g. court, legal and professional consultancy fees); lack of knowledge of available frameworks; and information gaps on SMEs' financial situation. The report also describes various approaches used by different jurisdictions to address these barriers.

2. The FSB, working with the IMF, World Bank and other international bodies, will promote the sharing of out-of-court corporate debt workout practices and experiences (e.g. via targeted workshops and outreach through FSB regional consultative groups).

1. Introduction

The FSB places great importance on effective restructuring and insolvency regimes for a stable financial system. The *Insolvency and Creditor Rights Standard* (ICR Standard)[4] is one of the FSB Key Standards for Sound Financial Systems.[5] The ICR Standard combines the World Bank *Principles for Effective Insolvency and Creditor/Debtor Regimes*[6] and the United Nations Commission on International Trade Law (UNCITRAL)[7] Legislative Guide on Insolvency Law.

The economic impact of COVID-19, combined with high levels of indebtedness, may induce a wave of corporate defaults over the coming years as official support measures are unwound, while the global economy is likely to be weighed down by debt overhang following the pandemic. In addition, growing vulnerabilities in the non-financial corporate sector may increasingly affect banks and other financial institutions. It is therefore important to have efficient procedures for the restructuring or liquidation of corporates in distress.

Effective corporate restructuring and insolvency frameworks are necessary to help minimise damage to the economic and financial system that could be caused by widespread defaults. Out-of-court workouts (OCWs) represent the alternative to full, formal insolvency proceedings, and they can be particularly useful in situations where the judicial system is overloaded or lacks the capacity or the resources to deal with complex cases and where the distressed corporates include large numbers of small and medium-sized enterprises (SMEs) that lack the resources for formal insolvency proceedings. OCWs enable creditors to modify their lending relationships with the debtor in a coordinated action instead of forcing the debtor into insolvency, where the prospects of recovery may be significantly lower. They can also help prevent non-performing loans (NPLs) from accumulating in financial institutions and therefore reduce financial sector vulnerabilities.

The objective of the review is to support COVID-19 response efforts by examining FSB member jurisdictions' practices, experiences and lessons from OCWs, and the implications for financial stability. Given the concerns about SMEs stemming from cost, effectiveness and administrative burden considerations, a particular focus is on specific rules and practices for debt workouts for SMEs.

The peer review focuses on OCWs for corporates,[8] and is anchored on the relevant elements of the ICR Standard Principles for Effective Insolvency and Creditor/Debtor Regimes and UNCITRAL Legislative Guide on Insolvency Law.[9] These key elements cover relevant features of the informal workout procedure itself, as well as desired features of an enabling legislative

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4 See *Insolvency and Creditor Rights Standard* (January 2011).

5 Available here.

6 Available here.

7 Available here.

8 Extending the scope to businesses organised in other forms would introduce issues that relate to personal insolvency, and that are not covered by the anchoring principles of this review.

9 The team also considered the INSOL International Principles for a Global Approach to Multi-Creditor Workouts (INSOL Principles), which presents the statements of best practice for all multi-creditor workouts. See International Association of Restructuring, Insolvency & Bankruptcy Professionals and its Statement of Principles for a Global Approach to Multi-Creditor Workouts II (April 2017).

framework.[10] However, the review did not monitor implementation or assess jurisdictions' compliance with these standards.

The primary source of information for the peer review was responses to a questionnaire by FSB jurisdictions. In addition, the FSB issued a call for public feedback in June 2021 and the team held a virtual roundtable with stakeholders in February 2022 on the areas covered by the review.

The report is structured as follows:

- Section 2 describes the types of OCW frameworks that exist across FSB jurisdictions and highlights the main features considered important by jurisdictions for increasing their efficiency;
- Section 3 focuses on SMEs, in particular their use of OCWs, challenges in such use, and features to help with a large number of restructurings;
- Section 4 focuses on the enabling framework; that is, the legal and regulatory factors that facilitate OCWs as well as elements of the legal and regulatory regimes that are of relevance to the financial system; and
- Section 5 describes how the functioning of OCW frameworks is supported by relevant practices of the financial sector and its authorities, and by sector specific legal and regulatory provisions.

Annex 1 provides a snapshot of the OCW procedures available in FSB jurisdictions. Annex 2 briefly describes recent and planned OCW-related reforms. Annex 3 gives an overview of the types of financial sector authority support for OCWs. In addition, Annex 4 lists the World Bank Principles and UNCITRAL recommendations to anchor the peer review, and Annex 5 summarises the public feedback received over the course of this review.

2. OCW frameworks in FSB jurisdictions

2.1. Types of OCW frameworks

FSB jurisdictions have adopted various approaches to complement in-court insolvency proceedings and facilitate restructurings through the use of OCW frameworks.

Most FSB jurisdictions have a variety of OCW frameworks in place. The possibility of a debtor and creditors to reach an agreement in a purely informal workout exists in all jurisdictions, and several jurisdictions report that there is a widespread informal restructuring practice. In addition, 17 jurisdictions have enhanced OCW frameworks in place, 23 have hybrid frameworks, while 15 jurisdictions identify having both types of frameworks in place (see Box 1 and Annex 1).

[10] An enabling environment encourages participants to engage in consensual arrangements designed to restore an enterprise to financial viability, for example by requiring disclosure of financial information of the distressed enterprise, by flexibly accommodating a broad range of restructuring activities and by giving creditors reliable recourse to enforcement.

Different OCW frameworks may serve different purposes. Restructuring frameworks can be part of a broader set of tools that also includes formal insolvency procedures. OCW frameworks present an alternative to the use of judicial procedures for debt restructuring, and each type of framework has specific strengths and capabilities. For this reason, the simultaneous existence of several OCW frameworks may be beneficial since they can complement each other.

Box 1: Types of OCW frameworks

Table 1: Frameworks available in FSB jurisdictions

Purely informal	Enhanced	Hybrid I (expedited reorganisation)	Hybrid II (restructuring procedures)
All FSB jurisdictions	AR, AU, CN, DE, ES, FR, HK, IN, ID, IT, JP, KR, MX, RU SG, TU, UK	CH, CN, ES, IN, KR, MX, SG, UK, US	AR, AU, BR, CA, CH, DE, EU, FR, HK, ID, IN, IT, JP, NL, SA, SG, UK, ZA

Source: FSB jurisdictions' responses. See Annex 1 for more detail.

FSB jurisdictions report three main types of OCW frameworks in use:

- *Informal OCWs*: Several jurisdictions report widespread use of purely informal restructuring workouts (Brazil, Canada, Germany, Mexico, UK, US), which are generally available across FSB jurisdictions.
- *Enhanced OCWs*: These consist of laws, regulations or general agreements that seek to facilitate restructurings without any judicial intervention. Such frameworks are extremely varied in their scope, elements, and financial sector authority involvement (see Section 5). However, the main goal for them all is to increase the possibility of reaching agreement on a restructuring plan by pooling creditors together, using codes of conduct, mediation, or other alternative dispute resolution (ADR) techniques, or providing administrative support to negotiations.
- *Hybrid OCWs:* Two hybrid frameworks are common.
  - *Hybrid I - Expedited reorganisation.* Under these frameworks restructuring negotiations take place out of court and then the restructuring agreement is confirmed by the court. The most prominent example and origin of this technique is in the US (pre-arranged and pre-packaged bankruptcies). Similar frameworks are available in China, India, Korea, Mexico, Singapore, Spain, Switzerland and the UK.
  - *Hybrid II - Restructuring procedures.* These are restructuring procedures where court intervention goes beyond the mere confirmation in expedited reorganisations but is more limited than in formal insolvency proceedings. The court may intervene by appointing an insolvency representative, granting a stay to facilitate negotiations, or confirming the workout agreement. Examples include special procedures in Argentina, Brazil and Saudi Arabia, preventive restructuring procedures (EU, to be introduced throughout by mid-2022), France, Germany, Italy and Netherlands) and schemes of arrangement and similar restructuring procedures in most common law countries (Australia, Canada, Hong Kong, India, Singapore, and the UK).

It is generally regarded that the effectiveness of different OCWs can vary in different settings. A purely informal OCW is most effectively used in restructuring financial debt with one main creditor or a limited number of creditors where no support for creditor coordination is required, and binds only consenting creditors through contractual means. Enhanced OCWs coordinate and increase

the possibilities of reaching agreement among a larger number of creditors and between the debtor and creditors. This is done by using codes of conduct or mediation tools, among others, to facilitate coordination amongst creditors and negotiations between creditors and debtors, without offering the possibility of binding dissenting creditors. Due to limited judicial intervention, hybrid OCWs offer the possibility of majority decisions that bind dissenting creditor minorities. Some hybrid restructuring procedures also use limited judicial intervention to protect restructuring negotiations (such as putting a stay on debt enforcement) but avoid the formality and complexity of full formal insolvency proceedings.

There is scarcity of data about the use of OCW frameworks. This is to be expected, given that debt restructurings and OCWs are frequently voluntary arrangements between private parties with no or very limited government involvement, which complicates efforts to develop methods of tracking the use of these tools. Informal restructurings tend to be confidential and are not included in official statistics. Data on the use of hybrid restructuring frameworks may be difficult to separate from data on formal insolvency proceedings in insolvency statistics because they may not be disaggregated from the data on full formal insolvency proceedings.[11] In the EU, member states will soon report separately on hybrid frameworks and other types of procedures.[12] Some countries where enhanced OCW frameworks are used produce basic statistical information on the use of those restructuring tools (Japan, Korea, Turkey).[13] The lack of a unified format makes comparative analysis challenging.[14] In any case, information on OCW frameworks is extremely useful for authorities and market participants.

The time needed to finalise the OCW process and reach an agreement differs according to the specific framework used. The time to finalise hybrid and enhanced OCWs varies from one month to twelve months or longer. The time to finalise informal OCWs is not clear because there is either no data available or there are no statutory time limits.[15] Where data is available, the duration varies between one and three months and therefore seems in general shorter than for enhanced and hybrid OCWs. This implies that the duration depends on the level of formality of the process and also on the need for court involvement. Other factors that may support swift agreements are the number of creditors or the complexity of the restructuring transactions.

Although most jurisdictions report there are no official statistics on cost comparison, there is a general assumption that OCWs are less costly than formal proceedings, inter alia because of shorter timeframes and fewer formalities and professionals involved. This also corresponds to the fact that OCWs are mostly chosen for less complex cases. Companies with more serious

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[11] Information on formal insolvency proceedings is equally incomplete and uneven in most cases. See The Use of Data in Assessing and Designing Insolvency Systems (IMF Working Paper, February 2019).

[12] Article 29 of the EU Restructuring Directive (Directive (EU) 2019/1023) contemplates collection of data, including number, duration, cost and outcome of restructuring procedures. It is to be transposed into national law by mid-2022 for those that requested an extension of the deadline.

[13] For example, in Japan there is data on the number of firms that have used some of its enhanced OCW frameworks, and Turkey collects data on the number of loans and amounts restructured under its enhanced OCW frameworks

[14] The lack of comprehensive statistics for the different existing OCW frameworks in particular countries does not allow an assessment of the relative use of each framework, where several OCW frameworks exist.

[15] In some jurisdictions, there are no statutory time limits to finalise OCW processes, particularly for informal workouts. This is because the processes mainly depend on the complexity of the restructuring agreement for the parties involved. On the other hand, some countries have time limits for hybrid and enhanced OCWs that vary from immediate up to 120 days. Time limits are mainly adopted regarding the meetings of creditors, vote or approval of the restructuring agreement by the participants, courts or related authorities, stay of individual enforcement actions, completion of restructuring process, submission of resolution plan and other necessary documents, approval of agreement, actions of the mediator filing objections with the court and moratorium.

problems or complex situations may prefer to choose hybrid or full formal insolvency proceedings.[16]

2.2. Relevant features of OCW frameworks

Typical procedural arrangements followed by purely informal workouts are difficult to describe given their informal, confidential and customised nature. However, jurisdictions commonly reported several relevant features for enhanced and hybrid workouts. The main features of OCW frameworks reported by jurisdictions relate to standstills/moratoria; eligibility; confidentiality; participation of professionals; flexibility of outcomes; and effects on creditors.

The features that are considered most helpful by authorities to support swift and cost-efficient restructurings are standstill agreements or moratoria on debt enforcement and flexibility of outcomes. Moratoria provide the company with breathing space from its creditors for some specified period of time while the company attempts to formulate a workout (see Box 2 for examples).[17] In addition, respondents to the FSB's call for public feedback identified several helpful features such as: enhanced flexibility and agility; issuance of standstill notices (similar to moratoria); involvement of financial authorities to attract creditor participation; and various regulatory, contractual or legal, and other factors (see Annex 5).

Box 2: Examples of moratoria on creditor actions

A stay on creditor enforcement action can be achieved by a voluntary or contractual commitment by creditors (standstill) or as an effect of a legal provision or court decision (moratorium).[18] These moratoria may be in place on a stand-alone basis or as an element of a broader restructuring mechanism (Singapore, UK, Brazil, EU).

- **Singapore:** Schemes of arrangement permit a company that has proposed or intends to propose a compromise between itself and its creditors (or any class of its creditors) to apply to court to restrain proceedings that may be taken against itself. An automatic moratorium of 30 days on enforcement proceedings will kick-in upon the application. Upon such an application, a court may also grant orders to restrain actions against the applicant company or related companies (i.e. subsidiary or holding company of the subject company).
- **UK:** In connection with a hybrid procedure called a Company Moratorium (available from June 2020), a moratorium is granted for an initial period of 20 business days, extendable by the company for a further 20 business days and beyond that, up to one year, with consent of creditors. The court may also extend a moratorium but is not restricted to a one year maximum. To date most, if not all, moratoria have been completed without needing an extension.
- **EU:** A stay on individual enforcement actions is available to debtors under the preventive restructuring frameworks prescribed by the EU Restructuring Directive.[19] The stay may be

[16] See *The Economic Impact of Chapter 11 Bankruptcy versus Out-of-Court Restructuring*, Markwardt, Lopez and DeVol, Journal of Applied Corporate Finance (2016),

[17] Such a stop on enforcement provides protection to the debtor during the negotiation process. It is particularly useful where there are major disagreements among creditors (i.e., rogue creditors that act fast to seize the assets of the debtors to gain an advantage).

[18] A moratorium is typically found in hybrid restructuring frameworks of type II. In informal restructurings and in enhanced restructurings, the standstill works by operation of best practice principles (standstill in INSOL principles) or by operation of the master restructuring agreement or administrative rules of the enhanced scheme.

[19] Directive (EU) 2019/1023 on Restructuring and Insolvency of 20 June 2019 ('EU Restructuring Directive"). The EU Restructuring Directive is in the process of being transposed by its Member States and will be reviewed in 2026.

imposed by operation of law or by court-order. It suspends not only enforcement actions and the right to seize and realize collateral, but also debtor's or debtor's directors' duties to file for insolvency and the ability of creditors to commence insolvency proceedings. The stay is to be granted for an initial period of up to four months and may be prolonged for a total duration of no longer than 12 months, if so provided in Member States' transposition laws.

Eligibility

OCW frameworks typically have less demanding eligibility requirements (if any) than formal insolvency proceedings. Generally, a distressed company can restructure its debt using these mechanisms without any insolvency test or based solely on the agreement of the parties involved. Therefore, purely informal workouts are generally accessible without eligibility requirements. In some enhanced OCWs, companies may have to provide information on their viability prospects (Japan, Singapore, Turkey).[20] Some hybrid restructuring frameworks, such as preventive insolvency procedures, may require a commencement standard (e.g. likelihood of insolvency, in the EU for procedures introduced under the EU Restructuring Directive) or other ways to filter out nonviable debtors. However, some jurisdictions may also allow insolvent companies to enter into an OCW framework (Australia, Canada, Hong Kong, UK) or do not require a positive assessment of the debtor's viability for access to any OCW framework (Germany, Netherlands, Switzerland, US).

In some jurisdictions all OCWs are accessible without such requirements. However, there are also examples where most of the OCW frameworks in place have an eligibility test (Japan) or where both pre-eligibility and post-eligibility tests are in place (Korea).

Where eligibility requirements to access the OCW frameworks apply, they mainly relate (often on the basis of a restructuring and/or payment plan) to: the duration of business activity; the assessment that the debtor is solvent; the overall amount of debt of the company; the amount of liquid assets or receivables; the absence of previous or ongoing restructuring agreements; lack of criminal history; reasonability of the OCW; evaluation of the expected effectiveness of the restructuring process; consent of stakeholders; and the prospects of the business (viability test). Requirements for these concrete eligibility criteria vary widely across jurisdictions.

Confidentiality

Confidentiality is considered a key element of every workout procedure as it prevents adverse publicity regarding the financial soundness and viability of the company. It avoids adding further stress to the struggling company and brings less reputational damage to the corporate and management than formal insolvency proceedings. Authorities in a couple of FSB jurisdictions (UK, China) considered confidentiality to be one of the advantages which distinguish their out-of-court restructuring procedures from those with court involvement. As mentioned in subsection 2.1, confidentiality is one reason why few data are available on informal procedures.

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[20] A viability prospect means that the company is already or has the potential to become successful (i.e. that the company's business is profitable). Usually, the viability prospect is not based on clearly defined ratios and includes multiple aspects of the business (i.e. not only financials). In contrast, a solvency test is often based on specific ratios, mainly assessing whether the company's total current assets cover its total current liabilities.

Participation of professionals

The role of professionals can be extremely diverse, depending on the formality of the restructuring mechanism. Informal restructuring relies on the participation of specialised financial and legal professionals, rather than on judicial intervention and on insolvency representatives. Insolvency professionals who are regulated have a central role in developing a restructuring solution in some enhanced frameworks (Australia, Japan, UK) and in some hybrid frameworks (France). In other hybrid frameworks, participation of insolvency professionals is required in some circumstances, bringing these procedures closer to formal insolvency procedures (EU). In addition, there are certain OCW frameworks that rely on independent experts to ensure that restructuring agreements are consistent with viability and feasibility requirements (Italy, Spain, India).[21]

Flexibility of outcomes

Corporate debt workouts have the advantage of offering flexible solutions for distress situations. Most OCW frameworks have complete flexibility in outcome (rescheduling of debt, writing down or writing off debt, debt/equity conversion, sale of assets, etc). The exceptions are some enhanced frameworks, like those for the restructuring of public claims (Indonesia), or some of those designed for distressed SMEs during the pandemic (Singapore), which have pre-determined restructuring solutions. Some systems contemplate that restructuring agreements will be protected from avoidance actions (Germany, Italy, Spain).[22] The sale of the enterprise as a going concern can also be included as part of an informal agreement in some enhanced frameworks (Italy, Japan) and in many hybrid frameworks (Argentina, Brazil, Germany, Italy, Netherlands, Switzerland, UK, US). In other systems, the sale of the enterprise is a modality of liquidation, rather than restructuring. Some enhanced procedures define a set of possible outcomes of the OCW framework, in particular where support by government funds is involved (Spain, Japan). There are also enhanced restructuring mechanisms which focus on generating a specific outcome (see Box 3 below).

Box 3: Payment moratoria in Italy

In Italy, moratoria agreements ("convenzioni di moratoria", provided since 2015) can be stipulated between debtors and banks and other financial institution creditors providing for a delay of payments to address the crisis. Therefore, they are a stand-alone OCW, whilst other kinds of moratoria exist within debt restructuring agreements. Provided that all creditors involved in the agreement have been notified about the beginning of the negotiations, if 75% of financial creditors pertaining to a specific class agree to the moratoria and an independent professional certifies that dissenting financial creditors pertain to the same class as the agreeing ones and that dissenting creditors suffer prejudice proportionate to the debtor reorganisation, the moratoria is binding on all financial creditors pertaining to the class. The moratoria agreement cannot burden creditors with new performances or obligations.

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[21] In India, the residual debt after restructuring of debts above a certain threshold (Rs 1 billion) requires an evaluation by a rating agency.

[22] Avoidance actions are judicial actions within an insolvency process that seek to cancel acts that have been prejudicial to the debtor or have unduly favored a creditor over other creditors. In theory, a restructuring agreement concluded before insolvency could fit within the range of these actions.

Effects on creditors

Several jurisdictions indicate differences in treatment between creditors in OCWs and in-court insolvency proceedings, and also among OCW frameworks. In the UK, OCWs are not bound by the *pari passu* principle that applies to in-court proceedings. Furthermore, there is a clear distinction in several jurisdictions between enhanced and hybrid frameworks in terms of effects on creditors. Generally, OCW frameworks facilitate concerted action by creditors for a coordinated debt restructuring. Many enhanced OCW frameworks are based on the exclusive participation of financial creditors and seek to have binding effects on this category of creditors only (Canada, India, Japan, Spain, Turkey).[23] Several enhanced frameworks do not bind certain classes of creditors, such as secured and preferential creditors without their agreement (UK), and there are cases of enhanced frameworks designed for all classes of creditors (Australia). In contrast, hybrid restructuring frameworks tend to bind all classes of creditors.[24] The need to reach a unanimous decision between all creditors has been identified as a challenge for the use of enhanced procedures where several creditors or several classes of creditors are involved. Where the number of creditors is higher and their composition is more complex (e.g. different creditor classes or different creditor types) a hybrid procedure may be chosen as it would allow, under certain circumstances, to bind dissenting creditors by court approval.

2.3. Features of enhanced OCW frameworks

Enhanced OCW frameworks consist of laws, regulations or general agreements that seek to facilitate restructurings without any judicial intervention. Enhanced procedures are in some jurisdictions less complex because they focus on the debtor/creditor relationship and do not involve complex inter-creditor coordination. For example, some focus on only one main creditor or only on financial creditors, and the other creditors remain unaffected (e.g. Italy, Japan, Korea, Spain). One such example is in Box 4 below. Other enhanced frameworks are designed for complex multi-creditor settings (Turkey). However, as with workouts in general, there is a range of approaches with different features, from entirely consensual (e.g. without regulatory or court oversight or enforcement) to regulated and supervised regimes.[25]

Box 4: Korea's Corporate Restructuring Promotion Act (CRPA)

The Financial Services Commission (FSC) developed the CRPA, an enhanced OCW framework, in 2001 to provide a transparent and fair OCW procedure. The CRPA is a statute that sets out procedures for the conduct of OCWs. Under the CRPA, creditor banks are required to carry out corporate risk assessments annually to identify distressed corporates. If a main creditor bank identifies a debtor company showing signs of insolvency based on the results of a credit risk assessment, it notifies the company, which may then apply for an OCW. The main creditor bank leads the process of developing a normalisation plan by convening other creditors in a Committee of Financial Creditors. The main creditor bank also monitors on a quarterly basis how the restructuring plans under the MoU are implemented. After three years, it evaluates the possibility of corporate improvement and reports the results to the creditor banks' council.

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[23] Public creditors do not generally participate in enhanced frameworks. In Indonesia, an enhanced framework is available to public creditors for the sole purpose of restructuring public claims.

[24] An exception is the Brazilian extrajudicial rehabilitation, which does not bind secured creditors and tax creditors.

[25] These are canvassed in detail in the World Bank's Toolkit for Corporate Workouts, which was updated in 2022. See World Bank Toolkit for Corporate Workouts (2022).

The CRPA provides for a Mediation Committee of Financial Creditors to mediate disputes among creditors. The committee can decide to inject new funds into the company, which rank immediately behind secured claims but ahead of other unsecured claims of financial creditors. As a general matter, all committee decisions, including implementation of the normalisation plan, require the consent of creditors representing at least 75 percent by amount of the total claims of all financial creditors. The CRPA also provides for simplified OCW procedures for SMEs, a more flexible timeline. The CRPA is currently scheduled to expire in 2023.

Members report several types of features which enhance procedures used by debtors and creditors to restructure debt without court involvement. Examples include codes of conduct, sets of principles, framework agreements and elements of ADR. Financial authorities in some jurisdictions have been active in creating such types of procedures or provide administrative support, as described in Section 5.

At one end of the spectrum are countries that have no such arrangements for OCWs (code of conduct or common practices), whether informal or formal. In some of those countries (e.g. US), this appears to be a policy choice informed by the notion that OCWs ought to fundamentally be guided by market forces, and complemented by strong hybrid OCWs and formal insolvency procedures. In addition, most jurisdictions indicated they have no single codified set of principles or guidance specifically for OCWs.

Some jurisdictions provide rules for the deployment of particular debt restructuring tools via self-regulated organisations (China) or norms informed by the common law (Canada). Jurisdictions with OCW guidance codified in a document include Turkey, Japan and India (each discussed in Section 5).

The term 'common practices' is intended to encompass cases where OCW processes have developed without government intervention. A good example of this is the 'London Approach' (which in turn influenced the development of the INSOL Principles described in Box 5 below). The London Approach emerged as a set of standards mutually agreed among creditors in the UK. In Germany, informal restructuring practice is largely shaped by a standard for restructuring concepts promulgated by the German Institute of Auditors (Standard S6). That standard sets forth requirements for expert opinions on the feasibility of restructurings, covering, inter alia, the analysis of the debtor's economic, financial, and legal situation and the evaluation of the measures envisaged for the purpose of resolving the debtor's distress.

There is limited uptake of master restructuring agreements (MRAs).[26] Only China, India, and Turkey (discussed in Section 5) report agreements akin to MRAs with the requisite legally binding nature. Several other countries have voluntary frameworks, for example the Spanish 'Code of Good Practices', or the Mexican Memorandum of Understanding prepared in 2020 after the COVID-19 outbreak.[27]

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[26] An MRA (or framework agreement) is an agreement among financial institutions that sets general requirements for the restructuring of companies. The signatories are bound by the majority decisions taken in each of the specific restructurings conducted under the agreement. These agreements generally include arbitration for the resolution of disputes.

[27] That memorandum shares some characteristics of an MRA but is not binding on creditors.

About half of FSB jurisdictions[28] have some form of debt restructuring schemes issued by a state authority or developed by state authorities in cooperation with the financial sector.[29] Some jurisdictions have more than one debt restructuring scheme, for different entities or purposes.[30] The entity responsible for these debt restructuring schemes is usually a bank supervisor, a financial sector or capital markets regulator, or a self-regulatory organisation. Korea's scheme is presented Box 4 and other examples are described in more detail in Section 5. They can be based on procedural rules, codes of conduct, or on administrative structures. Some may even provide pre-defined solutions for debt restructuring.

ADR mechanisms for resolving debtor-creditor or inter-creditor disputes play at least some role in the restructuring process in many jurisdictions. However, they are only formally integrated into OCW frameworks in a minority of jurisdictions.[31] The most common position is that there is some scope for ADR, but only on a case-by-case or informal basis (that is, it is not a formal or mandatory part of the workout process). Integrated ADR thus appears to be uncommon. European countries were disproportionately likely to report either that there is no dedicated framework for ADR for OCW, or that ADR is not widely used in this context.[32]

Box 5: Integration of INSOL principles in national frameworks

The INSOL International Principles for a Global Approach to Multi-Creditor Workouts (INSOL Principles)[33] have been influential in informing the debt restructuring principles adopted in many jurisdictions. However, even among countries in which the INSOL Principles are influential, the extent of conformity with the INSOL Principles varies. Indonesia was the only jurisdiction to indicate it had adopted the INSOL Principles. However, several jurisdictions (China, India, Japan, Korea, South Africa, Turkey and the UK) identified the existence of principles equivalent or similar to the INSOL Principles.

The mechanisms identified as similar to the INSOL Principles were markedly different across jurisdictions: either market-led, regulator-led, or enshrined in legislation. The mechanism in Turkey is two MRAs (for small and large value restructurings, as described in Section 5 and Annex 3) signed on to by creditors, co-ordinated and sponsored by the Banks Association of Turkey. That agreement includes provisions similar to the INSOL Principles on issues like stand-stills and information sharing. The UK has no codified equivalent provisions to the INSOL Principles, but similar provisions have been developed by the market or by financial institutions. In Indonesia, the INSOL Principles are enshrined in a regulation issued by the Financial Services Authority. Consistent with the INSOL Principles, Japan's 'Guidelines for Multi-Creditor Out-of-Court Workouts' target collective action and co-ordinating costs by allowing one creditor in an OCW to take on the role of a 'managing bank' to cover the cost of co-ordinating with all creditors.

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28 Australia, Brazil, China, India, Japan, Korea, Mexico, Saudi Arabia, Spain and Turkey.

29 A debt restructuring scheme is a set of rules for the restructuring of debts of distressed enterprises. These rules are issued by a state authority or developed by state authorities in cooperation with the financial sector. The scheme includes rules for eligibility, conduct of negotiations and steps to reach an agreement, and may be combined with public support for the preparation of restructuring plans, assistance with negotiations and resolution of disputes. It may also include guidance on solutions for different distress situations.

30 For example, Australia has introduced a new scheme specifically for small businesses, in addition to its pre-existing general scheme. Japan has more than five schemes, though not all of these are used in practice currently.

31 Australia, Japan, Germany.

32 Italy, Netherlands, Switzerland.

33 The INSOL Principles presents the statements of best practice for all multi-creditor workouts. See International Association of Restructuring, Insolvency & Bankruptcy Professionals and its Statement of Principles for a Global Approach to Multi-Creditor Workouts II (April 2017).

2.4. Features of hybrid OCWs

Hybrid frameworks fall into two broad categories: expedited reorganisations, where negotiations take place out of court and the agreement is confirmed by the court (pre-arranged and pre-packaged reorganisations); and restructuring procedures, where the court role goes beyond mere confirmation of the restructuring agreement (preventive restructuring procedures and schemes of arrangement). Expedited reorganisations, with various characteristics (reflecting WB Principle B.4.2, and UNCITRAL recommendations 160-168), exist in several countries such as China, Korea, Mexico, Singapore, Spain and the US. One such example is presented in Box 6.

Box 6: Hybrid procedures in the US

In the US, a pre-packaged bankruptcy is a bankruptcy case that begins with the filing of a plan of reorganization with the bankruptcy court that has already been accepted by creditors (or as to which solicitation of acceptances is already underway as of the date of the initiation of the bankruptcy case). The bankruptcy case is the means of implementing the accepted plan, which binds all creditors once confirmed.

A pre-negotiated bankruptcy is a restructuring in which the debtor company and key creditors agree upon the terms of a restructuring and contractually bind themselves to such terms through an agreement prior to engaging in the voting process mandated by US bankruptcy law. After the agreement is executed, the debtor initiates a chapter 11 case in the bankruptcy court to implement the restructuring. The company will seek court approval of a disclosure statement, solicit votes on the plan from creditors, and seek an order from the bankruptcy court confirming the plan, which binds all creditors.

The key difference between an out-of-court restructuring on the one hand and a pre-packaged or pre-negotiated bankruptcy on the other hand is that the latter options allow the debtor to impose a treatment on dissenting creditors' claims so long as the company satisfies the confirmation standards for a plan of reorganization under US bankruptcy law. In order to use cram-down to bind dissenting creditors, the plan of reorganization must meet all of the requirements for a voluntary, consensual plan of reorganization plus two additional requirements: (i) the plan must not unfairly discriminate and (ii) must be fair and equitable. These additional requirements apply to a class of creditors as a whole and not to individual creditors.

A plan unfairly discriminates against a class if another class of equal rank in priority will receive greater value under the plan than the nonaccepting class without reasonable justification. A plan is fair and equitable if it adheres to the absolute priority rule (e.g., a nonaccepting class of creditors cannot be compelled to accept less than full compensation if a more junior creditor receives anything) and there is no payment to creditors in excess of the allowed claim.

Around three-quarters of FSB jurisdictions provide for a hybrid procedure which typically has the following four characteristics: (i) debtor in possession;[34] (ii) court confirmation; (iii) cram-down; and (iv) court-ordered stay (see Box 7). In the majority of cases these features come together and constitute the backbone of the hybrid workout frameworks. Some jurisdictions without a hybrid procedure with the four characteristics describe a procedure presenting some or all of the characteristics but which resembles a judicial insolvency reorganisation.

[34] Any procedure that dispossesses the debtor requires additional legal safeguards which are usually only found in formal in-court procedures.

Box 7: Common characteristics of hybrid procedures

Hybrid procedures are characterised by facilitating agreements between the debtor and its creditors. In hybrid procedures, the intervention of the court tends to be limited to certain areas of the process, as illustrated by the selected characteristics. On the four main characteristics (i) debtor in possession, (ii) court confirmation, (iii) cram-down, and (iv) court-ordered stay, the following findings could be drawn:

(i) Whilst most jurisdictions allow for **debtor-in-possession** hybrid workouts, they differ in the debtors' operations, supervision and scope. Some jurisdictions provide that a supervisor appointment is optional and depends on the circumstances, while others provide no supervision (Italy). The scope of the business which the debtor can carry out varies: in some jurisdictions there are no limits, while others provide that only operations pertaining to the normal business course can be implemented. Finally, some jurisdictions provide for specific directors' duties during hybrid workouts (Germany), or that only normal corporate law duties apply (Brazil, UK). Therefore, the scope and the freedom of debtors' management of the business during hybrid workouts vary considerably and several techniques can be in place in order to avert tunnelling by debtors.

(ii) Most FSB jurisdictions provide for **court confirmation** of hybrid OCWs. Beyond the possibility to bind all creditors, such court approval may have other legal consequences, such as protection from avoidance actions or granting super-priority to fresh financing. However, only a few jurisdictions identified such consequences.

(iii) Most jurisdictions provide for the possibility of **binding dissenting creditors**; **(cram-down)**; procedurally, a (super) majority of creditors must vote in favour of the workout, all creditors must have been convened to the negotiations, a 'no creditors worse off' (than the next best alternative or than the liquidation value of their claim) test is applied and the agreement is sanctioned by a court. Some jurisdictions allow such cram-down solely within the same creditor class (Brazil, Italy), whilst others allow even cross-class cram-downs (Argentina, EU, Germany, UK).

(iv) For most jurisdictions, there is the possibility of obtaining a **court-ordered stay**; however the timing and discretion in awarding the stay vary. The stay could apply during negotiations or at a later stage, when an agreement is filed for court confirmation. Sometimes the stay starts automatically with the filing of the agreement for court approval or it may be granted according to court discretion. Pre-conditions for granting the stay before filing of the workout vary, but general requirements are that evidence is provided that negotiations with creditors are ongoing, and that the stay is necessary for the restructuring and that creditors are not unduly harmed.

2.5. Recent or planned changes to OCW frameworks in response to COVID

Most OCW frameworks were in place before COVID-19, and only a few are temporary. Temporary frameworks in response to the pandemic were introduced in France, India, Indonesia and Singapore.

Many jurisdictions that are considering changes to their OCW frameworks note that they are not COVID-19 related. In some jurisdictions, ongoing work aims to reduce the burden for micro and small businesses and to make OCWs more easily available (Australia, Brazil, China). In other jurisdictions, ongoing legislative revisions are of a comprehensive nature and include improvements of OCW frameworks (Italy – see Box 8 – and Spain).

Box 8: New enhanced workout procedure in Italy

In Italy, the negotiated workout for resolving a firm's crisis entered into force on 15 November 2021. It consists of a series of steps to facilitate negotiations between debtors and creditors, rather than a procedure through which a specific kind of agreement is reached. Despite its accessibility by all businesses, it could be specifically useful to address obstacles to SMEs restructuring. Its essential features are that: (i) the debtor is assisted by an independent expert in negotiating with creditors; (ii) during negotiations, the debtor may apply to the court for the suspension of enforcement actions and for receiving super-senior financing; (iii) the debtor continues to manage the company, but any actions potentially conflicting with the restructuring options must be communicated to the expert; and (iv) the outcome may consist in the initiation of a reorganisation procedure, or in the conclusion of informal agreements which potentially provide tax reductions and protection from avoidance actions. The expert ascertains the existence of concrete prospects for a reorganisation, meets with the other interested parties to propose intervention strategies and facilitates negotiations with creditors. During negotiations, the expert maintains the power to stop the procedure if they deem that there are no concrete chances for the debtor's recovery (substantially guaranteeing to the creditors that a restructuring could be successful and that the debtor doesn't engage in dilatory behaviour).

A few FSB jurisdictions made temporary changes to their insolvency laws to give more breathing space to enable distressed corporates to engage in OCWs. For example, Australia increased the threshold at which creditors could issue a statutory demand to file for insolvency and gave companies more time to respond to such demands. Switzerland permitted distressed corporates to notify courts of existing balance-sheet over-indebtedness and continue operating on the basis of an overall positive assessment of the future ability of the company to restructure its balance sheet by December 31, 2020.

3. OCWs for SMEs and large number of restructurings

3.1. SME specific OCW frameworks

Formal insolvency procedures and certain OCW procedures, for example multi-creditor workouts following the INSOL Principles, tend to be too sophisticated for SMEs. Some avenues of informal restructuring are only feasible for large companies with significant resources and creditor relationships, and workouts in formal in-court insolvency procedures may only be accessible to large and medium enterprises with the resources to bear the costs of formal restructuring.

Many jurisdictions therefore chose to establish specific OCWs for SMES or to open up dedicated channels within general OCW procedures or even within formal insolvency procedures.[35] About half of FSB jurisdictions either have specific OCW frameworks for SMEs or facilitate OCWs for

[35] In February 2020, a new bankruptcy law, the Small Business Restructuring Act (the "SBRA") became effective for SMEs in the US. The SBRA is an in-court reorganisation procedure for certain small businesses. Initially, the threshold for use of this procedure was set at non-contingent, liquidated debts of not more than $2,725,625, at least 50 percent of which is business debt. As part of COVID-19 relief, the debt limit has been temporarily raised to $7.5 million to make the procedure available to a larger number of firms. The SBRA permits debtors to retain control over their business while reorganising. Administrative costs are reduced by removing the automatic appointment of a creditors committee unless ordered by the court for cause, by only permitting the debtor to file a plan of reorganization, eliminating the ability of creditors or the trustee to file a competing plan, and by eliminating the debtor's requirement to file a disclosure statement. Plan confirmation requirements are relaxed too: owners of a small business can retain their ownership interest subject to meeting certain requirements, the plan confirmation requirements are generally less stringent than in a traditional chapter 11 case, and it is also easier for the small business debtor to confirm a plan over creditors' objections.

SMEs by simplifying the existing framework (see Box 9). Other frameworks are available only to larger corporates.[36] Only a few frameworks are available exclusively to specific sectors.[37]

Several jurisdictions cite costs and complexity as a deterrent to SMEs using in-court insolvency procedures or complex OCWs structures.[38] Such costs could include court fees, lawyers' fees, professional consultancy fees in preparing the restructuring plan as well as the cost for banks in handling small debt restructuring. It is even observed that the value added by the debt restructuring process does not necessarily outweigh the cost of such restructuring for SMEs. One objective of some SME-specific OCW procedures is therefore to provide a simple procedure with low cost. Some OCWs focus on financial creditors while other creditors remain unaffected (Italy, Korea, Spain, see subsection 2.3). This simplification may be particularly suitable for SMEs as these often rely on one main financial creditor and do not require complex inter-creditor coordination. For example, the enhanced OCW procedures in Korea (in Box 4) focuses on the restructuring of debt with financial creditors.

A lack of understanding of available frameworks is also noted as a factor impairing SMEs' ability to achieve successful restructurings in in-court insolvency procedures or complex OCWs.[39] For example, debt restructuring works best when early action is taken before financial distress is too embedded, yet SMEs may not have the legal expertise and awareness of when they should be seeking debt restructuring. Some SMEs may be unable to perform financial projections and repayment capacity in drafting the resolution plan. Some OCWs therefore provide some type of professional assistance, advice or support to the debtor to help maneuver through the restructuring procedure, for example in France (see Box 17) and Japan (see Box 18).

Most jurisdictions with a specific OCW framework for SMEs adopted a type of enhanced framework which seeks to facilitate restructurings through laws, regulations or agreements without direct judicial intervention. In many jurisdictions (Australia, India, Indonesia, Saudi Arabia, Singapore and Spain) the financially distressed but viable small companies need to develop a resolution plan that sets out the approach to restructure and repay their debts while allowing the companies to stay in business. Such a plan may need to be voted on by creditors and be overseen by the mediator or trustee.

Box 9: Access to specific procedures for SMEs

SMEs are defined differently across jurisdictions. SME-specific OCW procedures in different jurisdictions may therefore target different types of companies. Eligibility for these procedures often depends on the total debt thresholds, and can also depend on factors linked to turnover and number of employees. Below are some features of frameworks in place.

- In the EU, national laws may provide that the creditor or employees' representatives are allowed to initiate the restructuring process. In that case, the agreement of the debtor must be the precondition of initiating such a procedure for SMEs, but not necessarily for other debtors.

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[36] For example some enhanced OCW frameworks are designed for listed companies (Argentina). In Saudi Arabia, a minimum amount of debt is required to access the hybrid restructuring procedure.

[37] Canada (farming) Russia (strategic enterprises) Singapore (for SMEs in certain sectors).

[38] Australia, Brazil, Germany, Italy, Japan, Korea, Mexico, the Netherlands, Saudi Arabia, Singapore, Switzerland, US.

[39] India, Mexico, UK.

- In Japan and Singapore, an SME may apply to its lenders to initiate a restructuring process that involves all of its credit facilities across the participating banks and finance companies, subject to a viability test conducted by either one of its lenders or any independent party.
- In Korea, the thresholds for small operating owners, including SMEs, in simplified rehabilitation procedures were increased in June 2020 (under the CRPA). Small operating income owners with the debt value of no more than KRW 5 billion (up from KRW 3 billion) may file a petition for the simplified rehabilitation procedures. This aims to help SMEs and others who suffered from the COVID-19 pandemic to swiftly recover through simplified rehabilitation procedures.
- In Singapore, the SMEs in several sectors have access to a specific OCW framework, which provides for debt relief programs different from SMEs in other sectors.

Other considerations of jurisdictions on how to improve effectiveness of OCWs for SMEs refer to conditions outside the procedures themselves, that may support SME debt restructuring as part of an enabling framework (see Section 4). Some jurisdictions observe that incomplete data about SMEs' (financial) situations prevent successful debt restructuring,[40] since reliable audited financial information is not readily available to creditors. Systems that provide freely accessible information on this type of debtor may therefore improve the efficiency of OCWs for SMEs (see subsection 4.1). SMEs may also struggle to attract strategic investors and/or government support, and the current shareholders may not be willing to contribute additional capital. A favorable environment that supports SMEs in attracting fresh financing may therefore improve the efficiency of OCWs for SMEs.

3.2. Features to help with a large number of restructurings

Financial and economic crises may increase the need for procedures that provide the capacity to process a high number of debt restructurings in a given time. As SMEs account for the largest proportion of corporates in all jurisdictions, having the capacity for high numbers of debt restructuring processes is particularly relevant for this type of company. Economic and financial stress in times of crisis may push a high number of companies to insolvency procedures. The judicial system in many jurisdictions lacks the capacity to deal in a timely and effective manner with exceptionally high numbers of cases through ordinary insolvency procedures. Financial and economic crises have therefore caused jurisdictions to apply measures to conduct debt restructuring for a high number of distressed companies. In many cases, these measures included the establishment or improvement of enhanced or hybrid OCW procedures. For a quick reaction in crisis times, establishing or improving enhanced OCW procedures seems to be the preferred option in many jurisdictions as these may not be subject to the same legislative requirements or practical hurdles as the change of insolvency laws or the staffing of courts and may therefore be adopted and implemented in a swifter manner. In such situations, financial or other authorities may assume related tasks as described in Section 5.

As examples from earlier economic and financial crises, Korea and Indonesia (see Box 10) adopted temporary measures to conduct debt restructuring for a high number of distressed companies. In response to the natural disaster of 2011, Japan established an entity to support SMEs' debt restructuring. These programs were put in place for a temporary period.

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[40] Indonesia, Mexico, Saudi Arabia.

Box 10: Indonesia's Experiences in Tackling Large Number of Distressed Companies in Response to the Asian Financial Crisis

- In Indonesia, in response to the 1997 Asian Financial Crisis, the government established the Indonesia Banking Restructuring Agency (IBRA) to conduct debt restructuring for a high number of distressed companies. Under this approach, certain banks would transfer distressed loans to the IBRA.
- The debtor loans were transferred for no value, but the government in effect paid the face value for them by providing a full guarantee to depositors and creditors and recapitalising the banks. Any proceeds realised would be transferred to the banks to buy back the preferred shares issued to the Indonesian government in connection with the bank recapitalisation. IBRA estimated the fair value of its assets to be 26% of face value. As of 16 April 2003, a total of IDR392 trillion of bank loan assets belonging to 296,941 debtors was transferred to IBRA, with SME/retail loans (principal < IDR5 billion) accounting for 7%.
- The IBRA disposed of loan assets in accordance with their sizes and outsourced the management of such commercial loans. When dealing with SMEs and retail loans, the IBRA sold through open tender auctions and crash programs that allowed the debtor to settle its debts by providing a 100% discount on interest and penalties as well as 25% discount on principal for productive loans only. As of 31 December 2002, IBRA was able to settle IDR 25.8 trillion worth of loans for 363,856 accounts or 93% of the total SME principal amount.
- The IBRA was disbanded in 2004 after it met its duty.

Common features of the frameworks responding to special crisis situations, which require the processing of high numbers of debt restructurings, are simplified procedural elements. In some cases this includes certain standardised elements regarding the assessment or outcome of the restructuring, limiting the flexibility of debtor-creditor negotiations in favour of swift processing (see subsection 2.3 and examples from Japan in Box 18, Korea in Box 4 and Singapore in Box 11), in particular where the outcomes may be supported by government funds (Spain in Box 14, Japan). Often, these frameworks receive certain administrative or other support from authorities as described in Section 5. In-court insolvency procedures aim to balance out these rights and contain robust safeguards. These objectives also guide OCW procedures, which additionally aim at speediness and simplicity. The pursuit of both objectives by introducing simplifying and standardising elements in OCWs requires a balanced approach and proportionate safeguards.

Some of these schemes are established only on a temporary basis with the intent to wind them down after the restructuring needs triggered by the crisis are met (Indonesia Box 10, Japan Box 18). However, some of these temporary structures may become permanent at some point (e.g. Korea Box 4). During the COVID-19 crisis, some jurisdictions took other measures such as easing certain debtor-in-possession procedures for debtors hit by COVID-19 and facilitating OCWs for companies.[41]

3.3. Reforms to OCW frameworks for SMEs

Several jurisdictions introduced OCW frameworks to enhance restructuring chances for SMEs, either as a consequence of the COVID-19 pandemic or just before its start (Australia, France,

[41] Australia, Germany, India, and Singapore provided examples.

Italy, Japan in March 2022, Singapore). See Box 11 for some examples. Other examples are the Spanish code of conduct described in Box 14 and the negotiated workout in Italy presented in Box 8, which is accessible to all businesses but is targeted to the specific needs of SMEs. Other jurisdictions are still in the process of amending their frameworks (e.g. Spain). The different frameworks tackle several of the barriers identified in Sections 3.1 and 3.2. More information on recent reforms can be found in Annex 2.

Box 11: Examples of SME-specific reforms to OCW frameworks

- On January 1, 2020, Australia introduced the "small business debt restructuring process", accessible by financially distressed incorporated businesses with liabilities of less than AUD 1 million. The company develops a restructuring plan alongside a restructuring practitioner, which is put to a vote by eligible creditors. If it receives a majority vote by value, the plan commences and the restructuring practitioner oversees the plan. The process does not provide for automatic court involvement (although parties can bring matters before the court).
- France introduced a temporary procedure, open until 2 June 2023, for small companies (less than 20 employees) that find themselves in situation of insolvency as a result of the COVID-19 pandemic, but which had no difficulty before. The goal of this hybrid procedure is to help those companies to find debt settlement agreements in a short period so than they can present, within three months, a recovery plan rather than entering in bankruptcy procedure.
- Singapore introduced the extended support scheme standardised (ESS-S) and extended support scheme customised (ESS-C), available for SMEs with an annual group revenue of up to SGD 100 million or with up to 200 employees in 'Tier 1' and 'Tier 2' sectors (defined depending on the degree of affectedness by COVID-19 and comprising Aviation and Aerospace, Tourism, Hospitality, Conventions and Exhibitions, Built Environment, Licensed food shops and food stalls, qualifying retail outlets, Arts & Entertainment, Land Transport, Marine and Offshore). Those SMEs that were participating in ESS-S were permitted to defer 80% of principal payments on their secured loans granted by banks or finance companies, as well as loans granted under the Enterprise Singapore's Enhanced Working Capital Loan Scheme and Temporary Bridging Loan Programme until 30 September 2021. SMEs in Tier 1 and Tier 2 sectors that have not participated in the ESS-S were also allowed to defer 80% of principal payments to their lenders until 30 September 2021. The ESS-C protocol facilitates a coordinated and customised approach among lenders to restructure existing facilities of SMEs with viable businesses. Under this scheme, an SME with multiple credit facilities may approach any of its lenders to commence a restructuring process where all of its credit facilities across participating banks and financial companies will be taken into consideration for restructuring, subject to a business viability test that may be conducted – depending on the size of the credit exposure – by either one of its lenders or an independent assessor, which speeds up the process by consolidating restructuring requests into a single process compared to multiple restructuring proposals with individual lenders. Hence, the ESS-C supports swift and cost-efficient restructuring through the cooperation of lending banks and the information exchange among lenders should disincentivise them from taking premature legal actions. The ESS-C protocol ceased to be available for application after 31 December 2021.

4. Enabling framework to facilitate OCWs

The legal and regulatory framework should enable OCWs. Restructuring is affected by numerous laws and regulations; ideally these should perform an enabling role in restructuring activity.[42] Restructuring is facilitated by legal and regulatory frameworks that encourage debtors and creditors to reach agreements and conduct a wide range of operations. Laws are instrumental in setting adequate conditions for restructuring (for instance, by ensuring that financial information is accurate and available). However, restructuring can also be hindered by side-effects of rules that pursue different policies (for instance, tax rules).

4.1. Debtor information

Debtor information systems play a key role in removing information asymmetry and ensuring that transparent credit information is available to lenders in order to take informed credit decisions.[43] The information facilitates the conduct of due diligence before granting loans and early recognition of asset quality problems. For the existing creditors, regular monitoring of the information available on such systems helps them to identify early warning signals before a default in debt servicing. Early recognition facilitates taking early resolution action with regard to the stressed assets. Therefore, efficient financial information systems improve the functioning of credit markets and help in efficient credit allocation in an economy.

Almost all FSB jurisdictions have systems in place that help creditors obtain information about their debtors, and most of such information is available at no or low cost. Such systems include credit information bureaus, repositories for annual financial statements, and databases of companies' registrars. For publicly-listed companies, regular filings submitted to stock exchanges or securities market regulators are another information source. Section 5 and Annex 3 include some examples.

4.2. Fresh financing and recapitalisation

Many FSB jurisdictions establish priority for fresh financing, including in OCWs and in-court insolvency proceedings (ahead of all or at least some pre-petition creditors).[44] Such financing is often needed for indebted businesses to remain operational.[45] Alternatively, fresh financing can be useful for facilitating restructuring negotiations, to fund the repayment of smaller creditors and in so doing reduce the number of creditors with whom restructuring negotiations must take place.[46] Despite the utility of fresh financing in many cases, ordinary insolvency rules would place fresh credit low in the order of priority for repayment, and therefore make it unlikely that, in the event of default, lenders of fresh financing would be repaid in full. These types of rules

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[42] WB Principle B3 (Enabling Legislative Framework) notes that corporate workouts and restructurings should be supported by an enabling environment, one that encourages participants to engage in consensual arrangements designed to restore an enterprise to financial viability.

[43] WB Principle B3.1 notes that an enabling environment should require disclosure of or ensure access to timely, reliable and accurate information on the distressed enterprise.

[44] Brazil, Canada, Italy, Japan, Korea, Mexico, Singapore, Spain, Switzerland, Turkey, UK, US.

[45] WB Principle B3.2 notes that an enabling environment should encourage lending to, investment in, or recapitalisation of viable financially distressed enterprises.

[46] See the subsection 2.9 on interim financing of the World Bank Group's 'A Toolkit for Corporate Workouts' (2022).

make it less likely that lenders would be willing to take the risk of providing fresh lending to a struggling business, a problem that rules establishing the possibility to grant priority for fresh financing seek to address. [47]

Because priority for fresh financing poses a risk to the economic value of the rights of pre-existing creditors, particularly secured creditors, some jurisdictions that permit the granting of priority to fresh financing limit the circumstances in which such priority can be provided. The EU Restructuring Directive permits but does not require that such protection of fresh financing may only occur if subject to approval by a judicial or administrative authority. In Italy, after the filing of a debt restructuring agreement and before its confirmation, the court can authorise a priority rank to new financing in two cases.[48] In the negotiated workout procedure in Italy, the court may authorise priority to borrowings from third parties, shareholders or another company of the same group if the new financing helps maintain business continuity and is in the best interest of creditors. An alternative approach to protect the interests of creditors is to allow granting priority to fresh financing, but only in circumstances where pre-existing creditors consent (e.g. Japan).

The extent of the priority for fresh financing varies between OCW and in-court procedures and across jurisdictions. In the US, if a debtor can prove that it could not obtain unsecured financing by any other means, a bankruptcy court may authorise the company to grant the lender a lien that has priority not only over pre-bankruptcy secured lenders but also over administrative expenses, including vendor and employee claims. In Korea, financial claims arising from new funding provided to corporates undergoing workout procedures have a preferential right to be repaid prior to the financial claims of other financial creditors subsequent to statutory security rights. In Canada, the court may order that post commencement financing agreements are exempt from preferential payment, transfer at under value or other voidable transactions rules. The EU Restructuring Directive permits but does not require provision for grantors of new financing to receive payment with priority in the context of subsequent insolvency procedures. In Italy, subject to the court approval described in the preceding paragraph, fresh financing is granted super priority and is protected from avoidance actions in an eventual insolvency action. Singapore similarly provides super priority in the context of both schemes of arrangement and judicial management.

4.3. Other elements of an enabling framework

4.3.1. Write-downs of debt to public creditors

The role of tax authorities as creditors can have a bearing on restructuring agreements. Some public respondents to this review observed that because tax authorities are often creditors,

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47 If priority is granted to fresh financing, creditors providing fresh financing during OCWs are entitled to receive payment with priority in the context of subsequent insolvency procedures in relation to other creditors that would otherwise have superior or equal claims.

48 These are (1) when an independent professional certifies that such finance enhances creditors' repayment rate; and (2) when the finance is aimed at fulfilling the urgent needs of the business, provided that the latter will suffer permanent damages without the financing, and that the debtor cannot otherwise find such economic support.

policies on their behaviour as creditors should be in place to minimise uncertainty to other creditors in the workout negotiations.[49]

In some jurisdictions, the limited options for public creditors to accept debt reduction could complicate restructuring agreements. Reductions of debt granted by public creditors are allowed in most jurisdictions, although in some cases they are subject to civil/criminal scrutiny (Brazil, India and Japan). Reductions of public debts are generally not allowed in Argentina, Saudi Arabia, Spain, Switzerland and Turkey.

There are several examples of special rules applicable to public creditors and banks. In Brazil, reductions are allowed as long as they do not perform an act of administrative improbity and the administrative authorities must justify that the value offered is greater than the value to be recovered through a forceful tax collection. In France, public creditors can grant reductions of debt to distressed corporates without risk of incurring civil or criminal liability, as long as there are equivalent reductions being granted by private creditors. In Germany, the business judgement and no creditor worse-off rules play an important role in determining the possibility of civil liability. In India reductions of debt granted by public sector lenders are open to future vigilance probes. In Indonesia debt reductions granted by public finance institutions must comply with the specific terms and conditions imposed by state finance law and state-owned enterprise law. In Italy there is a detailed regulation for the Tax Administration. In Mexico public debt reductions must be in the same proportion as those granted by all creditors.

In light of the support provided by public creditors to companies during the pandemic, the integration of the restructuring of debt to public creditors may play an increasing role for debt workouts. Integrated schemes designed by policy makers to digest debt overhang in companies could include recapitalisation, debt refinancing and restructuring, and could in some jurisdictions be supported by the involvement of public creditors or state aid. This is particularly relevant to SMEs, since they have been the main target of public loan guarantees during the pandemic.

4.3.2. Tax aspects

The World Bank Principles note that an enabling environment should provide favourable or neutral tax treatment with respect to losses or write-offs that are necessary to achieve a debt restructuring based on the real market value of assets.[50] In formal insolvency proceedings it is common to establish tax exemptions, but this is not usually the case in OCWs.

Favourable tax treatment for losses or write-offs incurred in debt restructurings exist in several jurisdictions. Generally speaking, the tax effects of the reduction of debt are considered neutral if there is a deduction for the creditor and it generates taxable income for the debtor. Allowing the creditor to deduct the loss without including it in taxable income for the debtor takes place under certain conditions in Argentina, Australia, Germany, India, Indonesia, Italy, Japan, Korea, Mexico, UK and the US. Another tax rule that benefits the debtor is the possibility of carrying

[49] Establishing such rules would have to carefully consider measures to avoid fraud and tax evasion. If not carefully drafted, schemes to foster participation of tax creditors in restructurings are prone to collusion between creditors and debtors and may create incentives for debtors to give preference to debt servicing to private creditors over repayments to tax creditors. Several jurisdictions therefore maintain legal or constitutional reservations.

[50] See WB Principle B.3.4.

over the losses for several years (therefore reducing taxable income in those years). Such carryovers are present in several FSB jurisdictions.

4.3.3. Legal, regulatory and competition aspects

There are multiple ways in which legal and regulatory frameworks shape restructuring activity. Laws and regulations that are flexible enough to accommodate diverse operations and are applied predictably contribute to an enabling environment for restructuring.[51] In some cases, however, laws and regulations may create unintended obstacles for restructuring.

Most jurisdictions identify no significant legal and regulatory obstacles to out-of-court debt restructuring. In general, the legal and regulatory systems in FSB jurisdictions possess the necessary qualities to accommodate restructuring activities. Some authorities have referred to the effect of prudential rules governing financial institutions, including capital requirements, loan classification, loan loss reserves, and lending limits, as well as accounting rules regarding the treatment of NPLs and restructured loans. Although these rules may have side-effects over restructuring operations, their prudential objectives could be undermined by introducing exceptions or accommodations.

Recapitalisations of distressed companies tend to face more problems than other restructuring operations. Recapitalisations involve multiple aspects of company law, banking law and securities regulation. Some jurisdictions identify shareholders' pre-emption rights in all capital increases as an obstacle (Argentina, Mexico, Saudi Arabia, Spain). Banking regulations that limit the ownership of shares in non-financial companies also represent an obstacle in a few jurisdictions (Argentina, Italy, Mexico, Saudi Arabia).

Although competition law could potentially create obstacles for restructuring, FSB jurisdictions have not identified any negative impact. Since restructuring activity may consist of mergers and acquisitions, it may be subject to controls and prohibitions because of anti-competitive effects. However, there is special consideration for distressed companies, mostly by way of the "*failing firm defence*" that is used by competition authorities when evaluating mergers and acquisitions.[52] The issue of potential collusion in the actions of financial creditors has not been raised in any country, even in those where there are master agreements involving most of the banking sector.

4.3.4. Interaction with debt enforcement and insolvency

An enabling framework should give creditors reliable recourse to enforcement processes, and to liquidation and/or reorganisation proceedings.[53] Effective and predictable (in-court) debt enforcement and liquidation procedures are indispensable for the success of OCW processes. Informal restructuring in any type of OCW takes place in the shadow of the legal framework regarding enforcement and liquidation. The success of the OCW depends on the effectiveness of in-court insolvency or restructuring procedures and of enforcement processes.

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[51] WB Principle B3.5 notes that systems should incorporate "(I)Laws and procedures that address regulatory impediments that may affect enterprise reorganizations".

[52] For example, Argentina, Australia, Canada, EU, Germany, India, Italy and UK.

[53] See WB Principle B3.6.

The projected outcome of in-court insolvency procedures and/or of a liquidation provides a benchmark for the negotiation in an OCW process. Clear and reliable insolvency (debt enforcement and liquidation) frameworks that provide such predictions inform the decisions of debtors, creditors and potential new investors in their OCW negotiations. Agreements under an OCW are more likely if there is predictability about the outcomes that an in-court insolvency or restructuring procedure or debt enforcement would provide.

Efficient debt enforcement processes and in-court insolvency procedures create incentives to creditors and debtors to engage in OCWs. Several jurisdictions note that only efficient enforcement processes pose a credible threat to the debtor that incentivises active and timely engagement in OCWs (e.g. Brazil, India, Switzerland and the UK).[54]

Legal consequences for managers and owners of debtor companies provide incentives to timely engage in OCWs. Personal consequences could be severe in case of non-compliance with insolvency duties, property of the debtor might be seized within enforcement proceedings, and the persons actually responsible for the distress might be held accountable as subsidiarily liable (Russia). Directors' liability could be threatening in formal insolvency proceedings; therefore, the extension of safe harbours for directors to negotiate out-of-court workouts could enhance their undertaking (Australia). In some jurisdictions such as Japan and Korea there is a high reputational factor that gives preference to OCWs, where the debtor remains always in possession, over insolvency, liquidation or debt enforcement.

A couple of jurisdictions report a risk of abuse of the OCW process, i.e., debtors take refuge in OCWs in order to delay enforcement (Argentina, Mexico). Another jurisdiction explained that liquidation and reorganisation were perceived as working equally well, which eliminated incentives for arbitrage between them (Canada). In some jurisdictions, in-court liquidation deters debtors and creditors alike because of its length and ineffectiveness (Mexico).

4.4. Developments related to COVID-19

The majority of FSB jurisdictions introduced special fiscal programs designed to support companies in distress due to the COVID-19 crisis. Most of these programs were not designed primarily to support the restructuring of debt, although many of them could be used to refinance pre-existing debt (see Box 12 below).

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[54] For example, within an insolvency proceeding business may not continue, deposits might be frozen or transferred, decisions might be taken without the debtor, and formal proceedings may have an influence on the company's reputation.

Box 12: Fiscal support related to debt restructuring

Several FSB jurisdictions created funds expressly for balance sheet restructuring in response to the COVID-19 pandemic, including Argentina, Italy, South Africa and Spain. In addition, Australia provided guaranteed loans to SMEs that could be used in certain circumstances to refinance pre-existing debt.

Various countries provided other types of relief in connection with restructuring debts, including:

- subsidising legal and other fees in conjunction with a formal restructuring (Germany and Singapore);
- providing tax relief, such as deferring tax payments and offering special discounts for tax payments due (Brazil);
- providing tax incentives (deferred taxation) and exemption of social security premiums and financial supports (corporate loan interest discounts, extension of loan principal and interests repayments, preferential policies for loan renewal) (China); and
- providing loans or other temporary financial relief for MSMEs (Argentina, Saudi Arabia, Spain and Indonesia).

5. Role of financial sector authorities

As a general matter, financial sector authorities of FSB jurisdictions take one of two primary regulatory approaches to OCWs. Some financial authorities have assumed a direct role in facilitating debt restructuring and OCWs, and this role can take several forms. In other FSB jurisdictions, financial authorities refrain from such direct involvement, preferring to rely in most cases on voluntary arrangements between private parties.

5.1. Facilitating debt restructuring

In certain FSB jurisdictions, financial sector authorities play a direct role in facilitating debt restructuring and OCWs through the adoption of procedural rules, such as codes of conduct and sets of principles or the establishment of administrative structures. Several of these elements correspond to forms of enhanced OCW procedures (as described in sub-section 2.3). Other forms of direct involvement in debt restructuring include support to obtaining debtor information or to receiving fresh financing. Annex 3 provides more information on how financial sector authorities in some jurisdictions are involved in facilitating debt restructuring through OCWs.

5.1.1. Developing codes of conduct, sets of principles, and framework agreements

World Bank Principle B5 notes that a country's financial sector should promote the development of a code of conduct on a voluntary, consensual procedure for dealing with cases of corporate financial difficulty in which financial institutions have a significant exposure, especially in markets where corporate insolvency has reached systemic levels. It adds that good risk-management practices and effective internal procedures and practices within financial institutions to effectively work out non-performing loans should be encouraged.

Approximately half of FSB jurisdictions have adopted a code of conduct, set of principles, or framework agreements for voluntary, consensual debt restructuring and OCWs. Financial sector authorities in seven jurisdictions have developed such frameworks while the private sector in

three jurisdictions developed frameworks (also endorsed by financial sector authorities). The majority of these frameworks establish specific procedures for debt restructuring and OCWs, whereas a minority set out only principles.[55] The following Boxes provide examples of OCW frameworks developed by a financial sector authority (India, Box 13), a code of conduct developed by financial sector authorities to which banks can voluntarily agree to adhere (Spain, Box 14), a set of principles for creditors' committees (China, Box 15), and a set of common practices enshrined in MRAs developed by a banking association and approved by a financial sector authority (Turkey, Box 16).

Box 13: Reserve Bank of India's Principles-Based OCW Frameworks

The Reserve Bank of India (RBI) has developed numerous principles-based OCW frameworks, both prior to and in response to the COVID crisis.

- Prudential Framework for Resolution of Stressed Assets: The RBI released this principles-based, enhanced OCW framework in 2019. The Prudential Framework, which includes bright-lines tests, is available to both lenders and borrowers of banks and non-bank financial institutions. Under the Prudential Framework, if lenders decide to implement a resolution plan in respect to a borrower, the lenders have to execute an Inter-Creditor Agreement (ICA) as part of the OCW process. The ICA provides that any decision agreed by lenders representing 75 percent by value of the total outstanding credit facilities and 60 percent of the lenders by number is binding on all creditors and specifies the rights and duties of lenders.
- Resolution Framework for COVID-19-related Stress: The RBI adopted this temporary enhanced OCW framework, available until December 31, 2020, to enable lenders to implement a resolution plan under certain conditions without classifying the loans as non-performing. It included strict timelines and monitoring and disclosure requirements. Subsequently, the RBI adopted Resolution Framework 2.0 in 2021, under which lenders could restructure certain loans to MSMEs and other small business exposures, which had not been previously restructured, under certain conditions without classifying the exposures as non-performing.
- Restructuring of Advances: The RBI adopted this enhanced OCW for MSMEs adversely affected by the COVID pandemic. Under this framework, the RBI permitted lenders with aggregate exposure of Rs.250 million or less to restructure the loans of MSMEs in default without classifying the restructured loans as non-performing.
- Framework for Revival and Rehabilitation of MSMEs: The RBI issued this framework to provide a simpler and faster mechanism to address the stress in accounts of MSMEs with loans up to Rs.250 million, including accounts under consortium or multiple banking arrangements. The framework adopts a committee approach for deciding on a corrective action plan, which includes restructuring of debt and recovery of the business.

[55] Other characteristics of these frameworks include the delineation of institutional roles and regulations and eligibility conditions for borrowers. Most jurisdictions do not distinguish between companies based on their size or whether they are publicly listed or privately held.

Box 14: Code of conduct in Spain

The Spanish Government has adopted a code of conduct for restructuring loans with a public guarantee in response to the COVID-19 crisis. The Code of Good Practices, developed by the Ministry of Economy and Digitalisation, to which financial institutions may voluntarily adhere, aims to provide a common framework for action related to COVID-19 loans to corporates and self-employed individuals guaranteed by the three state-owned issuers: Instituto de Crédito Oficial (ICO), Compañía Española de Refianzamiento, S.A. (CERSA), and Compañía Española de Seguros de Crédito a la Exportación (CESCE). The Code establishes three possible outcomes for the restructuring of guaranteed loans originated between March 17, 2020, and June 30, 2022:

- extension of the maturity of a loan (up to 8-10 years), and mandatory extension of guarantees to the new maturity date by the ICO, CERSA, and CESCE;
- conversion of debt in capital/quasi capital, and extension of guarantees into new instruments by ICO, CERSA, and CESCE; or
- debt write-offs in which losses on each loan exposure will be proportionally distributed between the guarantor and lender, with the participation of ICO, CERSA, and CESCE

The Code also contains eligibility criteria and metrics for private debt restructuring. Banks can decide whether to voluntarily adhere to the Code or not. One-hundred banks, amounting to more than 95% of the total guaranteed loans and involving all significant financial institutions, have agreed to adhere to the Code. Financial sector authorities monitor the implementation of the Code through a Control Commission that includes ten members from public authorities and industry representatives.

Box 15: China Work Rules for Financial Institutional Creditors' Committee

In 2020, the China Banking and Insurance Regulatory Commission, National Development and Reform Commission, People's Bank of China, and China Securities Regulatory Commission released Work Rules for Financial Institutional Creditors' Committee, which apply to large, distressed non-financial corporates with heavy debt repayment burdens. The Work Rules contain 21 articles covering the Committee's mandates, members, master restructuring agreements, operations, and constraints. The Work Rules require the Committee to communicate with the debtor company and non-financial institutional creditors and to disclose important information relating to the debtor company to stakeholders. The Work Rules also provide for information sharing on debtors that evade repayment obligations. The Work Rules also specify that Creditors' Committees should not allow zombie enterprises with poor viability prospects and debtors that deliberately evade repayment obligations to use debt restructuring frameworks.

Box 16: Master Restructuring Agreements in Turkey

Since 2019, Turkey has used Framework Agreements prepared by the Turkish Banking Association and provided for under Turkish law as the basis for a set of common practices that apply to voluntary, consensual OCWs involving debtors of more than one financial institution. There are two Framework Agreements: the Large Scale Framework Agreement applies to corporates with exposures over 25 million Turkish lira, while the Small-Scale Framework applies to corporates with exposures under that amount. The main Turkish banks and financial institutions are signatories to the Framework Agreements. The Framework Agreements, and any amendments, must be approved by the Board of the Banking Regulation and Supervision Agency (BRSA).

The Framework Agreements are in effect template intercreditor agreements through which debtors and creditors can negotiate a consensual OCW. Both Framework Agreements impose an automatic standstill on creditor claims, provide for a consortium of creditor institutions, have a cram-down mechanism, and provide priority of repayment to fresh financing. Moreover, if any of the signatories to a master restructuring agreement fails to fulfil its obligations under the agreement, a panel of referees is available to adjudicate any disputes, which is an example of integrated ADR.

In jurisdictions where financial authorities are not directly involved in debt restructuring and have not adopted a code of conduct, set of principles, or framework agreements for debt restructuring and OCWs, parties to OCWs rely on alternative approaches to achieve consistency and procedural fairness. In these jurisdictions, parties to OCWs look to: enhanced procedures established by public bodies other than financial authorities; commercial and insolvency law standards or regulations, including formal insolvency law procedures, which provide the legal framework in which debtors and creditors operate; or hybrid procedures, particularly in-court validation of voluntary OCWs, in which the court serves as a means to ensure consistency and procedural fairness in OCWs.

5.1.2. Creating administrative structures

Approximately one-quarter of FSB members have established administrative structures to facilitate debt restructuring and OCWs. These administrative structures include credit mediation agencies, debt counselling services, or special bodies set up to provide guidance on and support to OCWs. Some of these jurisdictions, such as Spain and Japan, include standardised pre-defined restructuring templates and in some cases also access to public financing. In several of these cases, financial sector authorities were involved in the establishment of the administrative structures and provide support to them. In other jurisdictions, however, the financial sector authorities play a more active role in OCWs through the administrative structure. For example, in France two government agencies work with the debtor and its stakeholders to define and negotiate a restructuring plan in accordance with an OCW opened by the debtor. The Interministerial Committee for Industrial Restructuring (CIRI) works with companies with more than 400 employees, while the Departmental Committees for the Examination of Business Financing Problems (CODEFI), the local equivalents of CIRI, work with companies with fewer than 400 employees. Both CIRI and CODEFI become involved in situations where inter-creditor disputes or creditor inaction threaten to prevent creditors from reaching an agreement on the restructuring of debt through an OCW. Boxes 17 and 18 provide some additional examples of administrative structures.

Box 17: Credit mediation in France and Spain

France established in 2008 a public system of credit mediation for businesses, a local, free, and confidential service, to bring together debtors and creditors within a national agreement that defines the main principles of the credit mediation procedure. Since 2018, the Banque de France has supported the credit mediation scheme and provides its human and technical resources. A national credit mediator, nominated by the French government, ensures that banks pass on financing to companies facing temporary economic difficulties. Two delegate mediators assist the national credit mediator in managing applications with national scope and on particularly important issues. They also manage mediation services and provide support for local credit mediators with a team of financial analysts. Local credit mediators intervene, on a case-by-case basis, in the framework of a close dialogue with the banks and credit insurers to provide solutions for resolving distress and restructuring debts. The local credit

mediators are directors of the Banque de France in mainland France and directors of the issuing institutions in the French overseas departments. From the start of the COVID-19 pandemic through June 2021, nearly 17,000 companies, mainly SMEs (85%) in the services (55%) and trade (21%) sectors have contacted the credit mediation. The credit mediation's interventions have preserved nearly 7,600 companies and 93,000 jobs, and in 2020 were successful in more than half of cases.

Spain has also established a system of credit mediation and streamlined procedures for OCWs involving SMEs. Designed for SMEs satisfying certain conditions (including an estimated debt not in excess of €5 million), an insolvency professional is appointed to oversee the procedure, which has limited paperwork and pre-designed templates. The professional drafts a plan agreed with the debtor and shared with creditors. The plan's contents are designed to be open and flexible, with the required majorities increasing depending on the plan's hardship. If the plan is passed, it is binding on non-participating and dissenting creditors (including dissenting secured creditors under certain circumstances), with the exception of public creditors, and it cannot be avoided in a subsequent insolvency.

Box 18: Revitalisation of Regional Businesses and SMEs through OCWs in Japan

Japan has created two types of government-funded institutions to facilitate creditor coordination in OCWs that are otherwise too complicated and time-consuming for financial institutions.

The SME Revitalization Support Councils are local turnaround consulting service providers typically established by local chambers of commerce across Japan and partly subsidized by the Small and Medium Enterprise Agency. The SME Revitalization Support Councils manage the OCW, where participating banks are required, in around 90 percent of cases, to reschedule loan payments only. Where debt reduction is not required, restructuring plans can be flexible and expedited; for example, the distressed company does not have to show its balance sheet will be solvent and the process is typically quicker, last between two and six months. The consulting services of the SME Revitalization Support Councils are free of charge.

Another type of government-funded organisation assumes a more active role in restructuring. One example is the Regional Economy Vitalization Corporation of Japan (REVIC), a temporary entity funded by the Japanese government and banking industry and charged with rehabilitating distressed mid-sized regional companies. REVIC plays an active role in preparing restructuring plans and coordinating among creditors. Banks are required to grant reductions of unsecured debt on a pro rata basis when the restructuring plans are approved. Also, REVIC can provide new debt and equity financing to the troubled companies and purchase the non-performing loans from the banks if necessary. Furthermore, REVIC assists regional banks' employee development through its restructuring expert training program. The Japanese government extended REVIC's mandate for five years as a result of the COVID pandemic, and it is now scheduled to exist until 2031. In Japan, this type of government-funded temporary entity has been created in reaction to past crises; specifically, the Industrial Revitalization Corporation of Japan in 2003 (in response to the Japanese Financial Crisis), Enterprise Turnaround Initiative Corporation of Japan in 2009 (in response to the Global Financial Crisis), and Corporation for Revitalizing Earthquake-Affected Business in 2012 (in response to the Great East Japan Earthquake).

5.1.3. Administering mechanisms for identifying distressed corporates

In approximately half of FSB member jurisdictions, financial sector authorities have created or supported mechanisms that aim to identify signs of distress in corporates and to address information asymmetries between creditors and debtors in debt restructuring and OCWs. Creditors often face difficulties in identifying signs of distress in and accessing information about

the financial condition of their debtors. Jurisdictions have addressed this problem in a variety of ways. For example, financial sector authorities in Korea require creditor banks, pursuant to the CRPA, to carry out annual corporate risk assessments to identify distressed corporates and to notify debtor companies showing signs of distress so that such debtor companies may apply for OCWs. In Saudi Arabia, the Saudi Central Bank's Rules on the Management of Problem Loans require banks to establish early warnings signals in their risk management system, including a clear, robust, and demonstrable set of policies, procedures, tools, and governance, in order to enable banks to proactively identify distressed corporates, investigate the sources of such stress, and act before the borrower's financial condition deteriorates to the point of default.

Financial sector authorities in other jurisdictions maintain public databases of information on credit exposures or early warning systems, as discussed in Section 4. For example, the Central Bank of Brazil maintains a credit bureau recording all bank loans with individual debtors over R$200 (about $40). Both debtors and creditor banks can use the bureau to find information on banks' claims on debtors. The Risk Information Centre of the Bank of Spain (CIRBE) is a public service that manages a database containing practically all the loans, credits, guarantees, and other credit risks assumed by Spanish financial institutions. In China, the People's Bank of China runs a credit reporting system, and is constructing and improving the early warning system for corporate credit bonds. In Indonesia, creditors can identify early signs of distress through the Financial Information Services System (SLIK), which contains debtor data, fund provision facilities, and collateral data.

5.1.4. Incentivising fresh financing to corporates undergoing OCWs

Financial sector authorities are typically not directly involved in the provision of fresh financing to corporates undergoing OCWs. As set out in Section 4 above, most FSB jurisdictions give priority to fresh financing in the formal insolvency system, and thus would protect fresh financing in the case of hybrid OCWs as there is an element of judicial intervention in them. In OCWs, most FSB jurisdictions leave arrangements regarding the provision of fresh financing and the priority it is accorded to the parties.

There are exceptions, however. In Korea, the legal rules of the CRPA, which was developed by the FSC, protect financial claims arising from fresh financing to corporates undergoing OCWs by granting such claims priority status. As part of its COVID relief measures, financial sector authorities in Argentina provided up to four months of financial assistance directly to large companies or cooperatives undergoing debt restructuring to achieve economic and financial viability. This program was open only to corporates in certain strategic sectors aligned with the objectives of the National Fund for Productive Development. As discussed in more detail in Section 5.2, financial sector authorities of other FSB jurisdictions indirectly supported debt restructuring as part of their COVID relief efforts by providing incentives to financial institutions to restructure NPLs.

5.2. Managing financial sector balance sheets

FSB jurisdictions see OCWs as important tools that are used frequently to manage the volume of NPLs in jurisdictions' financial systems, especially when the financial system must handle large numbers of NPLs, such as during and after crisis events. In these situations it is important that banks have sufficient capabilities, adequate staff resources and suitable processes in place

to manage a high number of loan restructurings in order to provide restructuring options to distressed companies and the management of NPLs. Most jurisdictions view these tools as effective in handling large volumes of NPLs because of their flexibility and efficiency as compared with more traditional insolvency or liquidation proceedings.

- Mexico notes that in recent years debt restructuring and OCWs have become more effective and, as a result, fewer distressed debt cases go unresolved today than in past decades. Due to the pandemic and special criteria implemented by the Comisión Nacional Bancaria y de Valores, financial institutions have been able to use debt restructurings and OCWs to continue their lending activities without the need to increase their credit risk and reserves.[56] Debt restructuring of commercial loans has prevented the deterioration of asset quality indicators, kept delinquency levels manageable and allowed banks to reduce their capital consumption for credit risk.

- Korea notes that OCWs are frequently used, have played a significant role in facilitating an effective and efficient restructuring of distressed companies and have helped to reduce NPLs. Because OCWs are led by financial institutions in Korea, they allow these institutions to address financial distress and NPLs pre-emptively and efficiently.

Most members noted that both market-based and on-balance sheet solutions are available options for reducing NPL volumes. Some jurisdictions noted that market-based solutions were more popular, while others viewed on-balance sheet solutions as more effective.

In some FSB jurisdictions, financial sector authorities monitor restructuring agreements, particularly the reclassification of assets. The goal is to ensure, through supervisory action, that financial institutions enter into sustainable restructuring agreements.

A few FSB jurisdictions have supported centralised restructuring through national asset management companies to address NPLs. Box 19 discusses two examples.

Box 19: Experiences with national asset management companies

Italy's Società Gestione Attività (SGA). In 1996, the Italian Ministry of Finance established SGA, an asset management company, to acquire and manage about 12.4 billion liras (~ EUR 6.4 million) of NPLs, restructured loans, and other impaired assets from a distressed Italian bank, BdN, as part of the bank's restructuring plan. The aim of the intervention was to minimise the injection of public capital necessary to recapitalise the bank and to facilitate the disposal of assets that could generate further losses for the bank. By the end of 2015, SGA had recovered about 95 percent of the value of the assets managed. SGA is still operating. In 2016, it was bought by the Ministry of Economy and Finance and its corporate purpose was changed to allow for the acquisition or management of loans from entities other than those of BdN. Now renamed AMCO, it operates only at market terms by managing NPLs and assets acquired from other financial institutions, including other distressed Italian banks. AMCO may be involved in OCWs related to the NPLs it holds.

Spanish Asset Management Company (SAREB). SAREB was created in 2012 to manage NPLs transferred to it from the Spanish financial institutions that received public financial assistance during the Great Financial Crisis. SAREB was initially created as a privately-owned asset management company, where private entities (banks and insurance companies) held a major stake and the FROB

[56] Several jurisdictions have taken similar actions.

(Fund for Orderly Bank Restructuring) also held a significant equity participation. In its initial eight years, SAREB reduced its NPL portfolio by 37.9 percent from EUR 50.8 billion to EUR 31.5 billion. In 2020, SAREB was re-classified and included in the institutional sector of general government for national accounting purposes. Over the course of 2022, the capital structure and the governance of SAREB is being significantly amended.

5.3. Changes to the role of financial sector authorities in response to COVID

Financial sector authorities have played a lead role in the responses of FSB jurisdictions to the COVID crisis. Financial sector authorities have supported financial institutions, provided funds to corporates and SMEs, deferred taxes, and adjusted prudential rules and supervisory oversight of the financial sector to ensure that financial institutions were able to respond to the crisis. While most of these actions were aimed at supporting the broader economy and were not designed specifically with OCWs in mind, financial sector authorities implemented certain measures that directly or indirectly impacted OCWs. These measures ranged from the development of new OCW frameworks to respond to the COVID crisis to the adjustment of prudential and supervisory rules to encourage OCWs (see Box 20).

Box 20: Financial Sector Authorities Responses to the COVID Crisis

- **Development of New OCW Frameworks:** Financial sector authorities in certain jurisdictions put in place new OCW restructuring frameworks to respond to the COVID crisis. For example, the RBI introduced several temporary OCW frameworks, mentioned above in Box 13, to assist corporates and SMEs in India in responding to the COVID crisis.
- **Issuance of New Guidelines:** Financial sector authorities in some FSB jurisdictions issued guidelines in response to the COVID crisis. For example, in July 2021 the BRSA of Turkey published Guidelines on the Resolution of Distressed Assets and amendments to the Regulation on the Credit Operations of Banks, both of which require banks to prepare distressed asset strategies and operational plans to be implemented by independent workout units and provide details about borrowers' viability assessments.
- **Changes to Prudential Rules:** Financial regulators in numerous FSB jurisdictions, including Brazil, Argentina, South Africa, Indonesia, and the US, authorised changes to prudential rules to facilitate debt restructuring and OCWs, including changes to the classification of NPLs, temporary exemptions for banks from certain loan-loss provisions normally required on restructured loans, modifications to capital rules to neutralise the regulatory capital effects of certain credit related to COVID, and consideration for COVID effects in their examinations of financial institutions.
- **Support for Financial Institutions:** Financial sector authorities in numerous FSB jurisdictions acted to support the financial sector in response to the COVID crisis, which in turn provided necessary liquidity to financial institutions to engage in and provide financial support for OCWs. For example, US regulators acted jointly to ensure that the financial system had sufficient loss absorbing capacity and liquidity to handle a potential downturn by encouraging financial institutions to use the Federal Reserve Bank's discount window to help manage liquidity risks, to offer responsible small dollar loans to consumers and SMEs impacted by COVID, and to use their capital and liquidity buffers to respond to the COVID challenge.
- **Financial Support for OCWs**: Financial sector authorities in a few FSB jurisdictions have provided support to financial institutions and distressed corporates as part of COVID relief. For

instance, Indonesia's National Economic Recovery Program authorised the government to allocate and channel funds through eligible participant banks to support (i) restructuring the debts of MSMEs and corporates; and (ii) channelling new credits to such borrowers.

- **Use of Asset Management Companies**: A few FSB jurisdictions have used asset management companies to purchase assets from distressed companies to support their restructuring and recovery. For example, the Korea Asset Management Corporation (KAMCO) has purchased assets of companies suffering temporary distress due to the COVID crisis.

Only a few jurisdictions indicated that financial sector authorities had specific plans for amendments or reforms concerning OCWs and debt restructuring, although not all of these reforms are specific to the COVID crisis. In Japan, representatives of bankers, industry, and restructuring experts in March 2022 created new SME OCW guidelines to address the impact of the COVID pandemic. In the Netherlands, public and private creditors are working on consistent procedures and practices for consensual restructuring, such as common conditions for restructuring, sharing of expertise, and enhanced communication.

Most FSB jurisdictions without specific reform plans indicated that financial sector authorities would continue to monitor the impact of COVID on their economies and would remain flexible in adapting their responses to future developments.

Annex 1: Overview of OCW framework procedures in FSB jurisdictions[57]

Legend:

(white)	Type of procedure/enhancement does not exist.
(blue)	Type of procedure/enhancement exists and is available for SMEs ***and*** other sizes of companies (same procedure or variants of a procedure).
(yellow)	Type of procedure/enhancement exists and is available for SMEs ***only***.
(green)	Type of procedure/enhancement exists and is ***not*** available for SMEs.

Jurisdiction	Enhanced workout					Hybrid workout	
	Code of Conduct or Restructuring Principles	Master Restructuring Agreements	Alternative Dispute Resolution	Other third-party coordination (possibly administration or authority)	Other supporting features (dedicated process or incentives framework)	Hybrid I	Hybrid II (for example, Schemes of Arrangement)
Argentina				Mediation and settlement (blue) GR 861 (green)			APE Cramdown Creditor compromise (blue)
Australia			Voluntary administration (blue)	Voluntary administration (blue) Simplified debt restructuring (yellow)			Scheme of arrangement (blue)
Brazil							Prior Conciliation (blue)

[57] Source: FSB jurisdictions' responses. Classification based on these responses.

Jurisdiction	Enhanced workout					Hybrid workout	
	Code of Conduct or Restructuring Principles	Master Restructuring Agreements	Alternative Dispute Resolution	Other third-party coordination (possibly administration or authority)	Other supporting features (dedicated process or incentives framework)	Hybrid I	Hybrid II (for example, Schemes of Arrangement)
							Extrajudicial Recovery
Canada							Scheme of arrangement
China	Creditors committee			Creditors committee		Expedited reorganisations	
EU							EU Restructuring Directive
France			Mandat ad hoc	Departmental Committees for the Examination of Business Financing Problems (CODEFI)			Sauvegarde (safeguard procedure)
			Conciliation	Interministerial Committee for Industrial Restructuring (CIRI)			La procédure de traitement de sortie de crise (The post-crisis processing procedure)
Germany	Informal Restructuring Practice		Moderation Framework				Stabilization & Restructuring Framework for Enterprises

Jurisdiction	Enhanced workout					Hybrid workout	
	Code of Conduct or Restructuring Principles	Master Restructuring Agreements	Alternative Dispute Resolution	Other third-party coordination (possibly administration or authority)	Other supporting features (dedicated process or incentives framework)	Hybrid I	Hybrid II (for example, Schemes of Arrangement)
Hong Kong	HK approach to corporate difficulties						Scheme of arrangement
India	Framework for Revival and Rehabilitation of MSMEs		"Lok Adalats", formal ADR systems			Pre-packaged insolvency resolution process	Scheme of arrangement
	Prudential Framework for resolution of stressed assets						
Indonesia			Alternative Institution for Financial Services Sector Dispute Resolutions (LAPS SJK)		Financial and regulatory incentives to encourage debt restructuring in response to COVID (e.g. UJK Regulations 40/POJK.03/2019 and 14/POJK/05/2020)		Suspension of Debt Payment Obligation (PKPU)
					Crash Program for SMEs		

Jurisdiction	Enhanced workout					Hybrid workout	
	Code of Conduct or Restructuring Principles	Master Restructuring Agreements	Alternative Dispute Resolution	Other third-party coordination (possibly administration or authority)	Other supporting features (dedicated process or incentives framework)	Hybrid I	Hybrid II (for example, Schemes of Arrangement)
Italy				Certified recovery plans Negotiated workout for resolving a firm's crisis	Moratoria Agreement		Debt restructuring agreements
Japan	Guidelines for Multi-Creditor Out-of-Court Workouts		Turnaround ADR Framework supported by SME Revitalization Support Councils	Framework supported by REVIC			Special Conciliation Procedure
Korea			CRPA		CRPA specifies process of corporate restructuring (dedicated steps and timing)	Pre-packaged plan	
Mexico			Mediation			Pre-packaged insolvency	
Netherlands							WHOA

Jurisdiction	Enhanced workout					Hybrid workout	
	Code of Conduct or Restructuring Principles	Master Restructuring Agreements	Alternative Dispute Resolution	Other third-party coordination (possibly administration or authority)	Other supporting features (dedicated process or incentives framework)	Hybrid I	Hybrid II (for example, Schemes of Arrangement)
Russia			ADR such as conciliation and mediation		Tax incentives for mediation/conciliation (but not specific to insolvency) Measures for preventing the bankruptcy of strategic enterprises		
Saudi Arabia							Protective Settlement Procedure; Financial Restructuring Procedure
							Small Debtors' Protective Settlement Procedure; Small Debtors' Financial Restructuring Procedure

Jurisdiction	Enhanced workout					Hybrid workout	
	Code of Conduct or Restructuring Principles	Master Restructuring Agreements	Alternative Dispute Resolution	Other third-party coordination (possibly administration or authority)	Other supporting features (dedicated process or incentives framework)	Hybrid I	Hybrid II (for example, Schemes of Arrangement)
Singapore			ADR such as mediation and arbitration	Simplified debt restructuring under SIP	ESS-S (expired) ESS-C (expired)	Pre-pack scheme of arrangement	Scheme of arrangement Judicial Management
South Africa							Business Rescue
Spain	Code of Good Practices					Out of Court Agreements on Payments Homologated Refinancing Agreements	
Switzerland						Pre-packaged plans	Court-imposed moratoria
Turkey		Small and Large Scale Framework Agreements		Framework Agreements are endorsed by the Turkish Banking Association			
UK	INSOL Principles based on the		ADR including Negotiation, Mediation,			Restructuring Plan (Part 26A	Schemes of Arrangement

Jurisdiction	Enhanced workout					Hybrid workout	
	Code of Conduct or Restructuring Principles	Master Restructuring Agreements	Alternative Dispute Resolution	Other third-party coordination (possibly administration or authority)	Other supporting features (dedicated process or incentives framework)	Hybrid I	Hybrid II (for example, Schemes of Arrangement)
	London Approach		Arbitration and Conciliation			Companies Act 2006) Company Voluntary Arrangements (CVA) Company Moratorium	
US						Prepackaged and prearranged bankruptcies	

Annex 2: Overview of recent and planned OCW reforms in FSB jurisdictions[58]

<table>
<tr><th>Jurisdiction</th><th>Brief description of recent (from January 2020) or planned reform</th></tr>
<tr><td>Australia</td><td>“Small business debt restructuring process (introduced 1 January 2021)”, The Treasury Laws Amendment (2021 Measures No. 5) Act 2021 and the Treasury Laws Amendment (Corporate Insolvency Reforms Consequential Amendments) Regulations 2021
Accessible by financially distressed incorporated businesses with liabilities of less than $1 million.
The company develops a restructuring plan alongside a restructuring practitioner.
The plan is put to eligible creditors to vote on and, if it receives a majority vote by value, the plan commences and the restructuring practitioner oversees the plan.
The process does not provide for automatic court involvement (although parties can bring matters before the court).</td></tr>
<tr><td>Brazil</td><td>Recent reform: Prior Conciliation was introduced by Law 14.112/2020, which entered into force in January 2021.
Planned reforms: There are bills in Congress that propose a special kind of REJ (extrajudicial recovery) for micro and small business.</td></tr>
<tr><td>France</td><td>France introduced a new collective procedure (la procédure de traitement de sortie de crise) that applies from 18 October 2021 until 2 June 2023. Its objective is to restructure debt of companies with fewer than 20 employees and less than €3 million in total liabilities excluding equity (see Box 11).</td></tr>
<tr><td>Germany</td><td>As from 1 January 2021 debtors have access to a restructuring moderation framework (Moderation Framework) designed to facilitate restructurings in particular for micro and small enterprises (without being limited to such entities).
As from 1 January 2021 debtors have also access to the Stabilization and Restructuring Framework for Enterprises (restructuring framework) designed to facilitate preventive restructuring by granting debtors various instruments such as access to a stay of individual enforcement actions, offering the possibility to have a plan confirmed by the court and cross-class cram down.</td></tr>
<tr><td>India</td><td>India has, in April 2021, introduced the Pre-packaged Insolvency Resolution Process (“Pre-Pack”) in order to provide a consensual, speedier, cost effective, semi-formal and less disruptive framework for insolvency resolution of MSME corporate debtors in distress.</td></tr>
</table>

[58] Source: FSB jurisdictions’ responses.

Jurisdiction	Brief description of recent (from January 2020) or planned reform
Indonesia	Proposed reform of debt enforcement and in-court insolvency framework to improve functioning and better align with current business practices. • Financial Services Authority regulation concerning Bank's Asset Quality Assessment provides banks may restructure debts if debtor has difficulties paying and has good business prospects to fulfill obligations after the restructuring. • Financial Services Authority extension until March 31, 2023, of National Economic Stimulus as Countercyclical Policy on Impact of the Spread of Coronavirus Disease, which provides a framework for debt restructuring by banks of debtors impacted by Covid. • Financial Services Authority extension until April 17, 2023, of Countercyclical Policy on the Impact of Coronavirus Disease for Non-Bank Financial Institutions, which provides a framework for debt restructuring by non-bank financial institutions for debtors who are affected by COVID. • Crash Programs, both intended for MSMEs impacted by the COVID pandemic, one of which focuses on debt reduction and one on a moratorium on legal action on state receivables.
Italy	The negotiated workout for resolving a firm's crisis entered into force on 15 November 2021. It consists of a series of steps to facilitate negotiations between debtors and creditors, rather than a procedure through which a specific kind of agreement is reached. Its essential features are that: (i) the debtor is assisted by an independent expert in negotiating with creditors; (ii) during negotiations, the debtor may apply to the court for the suspension of enforcement actions and for receiving super-senior financing; (iii) the debtor continues to manage the company, but any actions potentially conflicting with the restructuring options must be communicated to the expert; (iii) the outcome may consist in the initiation of a reorganisation procedure, or in the conclusion of informal agreements which potentially provide tax reductions and protection from avoidance actions. The expert ascertains the existence of concrete prospects for a reorganisation, meet with the other interested parties to propose intervention strategies and facilitate negotiations with creditors. During negotiations, the expert maintains the power to stop the whole procedure if he or she deems that there are no concrete chances for the debtor's recovery (substantially guaranteeing to the creditors that a restructuring could be successful and that the debtor doesn't engage in dilatory behaviour). An important feature of the new bankruptcy code has been anticipated and introduced at the end of 2020 in order to enhance the possibility of reaching the prescribed majorities for debt restructuring agreements. Part of firms' debts is often represented by unpaid taxes. It is therefore important to have revenue and social security agencies to agree to the proposed debt restructuring plan. However, due to inertia or bureaucratic difficulties, it could happen that administrations fail to take part to restructuring decisions, or they cast a negative vote despite restructuring is convenient according to the "best interest of creditors' test". It has been provided that, when these administrations do not participate and their vote or agreement is necessary to reach the prescribed majorities (60%) for the debt restructuring agreement, the court can nevertheless confirm the agreement if it is more favourable for these public creditors than the liquidation of the debtor's assets.

Jurisdiction	Brief description of recent (from January 2020) or planned reform
Japan	Banking, industry, and restructuring experts published new SME OCW guidelines on 4 March 2022. The new guidelines provide SMEs with an additional OCW option, which is coordinated by restructuring experts with some of the fees covered by government financial assistance.
Korea	The scope of small operating owners, including SMEs that may file a petition for simplified rehabilitation procedures under the CRPA was expanded in June 2020. Therefore, small operating income owners with the debt value of no more than KRW 5 billion (up from KRW 3 billion) may file a petition for the simplified rehabilitation procedures. This aims to help SMEs and others who suffered from the COVID-19 pandemic to swiftly recover through simplified rehabilitation procedures. Amendment of Individual Insolvency Regime. Amendment for eligible claims of personal bankruptcy/rehabilitation: Previously contingent student loans (principal and interest of student loans to be reimbursed after borrower student's employment) claims were excluded, but are now included for individual bankruptcy or rehabilitation proceeding.
Netherlands	There are no planned reforms related to OCWs. The temporary regulation to allow debtors to request the court to postpone a formal bankruptcy procedure by reason of COVID-19 has since lapsed.
Spain	The government has approved the draft law on the insolvency reform (which transposes the Directive 2019/1023 on restructuring and insolvency) on the 21st of December. It is expected that it will be enacted by the Parliament on the second quarter of 2022. Although this is not a law in response to COVID-19, but a structural reform of the insolvency system, its provisions will apply to address issues raised by the pandemic. The other amendment in progress reforms the insolvency procedure to increase its efficiency, introducing multiple procedural modifications aimed at streamlining the procedure, facilitating the approval of an agreement when the company is viable and a quick liquidation when it is unviable. In the design of these procedures, special attention has been paid to micro-enterprises. The Law introduces a unique insolvency procedure and specially adapted to the needs of micro-enterprises, characterized by a maximum procedural simplification and by reducing the costs of the procedure, eliminating all the procedures that are not necessary and reducing the participation of professionals and institutions to those cases in which they fulfil an essential function, or whose cost is voluntarily assumed by the parties. Likewise, it makes available to the parties an online payment calculation and simulation program at no cost, which will allow the debtor's advisory costs to be reduced.
Singapore	The Simplified Insolvency Programme (SIP) was introduced on 29 January 2021. The SIP comprises two bespoke processes for micro and small companies: i) The simplified debt restructuring programme and ii) the simplified winding up programme. The features of the programme are tailored to micro and small companies, to allow for low-cost, faster and more efficient restructuring and winding up proceedings. The programme is administered by the Official Receiver.

Jurisdiction	Brief description of recent (from January 2020) or planned reform
	The SIP is open for application by micro and small companies that qualify under the statutory eligibility criteria from 29 January 2021 to 28 July 2022 (extension possible).
Switzerland	As part of the Swiss response to the COVID-19 pandemic, the Federal Council enacted certain temporary changes to Swiss insolvency law in April 2020. Under these measures, executive bodies of Swiss companies were allowed not to notify the courts of an existing balance sheet over-indebtedness and to continue trading on the basis of an overall positive assessment of the future ability of the company to restructure its balance sheet by December 31, 2020. In addition, access of SMEs to a protective moratorium had been facilitated by introducing a temporary 'moratorium lite' with less stringent formal requirements. These temporary measures lapsed in October 2020 and have not been extended.
UK	There are no recent or planned reforms as such. The Corporate Insolvency and Governance Act 2020 introduced permanent changes to the UK's restructuring and insolvency framework. The new permanent hybrid OCW of the restructuring plan *(and the moratorium that can be used in conjunction with it, or another OCW*), was introduced via this Act, which was fast-tracked through the UK parliament in response to the pandemic. These permanent measures commenced on 26 June 2020.

Annex 3: Types of financial sector authority support to OCWs in FSB jurisdictions

Legend:

(no colour)	Financial sector authorities **do not play any role**.
(blue)	Financial sector authorities set **incentives**, express expectations for the restructuring of company debt, or otherwise support(ed) the private sector in developing in developing their own mechanisms.
(yellow)	Financial sector authorities provide **procedural rules** (e.g. codes of conduct, principles, standards)
(green)	Financial sector authorities provide **infrastructure** (e.g. platforms, credit mediation, administrative structures)

Jurisdiction	Support to (enhanced) OCW procedures	Support to SMEs within OCW or to OCW procedures dedicated to SMEs	Support to aspects of enabling frameworks
Argentina	• Changes to prudential rules to encourage OCWs		• Assistance Program for Strategic Companies Undergoing a Debt Restructuring • Central bank credit bureau
Australia	• Changes to insolvency laws to encourage OCWs	• ASIC administers small business debt restructuring • Debt counseling to small businesses	
Brazil	• Changes to prudential rules to encourage OCWs		• Central Bank credit bureau
Canada			
China	• Creation of work rules, guidelines, sets of common practices		• Central bank credit reporting system and early warning system
EU			
France	• CIRI	• CODEFI	• Banque du France expert ratings

Jurisdiction	Support to (enhanced) OCW procedures	Support to SMEs within OCW or to OCW procedures dedicated to SMEs	Support to aspects of enabling frameworks
	• Credit mediation supported by Banque de France	• Credit mediation supported by the Banque du France	• Bpifrance
Germany	• Changes to application of prudential rules regarding distress caused by the COVID crisis		
Hong Kong	• Hong Kong Approach to Corporate Difficulties issued by monetary authority and banking association		
India	• RBI OCW frameworks and frameworks for ICAs	• Reserve Bank of India OCW frameworks for SMEs and Pre-packaged insolvency resolution process introduced by Insolvency and Bankruptcy Board of India	• Central Repository of Information on Large Credits • Company's annual accounts available with the Registrar of Company under Ministry of Corporate Affairs • Information Utilities as envisioned under Insolvency and Bankruptcy Code • Central Registry of Securitisation Asset Reconstruction and Security Interest
Indonesia	• Changes to prudential and supervisory rules to encourage OCWs	• Support to MSMEs through National Recovery Program	• SLIK
Italy			• Italian Central Credit Register • SGL/AMCO asset management company
Japan	• OCW Framework of REVIC is endorsed by Japan Financial Services Agency's supervisory guidelines	• OCW Framework of SME Revitalization Support Councils is endorsed by Japan Financial Services Agency's supervisory guidelines	

Jurisdiction	Support to (enhanced) OCW procedures	Support to SMEs within OCW or to OCW procedures dedicated to SMEs	Support to aspects of enabling frameworks
	• REVIC, temporary entity funded by Japanese government and banking industry	• SME Revitalization Support Councils established by local chambers of commerce and partly subsidized by Small and Medium Enterprise Agency.	
Korea	• CRPA developed by the Financial Services Commission	• Simplified workout procedures under the CRPA	• Korea Credit Information Services • CRPA rules protect fresh financing • KAMCO asset management company
Mexico	• Changes to prudential and accounting rules to encourage OCWs		
Netherlands			• Chamber of Commerce
Russia			• Unified Federal Register of Legally Important Information on Facts of Activities of Legal Entities
Saudi Arabia	• SAMA Guidelines for Management of Problem Loans requires banks to develop code of conduct based on articulated principles		• Bankruptcy Register • Early Warning Signals
Singapore		• Simplified Insolvency Programme • ESS-C includes MOU developed by Central Bank and private banks	
South Africa	• Changes to prudential rules to encourage OCWs		• CIPC information sources
Spain	• Code of Good Practices	• Out of Court Agreements on Payments for debtors whose estimated liabilities are not in excess of EUR 5 million and non-financial corporates that satisfy certain conditions	• CIRBE • SAREB asset management company
	• Control Commissions to monitor implementation of the Code of Good	• Credit mediation for Out of Court Agreements for debtors whose	

Jurisdiction	Support to (enhanced) OCW procedures	Support to SMEs within OCW or to OCW procedures dedicated to SMEs	Support to aspects of enabling frameworks
	Practices and Mortgage Debt Code of Conduct	estimated liabilities are not in excess of EUR 5 million and non-financial corporations that satisfy certain conditions.	
Switzerland	• Changes to insolvency laws to encourage OCWs	• Temporary moratorium for SMEs with less stringent formal requirements	• Debt collection register
Turkey	• Framework Agreements approved by financial sector authorities • Guidelines	• Small Scale Framework Agreements approved by financial sector authorities	• Credit Registry Bureau • Public Disclosure Platform
UK	• FCA oversight of regulated companies engaging in debt restructuring or OCW to ensure compliance with statutory objectives and protection of consumers and markets		• Companies House, the registrar of companies and the Insolvency Service
US	• Changes to application of prudential rules and banking supervision due to distress caused by COVID		

Annex 4: Relevant/key aspects of the ICR Standard

World Bank Principles and UNCITRAL recommendations shown in **bold** are the main ones to anchor the peer review.

Italicised text provides a high-level description of the bolded principles and recommendations.

<table>
<tr><th>No</th><th>Part A. Creditor/Debtor rights</th></tr>
<tr><td>A1</td><td>Key Elements</td></tr>
<tr><td>A2</td><td>Security (Immovable Property), Real property)</td></tr>
<tr><td>A3</td><td>Security (Movable property)</td></tr>
<tr><td>A4</td><td>Registry for Property and Security Rights over Immovable Assets</td></tr>
<tr><td>A5</td><td>Registry for Security Rights over Movable Assets</td></tr>
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<tr><td></td><td>Part B. Risk management and corporate workout</td></tr>
<tr><td>B1</td><td>Credit Information Systems</td></tr>
<tr><td>B2</td><td>Directors’ Obligations in the Period Approaching Insolvency</td></tr>
<tr><td>B3</td><td>Enabling Legislative Framework
There should be an environment that enables debt and enterprise restructuring and encourages participants to engage in consensual arrangements. This includes laws and procedures that ensure access to timely, reliable, and accurate financial information on the distressed enterprise, encourage lending to, investment in, or recapitalisation of viable financially distressed enterprises and flexibly accommodate a broad range of restructuring activities, involving asset sales, discounted debt sales, debt write-offs, debt reschedulings, debt and enterprise restructurings, and exchange offerings (debt-to-debt and debt-to-equity exchanges). Further relevant features relate to tax treatment, regulatory impediments and enforcement measures.</td></tr>
<tr><td>B4</td><td>Informal Workout Procedures
Informal workout procedures can be supported by informal techniques, such as voluntary negotiation or mediation or informal dispute resolution, as well as quick processing of required formal elements used to approve a pre-negotiated agreement. There may be a facilitating role for the supervisor, and a need for interim framework enhancement measures in the context of a systemic crisis.
UNCITRAL Legislative Guide Recommendations 160-168
These recommendations cover procedural features such as commencement of expedited reorganisation proceedings, application requirements, commencement, the effect and notice of commencement, and the confirmation, effect and failed implementation of a confirmed restructuring plan.</td></tr>
<tr><td>B5</td><td>Regulation of Workout and Risk Management Practices
A country’s financial sector should promote the development of a code of conduct on a voluntary, consensual procedure for dealing with cases of corporate financial difficulty in</td></tr>
</table>

	which financial institutions have a significant exposure, especially in markets where corporate insolvency has reached systemic levels. Good risk-management practices and effective internal procedures and practices within financial institutions to effectively work out non-performing loans should be encouraged.
	Part C. Legal Framework for Insolvency
C1	Key Objectives and Policies
C2	Due Process: Notification and Information
	Commencement
C3	Eligibility
C4	Applicability and Accessibility
C5	Provisional Measures and Ethics of Commencement
	Governance
C6	Management
C7	Creditors and the Creditors' Committee
	Administration
C8	Collection, Preservation, Administration and Disposition of Assets
C9	Stabilizing and Sustaining Business Operations
C10	Treatment of Contractual Obligations
C11	Avoidable Transactions
	Claims and Claims Resolution Procedures
C12	Treatment of Stakeholder Rights and Priorities
C13	Claims Resolution Procedures
C14	Reorganization Proceedings
	International and Group Aspects
C15	International Considerations
C16	Insolvency of Domestic Enterprise Groups
C17	Insolvency of International Enterprise Groups
	Insolvency of Micro and Small Enterprises
C18	Key Objectives and Policies
C19	Simplified Insolvency Proceedings
C20	Discharge
	Part D. Implementation: Institutional and Regulatory Frameworks
	Institutional Considerations
D1	Role of Courts
D2	Judicial Selection, Qualification, Training and Performance
D3	Court Organization

D4	Transparency and Accountability
D5	Judicial Decision Making and Enforcement of Orders
D6	Integrity of the System
	Regulatory Considerations
D7	Role of Regulatory or Supervisory Bodies
D8	Competence and Integrity of Insolvency Representatives

Annex 5: Summary of public feedback and roundtable with external participants

The FSB invited feedback from the public in June 2021 on the areas covered by the peer review.[59] Respondents identified several factors that can facilitate or hinder the use of OCWs, issues facing SMEs, and the role of financial sector authorities. The main points raised are summarised below, together with the highlights of a virtual roundtable on 16 February 2022 with stakeholders, including financial institutions, academics and insolvency practitioners.

Main features that facilitate or hinder the use of OCWs

Written responses cited a few features to facilitate the use of OCWs. These include: that OCWs can be more flexible, less costly, and faster than in-court procedures; that publicly-traded companies can keep their listing following an OCW; the early involvement of financial advisers; the issuance of standstill notices to financial creditors, which can be helpful for freeing up funds to pay for trade debts; and the involvement of financial authorities to incentivise creditor participation (see below). One respondent emphasised the importance of enabling legal environments, which include for example elements such as modern secured transaction regimes, that encourage the use of OCWs in increasing the likelihood of survival of distressed companies and promoting the availability of lower cost credit.

Roundtable participants cited several additional factors that facilitate the use of OCWs in their jurisdictions. These include:

- regulatory factors such as early warning systems, flexible regulatory provisioning for financial creditors; and facilitation of takeovers of companies by creditors;
- contractual or legal factors such as confidentiality of proceedings, suspension of the debtor's duty to file insolvency proceedings, suspension of a creditor's insolvency petitions and suspension of enforcement actions; and protection from claw-back and for fresh financing; and
- other factors, including the existence of predictable policies by tax authorities on their own behaviour as a creditor; provision of counselling to debtors; the existence of ex ante intercreditor agreements.

Respondents also raised some challenges to the use of individual frameworks in certain jurisdictions. These included: requirements for unanimous consent from all creditors involved in the workout for procedures which do not include a limited court involvement to confirm majority decisions; coordination challenges among creditors, in particular where companies have complex debt structures across multiple jurisdictions; the risk of ex-post court challenges to voluntary arrangements; challenges in managing hold-out creditors; lack of involvement of tax authorities in OCWs; institutional capacity, in particular of judges (for hybrid frameworks); and lack of preferred treatment for fresh financing.

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[59] See *Thematic Peer Review on Corporate Debt Workouts: Summary Terms of Reference* (June 2021).

Some stakeholders noted the need to make market solutions such as debt-to-equity swaps more widely available to companies going through OCWs, with or without authorities' involvement.

Issues facing SMEs

Respondents acknowledged that the definition of SME can vary widely across jurisdictions and in some include fairly large corporates, so it can be difficult in identifying common issues across jurisdictions. Stakeholders also pointed out that in many jurisdictions micro-companies are usually not incorporated and do not have access to OCW for corporates; instead they are subject to personal bankruptcy regimes for natural persons.

Several challenges for SMEs were cited by both respondents and roundtable participants. These include: the difficulty for SMEs in providing ex ante evidence of sustained liquidity and payment capacity; knowledge gaps on financial and accounting concepts necessary to negotiate an OCW or of OCW procedures themselves; limited access to legal and economic counsel; high costs in relation to the required financial restructuring, even if they are low compared to formal insolvency procedures; and the difficulty in finding practitioners willing to assist in the agreement of a relatively small OCW because the fees would be too low.

Potential solutions to these barriers offered by roundtable participants included: introducing simplified procedures for SMEs; standardising or modularising procedures, where SMEs would only use modules that are relevant; using technological innovations; having governments or the private sector set up platforms for credit mediation; and the creation of codes of conduct or good practice agreements. One participant cited a recent reform in their jurisdiction that introduced a cram-down on the tax authority and social security funds, allowing for a quicker decision on the restructuring agreement. Some also cautioned that the simplification of procedures is useful and important but must not come at the expense of the rights of creditors and debtors.

The role of financial sector authorities in facilitating debt restructuring

In written feedback, some respondents noted it is helpful where financial sector authorities play a role in OCWs as this can incentivise financial creditors to participate in debt restructurings. In addition, some highlighted the positive effect of payment deferrals, loan restructuring and moratoria on creditor enforcement as instruments to restructure debt.

At the roundtable, participants noted the very different traditions across jurisdictions regarding the involvement of authorities. In several instances authorities' involvement started in response to a financial or economic crisis. Some jurisdictions leave it to the market and its participants to process and agree restructuring of company debt. Where this is the case, restructurings are supported or guided by the potential outcomes of court procedures (US), or by out-of-court process rules. In some jurisdictions the private sector might be guided by voluntary approaches encouraged by the authorities, for example in the case of UK banks' adoption of the 'London Approach'. In some jurisdictions, government authorities are actively involved in debt restructuring, for example in France. In most cases the (sometimes unwritten) principles underpinning such approaches include confidentiality, transparency, equal treatment and independent busines review based on financial data from auditors. Usually, the restructuring focuses on the financial creditors and carves out employees and mostly also trade and supply

creditors. In other jurisdictions, financial authorities limit their involvement to providing structures and procedures to the private sector to support debt restructuring, for example in Korea.